

Chapter 653

2017 EDITION

Minimum Wages; Employment Conditions; Minors

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653.005 [Repealed by 1967 c.596 §15]

MINIMUM WAGES; EMPLOYMENT CONDITIONS

653.010 Definitions for ORS 653.010 to 653.261. As used in ORS 653.010 to 653.261, unless the context requires otherwise:

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

(2) “Employ” includes to suffer or permit to work but does not include voluntary or donated services performed for no compensation or without expectation or contemplation of compensation as the adequate consideration for the services performed for a public employer referred to in subsection (3) of this section, or a religious, charitable, educational, public service or similar nonprofit corporation, organization or institution for community service, religious or humanitarian reasons or for services performed by general or public assistance recipients as part of any work training program administered under the state or federal assistance laws.

(3) “Employer” means any person who employs another person including the State of Oregon or a political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(4) “Minor” means any person under 18 years of age.

(5) “Occupation” means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(6) “Organized camp” means a day or resident camp, whether or not operated for profit, established to give campers recreational, creative, religious or educational experience in cooperative group living wherein the activities are conducted on a closely supervised basis, whether or not the camp is used primarily by an organized group or by members of the public and whether or not the activities or facilities are furnished free of charge or for the payment of a fee.

(7) “Outside salesperson” means any employee who is employed for the purpose of and who is customarily and regularly engaged away from the employer’s place or places of business in making sales, or obtaining orders, or obtaining contracts for services and whose hours of work of any other nature for the employer do not exceed 30 percent of the hours worked in the workweek by the nonexempt employees of the employer.

(8) “Piece-rate” means a rate of pay calculated on the basis of the quantity of the crop harvested.

(9) “Salary” means no less than the wage set pursuant to ORS 653.025, multiplied by 2,080 hours per year, then divided by 12 months.

(10) “Wages” means compensation due to an employee by reason of employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to such deductions, charges or allowances as are permitted in ORS 653.035.

(11) “Work time” includes both time worked and time of authorized attendance. [1967 c.596 §2; 1979 c.153 §2; 1983 c.274 §1; 1985 c.99 §1; 1985 c.170 §1; 1989 c.446 §1; 1991 c.829 §2; 1993 c.739 §24; 2003 c.14 §398]

653.015 Statement of policy. It is declared to be the policy of the State of Oregon to establish minimum wage standards for workers at levels consistent with their health, efficiency and general well-being. [1967 c.596 §1]

653.017 Local minimum wage requirements; preemption; exceptions. (1) As used in this section:

(a) “Local government” includes a county, city, district or other public corporation, authority or entity organized and existing under statute or city or county charter.

(b) “Public employer” means a political subdivision of the State of Oregon, including counties, cities, districts, as defined in ORS 198.010 and 198.180, and public and quasi-public corporations.

(2) Except as provided in subsection (3) of this section, the State of Oregon preempts all charter and statutory authority of local governments to set any minimum wage requirements.

(3) A local government may set minimum wage requirements:

(a) For public employers;

(b) In specifications for public contracts entered into by the local government; and

(c) As a condition of the local government providing direct tax abatements or subsidies for private employers with 10 or more employees. [2001 c.967 §1]

Note: 653.017 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 653 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

(1) An individual employed in agriculture if:

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

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

(c) Such individual:

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

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

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

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

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

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

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

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

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

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

(b) Exercises discretion and independent judgment; and

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

(4) An individual employed by the United States.

(5) An individual who is employed by an institution whose function is primary or sec-

ondary education, and in which the individual is an enrolled student.

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

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

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

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

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

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

(b) A nonprofit organized camp.

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

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

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

(14) An individual employed in domestic service employment in or about a family home to provide companionship services for individuals who, because of age or infirmity, are unable to care for themselves.

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

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

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

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

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

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

(18) An individual residing in a mobile home park or manufactured dwelling park designed to provide other people with temporary or permanent lodging, for the purpose of maintenance, management or in assisting in the management of same.

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

(20) An individual who:

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

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

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

(B) Held in a ski area, as defined in ORS 30.970. [1967 c.596 §3; 1971 c.758 §3; 1973 c.383 §1; 1977 c.238 §1; 1979 c.153 §1; 1981 c.361 §1; 1983 c.319 §3; 1989 c.446 §2; 1991 c.829 §1; 1991 c.870 §1; 1993 c.494 §1; 1995 c.466 §1; 1995 c.497 §1; 1997 c.300 §1; 2008 c.32 §1; 2011 c.376 §1]

653.022 “Piece-rate-work-day” defined for ORS 653.020. As used in ORS 653.020 (1), “piece-rate-work-day” means any day during which an employee performs any agricultural labor on a piece-rate basis for not less than one hour. For the purposes of this section, “employee” does not include any individual employed by an employer in agriculture if such individual is the parent, spouse, child or other member of the employer’s immediate family. [1971 c.758 §2; 1989 c.446 §3]

653.025 Minimum wage rate; rules. (1) Except as provided in subsections (2) and (3) of this section, ORS 652.020 and the rules of the Commissioner of the Bureau of Labor and Industries issued under ORS 653.030 and 653.261, for each hour of work time that the employee is gainfully employed, no employer

shall employ or agree to employ any employee at wages computed at a rate lower than:

(a) For calendar year 2003, \$6.90.

(b) From January 1, 2004, to June 30, 2016, a rate adjusted for inflation as calculated by the commissioner.

(c) From July 1, 2016, to June 30, 2017, \$9.75.

(d) From July 1, 2017, to June 30, 2018, \$10.25.

(e) From July 1, 2018, to June 30, 2019, \$10.75.

(f) From July 1, 2019, to June 30, 2020, \$11.25.

(g) From July 1, 2020, to June 30, 2021, \$12.

(h) From July 1, 2021, to June 30, 2022, \$12.75.

(i) From July 1, 2022, to June 30, 2023, \$13.50.

(j) After June 30, 2023, beginning on July 1 of each year, a rate adjusted annually for inflation as described in subsection (5) of this section.

(2) If the employer is located within the urban growth boundary of a metropolitan service district organized under ORS chapter 268, except as provided by ORS 652.020 and the rules of the commissioner issued under ORS 653.030 and 653.261, for each hour of work time that the employee is gainfully employed, no employer shall employ or agree to employ any employee at wages computed at a rate lower than:

(a) From July 1, 2016, to June 30, 2017, \$9.75.

(b) From July 1, 2017, to June 30, 2018, \$11.25.

(c) From July 1, 2018, to June 30, 2019, \$12.

(d) From July 1, 2019, to June 30, 2020, \$12.50.

(e) From July 1, 2020, to June 30, 2021, \$13.25.

(f) From July 1, 2021, to June 30, 2022, \$14.

(g) From July 1, 2022, to June 30, 2023, \$14.75.

(h) After June 30, 2023, \$1.25 per hour more than the minimum wage determined under subsection (1)(j) of this section.

(3) If the employer is located within a nonurban county as described in ORS 653.026, except as provided by ORS 652.020 and the rules of the commissioner issued under ORS 653.030 and 653.261, for each hour of work time that the employee is gainfully

employed, no employer shall employ or agree to employ any employee at wages computed at a rate lower than:

(a) From July 1, 2016, to June 30, 2017, \$9.50.

(b) From July 1, 2017, to June 30, 2018, \$10.

(c) From July 1, 2018, to June 30, 2019, \$10.50.

(d) From July 1, 2019, to June 30, 2020, \$11.

(e) From July 1, 2020, to June 30, 2021, \$11.50.

(f) From July 1, 2021, to June 30, 2022, \$12.

(g) From July 1, 2022, to June 30, 2023, \$12.50.

(h) After June 30, 2023, \$1 per hour less than the minimum wage determined under subsection (1)(j) of this section.

(4) The commissioner shall adopt rules for determining an employer's location under subsection (2) of this section.

(5)(a) The Oregon minimum wage shall be adjusted for inflation as provided in paragraph (b) of this subsection.

(b) No later than April 30 of each year, beginning in 2023, the commissioner shall calculate an adjustment of the wage amount specified in subsection (1)(j) of this section based upon the increase, if any, from March of the preceding year to March of the year in which the calculation is made in the U.S. City Average Consumer Price Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the United States Department of Labor or its successor.

(c) The wage amount as adjusted under this subsection shall be rounded to the nearest five cents.

(d) The wage amount as adjusted under this subsection becomes effective as the new Oregon minimum wage amount, replacing the minimum wage amount specified in subsection (1)(j) of this section, on July 1 of the year in which the calculation is made. [1967 c.596 §4; 1973 c.403 §3; 1975 c.504 §1; 1979 c.832 §1; 1979 c.886 §1; 1985 c.99 §2; 1985 c.161 §1; 1989 c.446 §4; 1997 c.1 §1; 2003 c.2 §1; 2016 c.12 §1; 2017 c.17 §52]

653.026 "Nonurban county" defined for ORS 653.025. For purposes of ORS 653.025, "nonurban county" means any of the following counties:

- (1) Baker;
- (2) Coos;
- (3) Crook;
- (4) Curry;
- (5) Douglas;

(6) Gilliam;

(7) Grant;

(8) Harney;

(9) Jefferson;

(10) Klamath;

(11) Lake;

(12) Malheur;

(13) Morrow;

(14) Sherman;

(15) Umatilla;

(16) Union;

(17) Wallowa; or

(18) Wheeler. [2016 c.12 §2]

Note: 653.026 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 653 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

653.027 Wage rate for persons under 18 years of age in agriculture. An employer who employs individuals under 18 years of age in agricultural labor and who pays such individuals by the amount of work produced or services rendered shall pay such individuals the same rate of payment for the work produced or services required as paid to individuals 18 years of age or older. [1973 c.403 §2; 1993 c.18 §130]

653.029 [1975 c.504 §2; 1977 c.238 §2; 1979 c.832 §2; 1985 c.161 §2; repealed by 1989 c.446 §5]

653.030 Commissioner may prescribe lower rates in certain cases; rules. The Commissioner of the Bureau of Labor and Industries shall issue rules prescribing the employment of other types of persons at fixed minimum hourly wage rates lower than the minimum wage rate required by ORS 653.025, when the commissioner has determined that the application of ORS 653.025 would substantially curtail opportunities for employment for specific types of persons. The types of persons for whom a minimum hourly wage rate may be set are limited to persons with mental or physical disabilities or who are student-learners, as defined in ORS 653.070. [1967 c.596 §5 (1); 1973 c.403 §4; 1979 c.886 §2; 1981 c.850 §1; 1985 c.99 §3; 2007 c.70 §282]

653.035 Deducting value of lodging, meals and other benefits furnished by employer; treatment of commissions and tips. (1) Employers may deduct from the minimum wage to be paid employees under ORS 653.025, 653.030 or 653.261, the fair market value of lodging, meals or other facilities or services furnished by the employer for the private benefit of the employee.

(2) Employers may include commission payments to employees as part of the applicable minimum wage for any pay period in which the combined wage and commission

earnings of the employee will comply with ORS 653.010 to 653.261. In any pay period where the combined wage and commission payments to the employee do not add up to the applicable minimum wage under ORS 653.010 to 653.261, the employer shall pay the minimum rate as prescribed in ORS 653.010 to 653.261.

(3) Employers, including employers regulated under the federal Fair Labor Standards Act, may not include any amount received by employees as tips in determining the amount of the minimum wage required to be paid by ORS 653.010 to 653.261. [1967 c.596 §§6, 7; 1977 c.238 §3]

653.040 Powers of commissioner; rules. The Commissioner of the Bureau of Labor and Industries, in addition to the commissioner's other powers, may:

(1) Investigate and ascertain the wages of persons employed in any occupation or place of employment in the state.

(2) Require from an employer statements, including sworn statements, with respect to wages, hours, names and addresses and such other information pertaining to the employer's employees or their employment as the commissioner considers necessary to carry out ORS 653.010 to 653.261.

(3) Make such rules as the commissioner considers appropriate to carry out the purposes of ORS 653.010 to 653.261, or necessary to prevent the circumvention or evasion of ORS 653.010 to 653.261 and to establish and safeguard the minimum wage rates provided for under ORS 653.010 to 653.261. [1967 c.596 §8; 1985 c.99 §4; 2003 c.2 §2; 2005 c.22 §458]

653.045 Records to be kept by employers; itemization of deductions from wages. (1) Every employer required by ORS 653.025 or by any rule, order or permit issued under ORS 653.030 to pay a minimum wage to any of the employer's employees shall make and keep available to the Commissioner of the Bureau of Labor and Industries for not less than two years, a record or records containing:

(a) The name, address and occupation of each of the employer's employees.

(b) The actual hours worked each week and each pay period by each employee.

(c) Such other information as the commissioner prescribes by the commissioner's rules if necessary or appropriate for the enforcement of ORS 653.010 to 653.261 or of the rules and orders issued thereunder.

(2) Each employer shall keep the records required by subsection (1) of this section open for inspection or transcription by the commissioner or the commissioner's designee at any reasonable time.

(3) Every employer of one or more employees covered by ORS 653.010 to 653.261 shall supply each of the employer's employees with itemized statements of amounts and purposes of deductions in the manner provided in ORS 652.610. [1967 c.596 §9; 1985 c.99 §5]

653.050 Employers to post summary of law and rules; Bureau of Labor and Industries to furnish summaries and copies. Every employer required by ORS 653.025 or by any rules, orders or permit issued under ORS 653.030 or 653.261 to pay a minimum wage to any of the employer's employees shall keep summaries of ORS 653.010 to 653.261 and summaries of all rules adopted by the Commissioner of the Bureau of Labor and Industries pursuant to ORS 653.010 to 653.261 and 653.307 posted in a conspicuous and accessible place in or about the premises where the employees are employed. Employers may obtain the summaries from the website of the Bureau of Labor and Industries or upon request from the bureau, the first copy of which shall be furnished without charge. In addition, upon request, the bureau shall furnish the complete text of all rules adopted pursuant to ORS 653.010 to 653.261 and 653.307 to any employer without charge. [1967 c.596 §10; 1977 c.238 §4; 1985 c.99 §6; 2011 c.348 §4; 2013 c.296 §20]

653.055 Liability of noncomplying employer; contrary agreements no defense; wage claims; suits to enjoin future violations; attorney fees. (1) Any employer who pays an employee less than the wages to which the employee is entitled under ORS 653.010 to 653.261 is liable to the employee affected:

(a) For the full amount of the wages, less any amount actually paid to the employee by the employer; and

(b) For civil penalties provided in ORS 652.150.

(2) Any agreement between an employee and an employer to work at less than the wage rate required by ORS 653.010 to 653.261 is no defense to an action under subsection (1) of this section.

(3) The Commissioner of the Bureau of Labor and Industries has the same powers and duties in connection with a wage claim based on ORS 653.010 to 653.261 as the commissioner has under ORS 652.310 to 652.445 and in addition the commissioner may, without the necessity of assignments of wage claims from employees, initiate suits against employers to enjoin future failures to pay required minimum wages or overtime pay and to require the payment of minimum wages and overtime pay due employees but not paid as of the time of the filing of suit. The commissioner may join in a single pro-

ceeding and in one cause of suit any number of wage claims against the same employer. If the commissioner does not prevail in such action, the commissioner shall pay all costs and disbursements from the Bureau of Labor and Industries Account.

(4) The court may award reasonable attorney fees to the prevailing party in any action brought by an employee under this section. [1967 c.596 §11; 1977 c.513 §1; 1981 c.850 §2; 1981 c.897 §90; 1985 c.99 §7; 1995 c.618 §111]

653.060 Discharging or discriminating against employee prohibited. (1) An employer may not discharge or in any other manner discriminate against an employee because:

(a) The employee has inquired about the provisions of ORS 653.010 to 653.261 or 653.265 or has reported a violation of or filed a complaint related to ORS 653.010 to 653.261 or 653.265.

(b) The employee has caused to be instituted or is about to cause to be instituted any proceedings under or related to ORS 653.010 to 653.261 or 653.265.

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

(2) A violation of this section is an unlawful employment practice under ORS chapter 659A. A person unlawfully discriminated against under this section may file a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries. [1967 c.596 §12; 2007 c.278 §2; 2017 c.685 §4]

653.065 Application of Administrative Procedures Act. (1) All proceedings under ORS 653.010 to 653.261 shall be conducted in compliance with ORS chapter 183.

(2) All rules of the Commissioner of the Bureau of Labor and Industries under ORS 653.010 to 653.261 shall be issued in compliance with ORS chapter 183. [1967 c.596 §13; 1985 c.99 §8]

653.070 Student-learners special wage; conditions; rules; penalties. (1) As used in this section:

(a) "Bona fide professional training program" includes any professional training program approved by the Superintendent of Public Instruction pursuant to rules of the State Board of Education which provides for part-time employment training which may be scheduled for a part of the workday or workweek, for alternating weeks or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related information given as a regular part of the student-learner's course by an accredited school, college or university.

(b) "Student-learner" means a student who is receiving instruction in an accredited school, college or university and who is employed on a part-time basis, pursuant to a bona fide professional training program.

(2) Notwithstanding ORS 653.025, employers shall pay student-learners at least 75 percent of the minimum wage prescribed by ORS 653.025.

(3) The number of hours of employment training for a student-learner at subminimum wages, when added to the hours of school instruction, shall not exceed eight hours on any day or 40 hours in any week.

(4) The Commissioner of the Bureau of Labor and Industries may adopt rules prescribing the procedures and requirements for application and issuance of special certificates authorizing the employment of student-learners at subminimum wages. The rules shall require that the following conditions be satisfied before the issuance of such special certificates:

(a) The employment of the student-learner at subminimum wages authorized by the special certificate must be necessary to prevent curtailment of opportunities for employment.

(b) The occupation for which the student-learner is receiving preparatory training must require a sufficient degree of skill to necessitate a substantial learning period.

(c) The training must not be for the purpose of acquiring manual dexterity and high production speed in repetitive operations.

(d) The employment of a student-learner must not have the effect of displacing a worker employed in the establishment.

(e) The employment of the student-learners at subminimum wages must not tend to impair or depress the wage rates or working standards established for experienced workers for work of a like or comparable character.

(f) The occupational needs of the community or industry warrant the training of student-learners.

(g) There are no serious outstanding violations of the provisions of a student-learner certificate previously issued to the employer, or serious violations of any other provisions of law by the employer which provide reasonable grounds to conclude that the terms of the certificate would not be complied with, if issued.

(h) The issuance of such a certificate would not tend to prevent the development of apprenticeship under ORS 660.002 to 660.210 or would not impair established ap-

prenticeship standards in the occupation or industry involved.

(i) The number of student-learners to be employed in one establishment must not be more than a small proportion of its working force.

(5) Failure to comply with subsection (2) or (3) of this section shall subject the employer to a penalty of 75 percent of the minimum wage prescribed by ORS 653.025 for each hour of work time that the student-learner is gainfully employed. The Commissioner of the Bureau of Labor and Industries shall have a cause of action against the employer for the recovery of the penalty. [1979 c.886 §5; 1981 c.850 §3; 1989 c.491 §62; 1995 c.343 §50]

Note: 653.070 was added to and made a part of ORS chapter 653 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

653.075 Legislative findings on breast-feeding. The Legislative Assembly finds that:

(1) Women with infants and toddlers are the fastest growing sector of today's labor force, with at least 50 percent of pregnant women who are employed returning to work by the time their children are three months old.

(2) The American Academy of Pediatrics recommends that every child be breast-fed for at least the first 12 months of life and urges that arrangements be made for expressing breast milk if the mother and child are separated.

(3) Women who wish to continue breast-feeding after returning to work have relatively simple needs. These needs include a clean, convenient, private location to express milk at the work site and adequate break time in which to do so. [2005 c.466 §1]

653.077 Expressing milk in workplace; rules. (1) As used in this section:

(a) "Reasonable efforts" means efforts that do not impose an undue hardship on the operation of an employer's business.

(b) "Undue hardship" means significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business.

(2)(a) An employer shall provide reasonable unpaid rest periods to accommodate an employee who needs to express milk for her child.

(b) The employee shall provide reasonable notice to the employer that the employee intends to express milk upon returning to work.

(c) Unless otherwise agreed to by the employer and the employee, the employer shall provide the employee a 30-minute rest period to express milk during each four-hour

work period, or the major part of a four-hour work period, to be taken by the employee approximately in the middle of the work period.

(d) The employee shall, if feasible, take the rest periods to express milk at the same time as the rest periods or meal periods that are otherwise provided to the employee.

(e) If the employer is required by law or contract to provide the employee with paid rest periods, the employer shall treat the rest periods used by the employee for expressing milk as paid rest periods, up to the amount of time the employer is required to provide as paid rest periods. If an employee takes unpaid rest periods, the employer may allow the employee to work before or after her normal shift to make up the amount of time used during the unpaid rest periods. If the employee does not work to make up the amount of time used during the unpaid rest periods, the employer is not required to compensate the employee for that time.

(3) When an employer's contribution to an employee's health insurance is influenced by the number of hours the employee works, the employer shall treat any unpaid rest periods used by the employee to express milk as paid work time for the purpose of measuring the number of hours the employee works.

(4) An employer is not required to provide rest periods under this section if to do so would impose an undue hardship on the operation of the employer's business.

(5)(a) An employer shall make reasonable efforts to provide a location, other than a public restroom or toilet stall, in close proximity to the employee's work area for the employee to express milk in private.

(b) The location may include, but is not limited to:

(A) The employee's work area if the work area meets the requirements of paragraph (a) of this subsection;

(B) A room connected to a public restroom, such as a lounge, if the room allows the employee to express milk in private; or

(C) A child care facility in close proximity to the employee's work location where the employee can express milk in private.

(6) An employer may allow an employee to temporarily change job duties if the employee's regular job duties do not allow her to express milk.

(7) This section applies only to an employer whose employee is expressing milk for her child 18 months of age or younger.

(8) This section applies only to employers who employ 25 or more employees in the

State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which the rest periods are to be taken or in the year immediately preceding the year in which the rest periods are to be taken.

(9) Notwithstanding ORS 653.020 (3), this section applies to individuals engaged in administrative, executive or professional work as described in ORS 653.020 (3).

(10)(a) In addition to, and not in lieu of, any other requirement under this section, each school district board shall adopt a policy regarding breast-feeding in the workplace to accommodate an employee who needs to express milk for her child.

(b) Each policy must, at a minimum, designate a location at the school facility, other than a public restroom or toilet stall, in close proximity to the employee's work area for the employee to express milk in private.

(c) A policy adopted under this subsection, including the designated locations where an employee may express milk, must be published in an employee handbook. In addition, a list of the designated locations must be readily available, upon request, in the central office of each school facility and in the central administrative office for each school district.

(11) The Commissioner of the Bureau of Labor and Industries shall adopt rules to implement and enforce this section. [2005 c.466 §2; 2007 c.144 §1]

653.079 Advisory committee on expressing milk in workplace; membership; duties. (1) The Commissioner of the Bureau of Labor and Industries shall appoint an advisory committee. The advisory committee must include equal representation of members from labor and management.

(2) Upon request by a particular industry or profession, the advisory committee shall:

(a) Determine when the ordinary course of the requesting industry or profession makes compliance with ORS 653.077 difficult for an employer in that industry or profession; and

(b) Submit to the commissioner recommendations for rules that address compliance difficulties in that industry or profession.

(3) The commissioner shall determine the terms and organization of the advisory committee.

(4) All agencies of state government, as defined in ORS 174.111, are directed to assist the advisory committee in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members

of the advisory committee consider necessary to perform their duties. [2007 c.144 §4]

Note: 653.079 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 653 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

653.105 [Amended by 1953 c.123 §2; repealed by 1967 c.596 §15]

653.110 [Repealed by 1967 c.596 §15]

653.115 [Repealed by 1967 c.596 §15]

653.120 [Repealed by 1967 c.596 §15]

653.125 [Repealed by 1967 c.596 §15]

653.205 [Amended by 1961 c.337 §1; repealed by 1967 c.596 §15]

653.210 [Repealed by 1967 c.596 §15]

653.215 [Repealed by 1967 c.596 §15]

653.220 [Repealed by 1967 c.596 §15]

653.225 [Repealed by 1967 c.596 §15]

653.230 [Repealed by 1967 c.596 §15]

653.235 [Repealed by 1967 c.596 §15]

653.240 [Repealed by 1967 c.596 §15]

653.245 [Repealed by 1967 c.596 §15]

653.250 [Repealed by 1967 c.596 §15]

653.255 [Repealed by 1967 c.596 §15]

653.256 Civil penalty for general employment statute or rule violations. (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 \$1,000 against any person that willfully violates ORS 653.025, 653.030, 653.045, 653.050, 653.060, 653.261, 653.265, 653.606, 653.611, 653.616, 653.621, 653.626, 653.631 or 653.636 or section 5, chapter 537, Oregon Laws 2015, or any rule adopted thereunder.

(2) In addition to any other penalty provided by law, the commissioner may assess a civil penalty not to exceed \$1,000 against any person that intentionally violates ORS 653.077 or any rule adopted thereunder.

(3) Civil penalties authorized by this section shall be imposed in the manner provided in ORS 183.745.

(4)(a) All sums collected as penalties under this section shall be first applied toward reimbursement of costs incurred in determining the violations, conducting hearings under this section and addressing and collecting the penalties.

(b) The remainder, if any, of the sums collected as penalties under subsection (1) of this section shall be paid over by the commissioner to the Department of State Lands for the benefit of the Common School Fund of this state. The department shall issue a receipt for the money to the commissioner.

(c) The remainder, if any, of the sums collected as penalties under subsection (2) of this section shall be paid over by the com-

missioner to the Department of Human Services for the benefit of the Breastfeeding Mother Friendly Employer Project. The department shall issue a receipt for the moneys to the commissioner. [1997 c.314 §2; 2001 c.690 §3; 2007 c.144 §2; 2015 c.537 §17; 2017 c.685 §5]

653.260 [Repealed by 1967 c.596 §15]

653.261 Minimum employment conditions; overtime; rules; meal periods; exemptions; penalty. (1)(a) The Commissioner of the Bureau of Labor and Industries may adopt rules prescribing such minimum conditions of employment, excluding minimum wages, in any occupation as may be necessary for the preservation of the health of employees. The rules may include, but are not limited to, minimum meal periods and rest periods, and maximum hours of work, but not less than eight hours per day or 40 hours per workweek; however, after 40 hours of work in one workweek overtime may be paid, but in no case at a rate higher than one and one-half times the regular rate of pay of the employees when computed without benefit of commissions, overrides, spiffs and similar benefits.

(b) As used in this subsection, “workweek” means a fixed period of time established by an employer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods. A workweek may begin on any day of the week and any hour of the day and need not coincide with a calendar week. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade overtime requirements.

(2) Rules adopted by the commissioner pursuant to subsection (1) of this section do not apply to individuals employed by this state or a political subdivision or quasi-municipal corporation thereof if other provisions of law or collective bargaining agreements prescribe rules pertaining to conditions of employment referred to in subsection (1) of this section, including meal periods, rest periods, maximum hours of work and overtime.

(3) Rules adopted by the commissioner pursuant to subsection (1) of this section regarding meal periods and rest periods do not apply to nurses who provide acute care in hospital settings if provisions of collective bargaining agreements entered into by the nurses prescribe rules concerning meal periods and rest periods.

(4)(a) The commissioner shall adopt rules regarding meal periods for employees who

serve food or beverages, receive tips and report the tips to the employer.

(b) In rules adopted by the commissioner under paragraph (a) of this subsection, the commissioner shall permit an employee to waive a meal period. However, an employer may not coerce an employee into waiving a meal period.

(c) Notwithstanding ORS 653.256 (1), in addition to any other penalty provided by law, the commissioner may assess a civil penalty not to exceed \$2,000 against an employer that the commissioner finds has coerced an employee into waiving a meal period in violation of this subsection. Each violation is a separate and distinct offense. In the case of a continuing violation, each day’s continuance is a separate and distinct violation.

(d) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS 183.745. All sums collected as penalties under this subsection shall be applied and paid over as provided in ORS 653.256 (4). [1967 c.596 §5 (2), (3); 1971 c.492 §1; 1981 c.361 §2; 1985 c.99 §9; 2001 c.466 §1; 2007 c.167 §§1,2; 2011 c.58 §1; 2017 c.685 §§6,7]

653.263 Overtime for persons employed by seafood processors. (1) As used in this section:

(a) “Seafood processor” means a cannery, drier or packing plant that processes seafood.

(b) “Workweek” means a fixed period of time established by an employer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods. A workweek may begin on any day of the week and any hour of the day and need not coincide with a calendar week. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade overtime requirements.

(2) An employer may not require or permit an employee employed by a seafood processor to work more than 10 hours in any one day unless the employer compensates the employee as follows:

(a) One and one-half times the employee’s regular rate of pay for each hour the employee works over 10 hours in any one day if the employee is an hourly employee; or

(b) One and one-half times the regular price for all work done during the time the employee is employed over 10 hours per day if the employee is a piece worker.

(3) This section does not apply to:

(a) An employee who is engaged in manufacturing, as defined in ORS 652.020; or

(b) An employee whose principal duties are administrative in nature or who does not otherwise, in the usual course of the employee's duties, come into contact with the direct processing of goods. [2017 c.685 §10]

Note: 653.263 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 653 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

653.265 Overtime for persons employed in canneries, driers and packing plants; exceptions; remedies; penalties. (1) As used in this section:

(a) "Perishable product" means any product that may spoil, deteriorate or undergo other material changes that render it unsuitable for the use for which it was produced. "Perishable product" includes agricultural crops, meat and fish.

(b) "Undue hardship period" means the period of time during which perishable product must be processed after harvesting, slaughter or catch.

(c) "Workweek" means a fixed period of time established by an employer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods. A workweek may begin on any day of the week and any hour of the day and need not coincide with a calendar week. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade overtime requirements.

(2)(a) Except as provided in paragraphs (b) to (d) of this subsection, an employer may not require or permit an employee employed in any cannery, drier or packing plant in this state to work more than:

- (A) 10 hours in any one day; or
- (B) 55 hours in one workweek.

(b) An employer may permit an employee described in paragraph (a) of this subsection to work up to 60 hours in one workweek if the employee requests or consents in writing to work more than 55 hours in the workweek.

(c) Notwithstanding paragraph (b) of this subsection, during the period of time that an employer is eligible for an undue hardship period exemption under subsection (5) of this section, an employer may permit an employee described in paragraph (a) of this subsection to work:

- (A) Up to 84 hours per workweek for four workweeks; and
- (B) Up to 80 hours per workweek for the remainder of the undue hardship period.

(d) An employer may permit an employee described in paragraph (a) of this subsection to work more than 10 hours in any one day if the employer compensates the employee as follows:

(A) One and one-half times the employee's regular rate of pay for each hour the employee works over 10 hours in any one day if the employee is an hourly employee; or

(B) One and one-half times the regular price for all work done during the time the employee is employed over 10 hours per day if the employee is a piece worker.

(3) An employer shall calculate an employee's overtime on a daily basis under subsection (2)(d) of this section and on a weekly basis under ORS 653.261 (1) and pay the greater of the two amounts if, during the same workweek, the employee works more than:

- (a) 10 hours in one day as described in subsection (1) of this section; and
- (b) 40 hours in one workweek as described in ORS 653.261 (1).

(4) An employer that makes an overtime payment to an employee pursuant to subsection (3) of this section satisfies the overtime compensation requirements under this section and ORS 653.261 (1).

(5)(a) An employer is eligible for an undue hardship period exemption from the restrictions on work hours under subsection (2)(a) of this section if the employer, in the ordinary course of the employer's business, processes perishable products. The undue hardship period exemption shall be effective only during an undue hardship period. An employer may be eligible for more than one undue hardship period exemption in a calendar year. However, the combined total duration of the employer's undue hardship period exemptions may not exceed 21 workweeks in a calendar year.

(b) To claim an undue hardship period exemption, an employer must provide notice of the undue hardship period to the Commissioner of the Bureau of Labor and Industries and obtain written consent from each employee whom the employer will request to work more than 55 hours in any workweek during the undue hardship period.

(c)(A) The notice the employer sends to the commissioner under paragraph (b) of this subsection must be in a form prescribed by the commissioner by rule and include a description of the reasons for the undue hardship period, the start and expected end dates of the undue hardship period and any other information required by the commissioner.

(B) The employee's written consent shall be in a form prescribed by the commissioner by rule and include:

(i) A description of the employer's reasons for the undue hardship period;

(ii) The start and expected end dates of the undue hardship period;

(iii) A statement that the employer may require the employee to work up to 84 hours per workweek for up to four workweeks during the undue hardship period;

(iv) A statement that the employer may require the employee to work up to 80 hours per workweek for the remainder of the undue hardship period;

(v) A statement that the employee consents to working up to 84 hours per workweek for up to four workweeks during the undue hardship period and up to 80 hours per workweek for the remainder of the undue hardship period;

(vi) Contact information for the Bureau of Labor and Industries; and

(vii) Any other information required by the commissioner.

(6) An employer may not coerce an employee into consenting to work more than 55 hours in a given workweek.

(7) This section does not apply to:

(a) An employee employed in a cannery, drier or packing plant that is located on a farm and primarily processes products produced on the farm;

(b) An employee employed in a cannery, drier or packing plant who is engaged in manufacturing, as that term is defined in ORS 652.020;

(c) An employee employed by a seafood processor, as that term is defined in ORS 653.263; or

(d) An employee employed in a cannery, drier or packing plant whose principal duties are administrative in nature or who is not otherwise, in the usual course of the employee's duties, engaged in the direct processing of goods.

(8) Subsections (2) to (6) of this section do not apply to employees who are represented by a labor organization for purposes of collective bargaining with their employer, provided limits on the required hours of work and overtime payment have been agreed to between the employer and labor organization, or if no agreement is reached, then, for the purposes of this subsection, such limits and payments shall not be deemed to be changed from the previous collective bargaining agreement between the employer and labor organization unless the employees have been locked out or are en-

gaged in a strike or the employer has unilaterally implemented new terms and conditions of employment.

(9)(a) Notwithstanding ORS 653.256, in addition to any other penalty provided by law, the commissioner may assess the following civil penalties against an employer:

(A) \$2,000 per violation if the commissioner determines the employer coerced an employee into consenting under subsection (2)(b) of this section to work more than 55 hours in any given workweek; and

(B) \$3,000 per violation if the commissioner determines the employer coerced an employee into consenting under subsection (5) of this section to work more than 55 hours per workweek in any given workweek during an undue hardship period.

(b) Each violation described in paragraph (a) of this subsection is a separate and distinct offense. In the case of a continuing violation, each workweek's continuance is a separate and distinct violation.

(c) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS 183.745. All sums collected as penalties under this subsection shall be applied and paid over as provided in ORS 653.256.

(10)(a) In addition to any other remedy provided by law, an employee has a private cause of action against an employer if the employer violates subsection (2) of this section by requiring the employee to work more than the applicable limit for the maximum allowable hours of employment in one workweek.

(b) If the employee prevails in an action brought under this section, the court may enter judgment against the employer for:

(A) Actual damages or \$3,000 per claim, whichever is greater;

(B) Equitable relief; and

(C) Liquidated damages in an amount equal to twice the employee's overtime wages earned during the period not allowed under subsection (2) of this section.

(c) In an action brought under this section, the court may award to the prevailing plaintiff costs, disbursements and reasonable attorney fees. Any attorney fee agreement is subject to approval by the court. [Amended by 1971 c.492 §2; 2017 c.685 §§8,9]

653.268 Overtime for labor directly employed by public employers. (1) Labor directly employed by any public employer as defined in ORS 243.650 shall be compensated, if budgeted funds for such purpose are available, for overtime worked in excess of 40 hours in any one week, at not less than one and one-half times the regular rate of such

employment. If budgeted funds are not available for the payment of overtime, such overtime shall be allowed in compensatory time off at not less than time and a half for employment in excess of 40 hours in any one week.

(2) Nothing in this section shall prevent a labor organization under the National Labor Relations Act or ORS 243.650 to 243.782 or other employees from negotiating additional overtime pay requirements with a public employer. [Formerly 279.340]

653.269 Exceptions to ORS 653.268; rules. The provisions of ORS 653.268 relating to pay for overtime shall not apply to:

(1) Labor employed in forest fire fighting.

(2) Employees of any irrigation system district actually engaged in the distribution of water for irrigation or domestic use.

(3) Employees of a public employer, as defined in ORS 243.650, who are employed in fire protection or law enforcement activities, including security personnel in corrections institutions, as those employees and activities are defined by rule of the Commissioner of the Bureau of Labor and Industries.

(4) Employees of a people's utility district organized under ORS chapter 261.

(5) Employees exempted from overtime:

(a) By a public employer as defined in ORS 243.650 because of the executive, administrative, supervisory or professional nature of their employment as the nature of such employment is defined by rule of the Commissioner of the Bureau of Labor and Industries; or

(b) By a collective bargaining agreement expressly waiving application of ORS 653.268.

(6) Employees of a public employer as defined in ORS 243.650 engaged in the operation of a hospital or an establishment that is an institution primarily engaged in the care of persons who are sick or aged or have mental illness or mental retardation and who reside on the premises if, before performance of the work and pursuant to an agreement between the employer and employee or between the employer and the bargaining representative of the employees when the employees are represented under a collective bargaining agreement, a work period of 14 consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for the employee's employment in excess of eight hours in any workday and in excess of 80 hours in such 14-day period, the employee receives compensation at a rate not less than one and one-half times the rate at which the employee is employed.

(7) Members of the organized militia while on state active duty in accordance with ORS 399.075. [Formerly 279.342; 2007 c.70 §283]

653.270 [Repealed by 1967 c.596 §15]

653.275 [Repealed by 1967 c.596 §15]

653.280 Employer to safeguard employee's trade equipment. (1) An employer shall take all reasonable precautions to safeguard all trade equipment that is owned by an employee and is located on premises under the employer's control.

(2) As used in ORS 653.285 and this section, unless the context requires otherwise:

(a) "Employee" and "employer" have the meaning provided for those terms in ORS 652.310.

(b) "Premises" means the place where the employer and the employee of the employer are engaged in the furtherance of a common enterprise or the accomplishment of the same or related purposes in operation.

(c) "Trade equipment" is limited to musical instruments and sound equipment. [1975 c.488 §7; 2007 c.71 §206]

653.285 Liability of employer. If an employee's trade equipment is damaged upon or stolen from premises under the employer's control as a proximate cause of the employer's failure to comply with ORS 653.280 the employee has a right to file an action against the employer, and the employer is liable, for financial settlement as is needed to repair or replace the equipment. The court may award reasonable attorney fees to the prevailing party in an action under this section. [1975 c.488 §8; 1981 c.897 §91; 1991 c.67 §158; 1995 c.618 §112]

653.295 Noncompetition agreements; bonus restriction agreements; applicability of restrictions. (1) A noncompetition agreement entered into between an employer and employee is voidable and may not be enforced by a court of this state unless:

(a)(A) The employer informs the employee in a written employment offer received by the employee at least two weeks before the first day of the employee's employment that a noncompetition agreement is required as a condition of employment; or

(B) The noncompetition agreement is entered into upon a subsequent bona fide advancement of the employee by the employer;

(b) The employee is a person described in ORS 653.020 (3);

(c) The employer has a protectable interest. As used in this paragraph, an employer has a protectable interest when the employee:

(A) Has access to trade secrets, as that term is defined in ORS 646.461;

(B) Has access to competitively sensitive confidential business or professional information that otherwise would not qualify as a trade secret, including product development plans, product launch plans, marketing strategy or sales plans; or

(C) Is employed as an on-air talent by an employer in the business of broadcasting and the employer:

(i) In the year preceding the termination of the employee's employment, expended resources equal to or exceeding 10 percent of the employee's annual salary to develop, improve, train or publicly promote the employee, provided that the resources expended by the employer were expended on media that the employer does not own or control; and

(ii) Provides the employee, for the time the employee is restricted from working, the greater of compensation equal to at least 50 percent of the employee's annual gross base salary and commissions at the time of the employee's termination or 50 percent of the median family income for a four-person family, as determined by the United States Census Bureau for the most recent year available at the time of the employee's termination; and

(d) The total amount of the employee's annual gross salary and commissions, calculated on an annual basis, at the time of the employee's termination exceeds the median family income for a four-person family, as determined by the United States Census Bureau for the most recent year available at the time of the employee's termination. This paragraph does not apply to an employee described in paragraph (c)(C) of this subsection.

(2) The term of a noncompetition agreement may not exceed 18 months from the date of the employee's termination. The remainder of a term of a noncompetition agreement in excess of 18 months is voidable and may not be enforced by a court of this state.

(3) Subsections (1) and (2) of this section apply only to noncompetition agreements made in the context of an employment relationship or contract and not otherwise.

(4) Subsections (1) and (2) of this section do not apply to:

(a) Bonus restriction agreements, which are lawful agreements that may be enforced by the courts in this state; or

(b) A covenant not to solicit employees of the employer or solicit or transact business with customers of the employer.

(5) Nothing in this section restricts the right of any person to protect trade secrets or other proprietary information by injunc-

tion or any other lawful means under other applicable laws.

(6) Notwithstanding subsection (1)(b) and (d) of this section, a noncompetition agreement is enforceable for the full term of the agreement, for up to 18 months, if the employer provides the employee, for the time the employee is restricted from working, the greater of:

(a) Compensation equal to at least 50 percent of the employee's annual gross base salary and commissions at the time of the employee's termination; or

(b) Fifty percent of the median family income for a four-person family, as determined by the United States Census Bureau for the most recent year available at the time of the employee's termination.

(7) As used in this section:

(a) "Bonus restriction agreement" means an agreement, written or oral, express or implied, between an employer and employee under which:

(A) Competition by the employee with the employer is limited or restrained after termination of employment, but the restraint is limited to a period of time, a geographic area and specified activities, all of which are reasonable in relation to the services described in subparagraph (B) of this paragraph;

(B) The services performed by the employee pursuant to the agreement include substantial involvement in management of the employer's business, personal contact with customers, knowledge of customer requirements related to the employer's business or knowledge of trade secrets or other proprietary information of the employer; and

(C) The penalty imposed on the employee for competition against the employer is limited to forfeiture of profit sharing or other bonus compensation that has not yet been paid to the employee.

(b) "Broadcasting" means the activity of transmitting of any one-way electronic signal by radio waves, microwaves, wires, coaxial cables, wave guides or other conduits of communications.

(c) "Employee" and "employer" have the meanings given those terms in ORS 652.310.

(d) "Noncompetition agreement" means an agreement, written or oral, express or implied, between an employer and employee under which the employee agrees that the employee, either alone or as an employee of another person, will not compete with the employer in providing products, processes or services that are similar to the employer's products, processes or services for a period of time or within a specified geographic area

after termination of employment. [1977 c.646 §2; 1983 c.828 §1; 1985 c.565 §85; 2005 c.22 §459; 2007 c.902 §2; 2015 c.429 §1]

653.300 Health benefit plan options for certain employees; limitation on cost to employer or health benefit plan for exercise of option. (1) Each public or private employer in this state which offers its employees a health benefit plan and employs not fewer than 25 employees, and each employee benefit fund in this state with not fewer than 25 members which offers its members any form of health benefit, shall make available to and inform its employees or members of the option to enroll in at least one health maintenance organization which provides health care services in the geographic areas in which a substantial number of such employees or members reside. Where there is a prevailing collective bargaining agreement, the selection of the health maintenance organizations to be made available to the employees shall be made under the agreement.

(2) No employer or benefits fund in this state shall be required to pay more for health benefits as a result of the application of this section than would otherwise be required by any prevailing collective bargaining agreement or other contract for the provision of health benefits to its employees.

(3) Notwithstanding subsection (1) of this section, no employer or benefits fund need provide such an option unless at least 25 employees or members agree to participate in a health maintenance organization. [1985 c.747 §70]

Note: 653.300 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 653 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

EMPLOYMENT OF MINORS

653.305 Bureau's inquiry into employment of minors. The Bureau of Labor and Industries may at any time inquire into wages or hours or conditions of labor of minors employed in any occupation in this state and determine suitable hours and conditions of labor for such minors. [Amended by 1967 c.596 §16; 1979 c.886 §3; 1993 c.18 §131; 2013 c.296 §21]

653.307 Annual employment certificates; effect of failure by employer to comply; school districts required to cooperate with bureau; rules. (1) In accordance with the applicable provisions of ORS chapter 183, the Bureau of Labor and Industries shall adopt rules governing annual employment certificates required under this section. After September 9, 1995, the rules governing the total hours a minor can work shall not be more restrictive than the re-

quirements of the federal Fair Labor Standards Act (29 U.S.C. 202, et seq.), unless otherwise provided by Oregon law.

(2) An employer who hires minors shall apply to the bureau for an annual employment certificate to employ minors. The application shall be on a form provided by the bureau and shall include, but need not be limited to:

(a) The estimated or average number of minors to be employed during the year.

(b) A description of the activities to be performed.

(c) A description of the machinery or other equipment to be used by the minors.

(3) Once a year, the bureau shall provide to all employers applying for an annual employment certificate an information sheet summarizing all rules and laws governing the employment of minors.

(4) Failure by an employer to comply with ORS 653.305 to 653.340 or with the regulations adopted by the bureau pursuant to this section shall subject the employer to revocation of the right to hire minors in the future at the discretion of the bureau, provided that an employer shall be granted a hearing before the bureau prior to such action being taken.

(5) All school districts shall cooperate with the bureau and make available, upon request of the bureau, information concerning the age and schooling of minors. [1971 c.626 §2; 1995 c.133 §1; 2013 c.296 §22]

653.310 Employment certificates on file; list of minor employees. No child under 18 years of age shall be employed or permitted to work in any employment listed in ORS 653.320 (2) unless the person employing the child keeps on file and accessible to the school authorities of the district where such child resides, and to the police and the Bureau of Labor and Industries, an annual employment certificate as prescribed by the rules adopted by the bureau pursuant to ORS 653.307 and keeps a complete list of all such children employed therein. [Amended by 1971 c.626 §3; 1995 c.133 §2; 1999 c.59 §194; 2013 c.296 §23]

653.315 Working hours for children under 16 years of age; exceptions; mealtimes; posting notice of hours. (1) A child under 16 years of age may not be employed for longer than 10 hours for any one day or more than six days in any one week. The Commissioner of the Bureau of Labor and Industries shall issue special permits for the employment of children under 16 years of age in agriculture for longer than 10 hours for any one day when the commissioner determines that such hours of work will not be detrimental to the health and safety of the children so employed.

(2)(a) A child under 16 years of age may not be employed at any work before 7 a.m. or after 7 p.m., except that during the period between June 1 and Labor Day a child under 16 years of age may be employed until 9 p.m.

(b) Paragraph (a) of this subsection does not apply to a child under 16 years of age who is:

(A) Employed in agriculture.

(B) Employed in youth camps. As used in this subparagraph, "youth camps" means those camps operated and maintained primarily for the supervised recreation and education of youth of either sex during the public school vacation periods.

(C) Employed as a newspaper carrier or vendor.

(D) Employed in or about private residences at domestic work, chores and child care. This exception does not extend to employment in places where child care or training is carried on as an occupation.

(3) Every child under 16 years of age is entitled to not less than 30 minutes for mealtime and the mealtime may not be included as part of the work hours of the day.

(4) Every employer of children under 16 years of age shall post, in a conspicuous place where the children are employed, a printed notice stating the maximum work hours required in one week and in every day of the week from the children. [Amended by 1957 c.419 §1; 1961 c.205 §1; 1981 c.228 §1; 1997 c.453 §1; 2005 c.154 §1; 2009 c.104 §1]

653.320 Employment of children under 14 years; exceptions. (1) No child under the age of 14 years shall be employed in any work, or labor of any form for wages or other compensation to whomsoever payable, during the term when the public schools of the town, district or city in which the child resides are in session.

(2) Except as provided in subsections (3) and (4) of this section, no child under 14 years of age shall be employed or permitted to work in, or in connection with, any place of business.

(3) The Bureau of Labor and Industries may allow children between the ages of 12 and 14 to be employed in any suitable work during any school vacation extending over a term of two weeks and may issue permits therefor. The bureau shall exercise careful discretion as to the character of such employment and its effect on the physical and moral well-being of the child.

(4) Exceptions may be made by the bureau exempting a minor or class of minors from the provisions of this section. [Amended by 1971 c.625 §1; 2013 c.296 §24]

653.325 [Repealed by 1967 c.527 §3]

653.326 Employment of professionally trained minors allowed with permit. (1) The Bureau of Labor and Industries may by special permit authorize a child under 18 years of age to engage in employment otherwise prohibited by law if the child has successfully completed professional training for such employment conducted by any school district, or training that the bureau considers equivalent thereto, and the child:

(a) Has graduated from high school; or

(b) Is employed during such time as public schools are not in session for a period exceeding 30 days.

(2) The bureau or a person authorized by the bureau shall investigate periodically the conditions of the employment for which a special permit has been issued, to determine whether the permit should be continued. [1967 c.347 §2; 1995 c.343 §51; 2013 c.296 §25]

653.330 Employment of minors in certain logging operations prohibited. No person shall employ or allow:

(1) Any person under the age of 18 years to act as engineer of or have charge of or operate any logging engines used in logging operations.

(2) Any person under the age of 16 years to act in the capacity of giving signals to the engineer in logging operations or receiving and forwarding such signals.

653.335 Employment of minors as elevator operators prohibited. No person shall employ or allow any person under the age of 18 years to run, operate or have charge of, any elevator used for the purpose of carrying either persons or property.

653.340 Employment of minors for message and delivery service. (1) No person under the age of 18 years shall be employed or permitted to work as a messenger for a telegraph or messenger company or anyone engaged in such a business in the distribution, transmission or delivery of goods or messages before 5 a.m. or after 10 p.m.

(2) No person under the age of 16 years shall be employed or permitted to work in the telegraph, telephone or public messenger service.

653.345 Legislative findings. The Legislative Assembly finds that the crops of berry and bean growers in Oregon are imperiled by the federal law prohibiting the employment of youthful agricultural workers. Since suitable replacements for such workers are not available, the long established use of youthful berry and bean pickers must be permitted to the extent that it does not interfere with interstate commerce and federal law. The Legislative Assembly further finds

that such agricultural employment is healthful, a good introduction to the work ethic and develops an understanding of the role of agriculture in society. [1975 c.422 §1]

653.350 Employment of children under 12 years for certain agricultural labor; conditions. (1) An individual who is less than 12 years of age but not less than nine years of age may be employed to pick berries and beans in this state outside of school hours if:

(a) The individual is employed with the consent of the child's parent or guardian;

(b) The berries and beans picked are sold within the state only and not transported out of this state in any form;

(c) The Director of the Employment Department or the designee of the director certifies that there are not sufficient workers available in the immediate area to harvest the berry or bean crop without the employment of youthful pickers; and

(d) The individual is paid at the same rate as other employees of the employer who are 12 years of age or older and are engaged in picking berries or beans.

(2) Each basket or container holding berries, berry products, beans or bean products picked by individuals who are less than 12 years of age must be distinctively marked so as to prevent the berries, berry products, beans or bean products from entering interstate commerce. [1975 c.422 §2]

653.355 Exemption of certain employers. Nothing in ORS 653.345, 653.350 and 653.355 shall apply to employers which are exempt from the child labor provisions of the federal Fair Labor Standards Act. [1975 c.422 §3]

653.360 Employment of minors in certain boating, fishing and agricultural situations. Notwithstanding any other provision of ORS 653.305 to 653.370:

(1) Minors 16 years of age and 17 years of age may be employed as assistants on chartered fishing or pleasure boats.

(2) Minors 14 years of age and 15 years of age may be employed at dock areas used by chartered fishing or pleasure boats.

(3) Minors less than 18 years of age may be employed on commercial fishing vessels without an employment permit when employed and supervised by the minor's grandfather, grandmother, father, mother, brother, sister, uncle or aunt.

(4) Minors 16 years of age and 17 years of age may be employed to operate power-driven machinery in connection with their employment in the processing of agricultural commodities in an agricultural warehouse on a farm by a farmer if each such minor has

completed a training program in the safe operation of such machinery as prescribed by rule of the Bureau of Labor and Industries under ORS 653.307. [1979 c.626 §2; 1995 c.477 §1; 2013 c.296 §26]

653.362 Exemption of minors serving as soccer referees. The provisions of ORS 653.305 to 653.370 do not apply to a person under 18 years of age serving as a referee or assistant referee in a youth or adult recreational soccer match. [2001 c.765 §2]

653.365 Civil penalty exemption for unlawful employment of minors by parents or persons standing in place of parents. The provisions of ORS 653.370 do not apply when minors under 18 years of age are employed under the following circumstances:

(1) The minor is employed by the parent of the minor; or

(2) The minor is employed by a person standing in the place of the parent of the minor and who has custody of the minor. [1981 c.820 §3; 1997 c.103 §1]

653.370 Civil penalty for unlawful employment of minors. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may impose upon any person who violates ORS 653.305 to 653.370, or any rule adopted by the Bureau of Labor and Industries under ORS 653.305 to 653.370 or 653.400, a civil penalty not to exceed \$1,000 for each violation.

(2) Notwithstanding ORS 183.482, any petition for review of an order imposing a civil penalty under this section must be filed within 30 days following the date the order upon which the petition is based is served.

(3) Except as otherwise provided in this section, civil penalties under this section shall be imposed as provided in ORS 183.745.

(4) All sums collected as penalties pursuant to this section shall be first applied toward reimbursement of the costs incurred in determining the violations, conducting hearings under this section and assessing and collecting such penalties. The remainder, if any, of the sums collected as penalties pursuant to this section shall be paid over by the commissioner to the Department of State Lands for the benefit of the Common School Fund of this state. The department shall issue a receipt for the money to the commissioner.

(5)(a) Notwithstanding subsection (1) of this section, the commissioner may not impose a civil penalty pursuant to this section upon any person who provides evidence satisfactory to the commissioner that:

(A) The person has paid a civil penalty to the United States Department of Labor for

violation of the child labor provisions of the federal Fair Labor Standards Act (29 U.S.C. 201 et seq.); and

(B) The civil penalty involved the same factual circumstances at issue before the commissioner.

(b) Notwithstanding subsection (1) of this section, the commissioner shall refund any civil penalty previously imposed on and collected from any person pursuant to this section if the person provides evidence satisfactory to the commissioner that:

(A) The person has paid a civil penalty to the United States Department of Labor for violation of the child labor provisions of the federal Fair Labor Standards Act (29 U.S.C. 201 et seq.); and

(B) The civil penalty involved the same factual circumstances underlying the commissioner's imposition of a civil penalty. [1981 c.820 §2; 1985 c.120 §1; 1989 c.706 §20; 1991 c.734 §60; 1997 c.103 §2; 2013 c.296 §27]

653.400 Rules. The Bureau of Labor and Industries may prepare, adopt and promulgate rules for the carrying into effect of this section and ORS 653.305 to 653.370, 653.560 and 653.565. [Formerly 653.525]

653.403 Visitation rights of bureau; prosecution of offenses against child labor laws. (1) The Bureau of Labor and Industries or anyone authorized by the bureau in writing may visit any place of business to ascertain whether any minors are employed contrary to ORS 653.310, 653.315, 653.320 and 653.340 and the rules adopted by the bureau pursuant to ORS 653.307. The bureau or authorized persons shall report any cases of illegal employment to the proper school authorities and to the district attorney of the county. The bureau may require the business to produce the annual employment certificates and lists of minors employed for inspection.

(2) The bureau shall bring complaints for offenses under ORS 653.310, 653.315, 653.320 and 653.340 to the attention of the proper district attorney who shall prosecute such offenses. [Formerly 653.545]

653.405 [Repealed by 1971 c.626 §7]

653.410 [Repealed by 1971 c.626 §7]

PREDICTIVE WORK SCHEDULING

653.412 Definitions. As used in ORS 653.412 to 653.485, unless the context requires otherwise:

(1) "Chain" means an establishment that is part of an affiliation of two or more establishments within the United States, each of which is owned by the same person or entity and operate under identical or substan-

tially similar trade names or service marks, both as defined in ORS 647.005.

(2)(a) "Employee" means an employee, as defined in ORS 652.310, who is employed in a retail establishment, a hospitality establishment or a food services establishment and is engaged in providing services relating to:

(A) Retail trade, as that term is used in the 2012 North American Industry Classification System under code 44-45;

(B) Hotels and motels, as those terms are used in the 2012 North American Industry Classification System under code 721110, or casino hotels, as that term is used in the 2012 North American Industry Classification System under code 721120; or

(C) Food services, as that term is used in the 2012 North American Industry Classification System under code 722.

(b) "Employee" does not include:

(A) A salaried employee described in ORS 653.020 (3);

(B) A worker supplied to an employer by a worker leasing company, as defined in ORS 656.850; or

(C) An employee of a business that provides services to or on behalf of an employer.

(3) "Employer" means an employer, or a successor to an employer, described in ORS 653.422 (1).

(4) "Food services establishment" means the fixed point of sale location for establishments defined in the 2012 North American Industry Classification System under code 722 as food services and drinking places.

(5) "Hospitality establishment" has the meaning provided in the 2012 North American Industry Classification System under code 721110 for hotels and motels and code 721120 for casino hotels.

(6) "On-call shift" means any time that an employer requires an employee to be available to work or to contact the employer or wait to be contacted by the employer for the purpose of determining whether the employee must report to work. During the shift, on-call status applies regardless of whether the employee is located on or off the employer's premises.

(7) "Regular rate of pay" means the regular hourly rate or hourly equivalent that an employer must pay an employee for each hour the employee works during a given work shift, including any shift differential pay. "Regular rate of pay" does not include:

(a) Tips;

(b) Bonuses or other incentive payments;

(c) Overtime, holiday pay or other premium rate; or

(d) Any additional compensation an employer is required to pay an employee under ORS 653.442 or 653.455.

(8) "Retail establishment" means the fixed point of sale location for an establishment defined in the 2012 North American Industry Classification System under codes 441110 to 453998 as a retail trade establishment.

(9) "Shift differential pay" means a pay differential meant to compensate an employee for work performed under differing conditions, such as for working at night. "Shift differential pay" does not include any additional compensation an employer is required to pay an employee under ORS 653.442 or 653.455.

(10) "Successor" means a business or enterprise that is substantially the same entity as the predecessor employer according to criteria adopted by the Bureau of Labor and Industries by rule and consistent with federal law.

(11) "Time of hire" means the period after an offer of employment and acceptance of the offer of employment and on or before the commencement of employment.

(12) "Work schedule" means the hours, days and times, including regular work shifts and on-call shifts, when an employee is required by an employer to perform duties of employment for which the employee will receive compensation.

(13) "Work shift" means the specific and consecutive hours the employer requires the employee to work.

(14) "Workweek" means a fixed period of time established by an employer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods. A workweek may begin on any day of the week and any hour of the day and need not coincide with a calendar week. The beginning of a workweek may be changed if the change is intended to be permanent.

(15) "Writing" or "written" means a printed or printable communication in physical or electronic format including a communication that is transmitted through electronic mail, text message or a computer system or is otherwise sent and stored electronically.

(16) "Year" means any fixed, consecutive 12-month period of time. [2017 c.691 §2]

Note: 653.412 becomes operative July 1, 2018. See section 16, chapter 691, Oregon Laws 2017.

Note: 653.412 to 653.485 were added to and made a part of ORS chapter 653 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

653.415 [Repealed by 1971 c.626 §7]

653.420 [Repealed by 1971 c.626 §7]

653.422 Covered employees; integrated enterprises; rules. (1) ORS 653.412 to 653.485 apply to an employee who is employed by an employer, as defined in ORS 652.310, that is also one or more of the following:

(a) A retail establishment that employs 500 or more employees worldwide, including but not limited to a chain or an integrated enterprise.

(b) A hospitality establishment that employs 500 or more employees worldwide, including but not limited to a chain or an integrated enterprise.

(c) A food services establishment that employs 500 or more employees worldwide, including but not limited to a chain or an integrated enterprise.

(2) To determine the number of employees employed by an employer, the calculation shall be based upon the average number of employees employed on each working day during each of 20 or more workweeks in the current calendar year or immediately preceding calendar year.

(3) Separate entities that form an integrated enterprise are considered a single employer under ORS 653.412 to 653.485. Separate entities will be considered an integrated enterprise and a single employer under ORS 653.412 to 653.485 where a separate entity controls the operation of another entity. The factors to consider in determining whether separate entities form an integrated enterprise include, but are not limited to:

(a) The degree of interrelation between the operations of multiple entities;

(b) The degree to which the entities share common management;

(c) The degree to which the entities have centralized control of labor relations; and

(d) The degree of common ownership or financial control over the entities.

(4) The Commissioner of the Bureau of Labor and Industries shall adopt rules in accordance with the provisions of subsection (3) of this section regarding how to determine when separate entities form an integrated enterprise for the purposes of ORS 653.412 to 653.485. [2017 c.691 §3]

Note: 653.422 becomes operative July 1, 2018. See section 16, chapter 691, Oregon Laws 2017.

Note: See second note under 653.412.

653.425 [Repealed by 1971 c.626 §7]

653.428 Good faith estimate of work schedule. (1) An employer shall provide a new employee with a written good faith estimate of the employee's work schedule at the time of hire. The good faith estimate:

(a) Shall state the median number of hours the employee can expect to work in an average one-month period;

(b) Shall explain the voluntary standby list described in ORS 653.432 and provide the written notice required in ORS 653.432;

(c) Shall indicate whether an employee who is not on the voluntary standby list can expect to work on-call shifts and, if so, set forth an objective standard for when an employee not listed on the voluntary standby list may be expected to be available to work on-call shifts; and

(d) May be based on a prior year schedule if it is a good faith estimate of seasonal or episodic work.

(2) The employer shall include the good faith estimate in the language the employer typically uses to communicate with the employee. [2017 c.691 §4]

Note: 653.428 becomes operative July 1, 2018. See section 16, chapter 691, Oregon Laws 2017.

Note: See second note under 653.412.

653.430 [Repealed by 1971 c.626 §7]

653.432 Voluntary standby list; penalties. (1) An employer may maintain a standby list of employees whom the employer will request to work additional hours to address unanticipated customer needs or unexpected employee absences if the listed employees have requested or agreed in writing to be included on the standby list and the employer notifies each employee in writing:

(a) That the list is voluntary and how an employee may request to be removed from the list;

(b) How the employer will notify a standby list employee of additional hours available and how an employee may accept the additional hours;

(c) That the employee is not required to accept the additional hours offered; and

(d) That an employee on the standby list is not eligible for additional compensation under ORS 653.455 for the changes to the employee's written work schedule resulting from the employee's acceptance of additional hours offered to the employee as a result of being on the standby list.

(2) An employer shall provide an employee on the standby list with notice of additional hours available by in-person conversation, telephone call, electronic mail, text message or other accessible electronic or written format.

(3) An employee who receives notice of additional hours available under this section may decline to accept the additional hours offered.

(4) An employee who consents to work additional hours in response to an employer's request under this section is not eligible for any additional compensation under ORS 653.455 for the resulting change to the employee's written work schedule.

(5) An employee may request to be removed from the standby list at any time.

(6) An employer may not retaliate against an employee who:

(a) Does not request or agree to be added to the standby list;

(b) Requests to be removed from the standby list; or

(c) Declines an employer's request that the employee work additional hours as a result of the employee being on the standby list.

(7) 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 an employer that the commissioner finds has coerced an employee into requesting or agreeing to be added to the standby list in violation of this section. Each violation is a separate and distinct offense. In the case of a continuing violation, each day's continuance is a separate and distinct violation.

(8) The standby list is not a list of employees scheduled for on-call shifts and the employer is not required to include a list of employees on the standby list in the written work schedule described in ORS 653.436. [2017 c.691 §4a]

Note: 653.432 becomes operative July 1, 2018. See section 16, chapter 691, Oregon Laws 2017.

Note: See second note under 653.412.

653.435 [Repealed by 1971 c.626 §7]

653.436 Advance notice of work schedule. (1) An employer shall provide an employee with a work schedule in writing at least seven calendar days before the first day of the work schedule.

(2) The employer shall post the written work schedule in a conspicuous and accessible location, in English and in the language the employer typically uses to communicate with the employees.

(3) The employer shall provide a written work schedule that runs through the last date of the posted work schedule in effect at the time of delivery to:

(a) A new employee on or before the employee's first day of work; or

(b) An existing employee on the employee's first day of work after a leave of absence.

(4) The written work schedule shall include all work shifts and on-call shifts for the work period.

(5) If the employer requests changes to the written work schedule after the advance notice required in this section:

(a) The employer shall provide the employee with timely notice of the change by in-person conversation, telephone call, electronic mail, text message or other accessible electronic or written format; and

(b) The employee may decline any work shifts not included in the employee's written work schedule.

(6) At any time after the advance notice of written work schedule required in this section, an employee may request in writing that the employer add the employee to one or more work shifts or on-call work shifts. Any changes to the employee's written work schedule resulting from such employee-requested work schedule changes are not subject to the advance notice requirements of this section. [2017 c.691 §5]

Note: 653.436 becomes operative July 1, 2018. See section 16, chapter 691, Oregon Laws 2017.

Note: The amendments to 653.436 by section 5a, chapter 691, Oregon Laws 2017, become operative July 1, 2020. See section 16, chapter 691, Oregon Laws 2017. The text that is operative on and after July 1, 2020, is set forth for the user's convenience.

653.436. (1) An employer shall provide an employee with a work schedule in writing at least 14 calendar days before the first day of the work schedule.

(2) The employer shall post the written work schedule in a conspicuous and accessible location, in English and in the language the employer typically uses to communicate with the employees.

(3) The employer shall provide a written work schedule that runs through the last date of the posted work schedule in effect at the time of delivery to:

(a) A new employee on or before the employee's first day of work; or

(b) An existing employee on the employee's first day of work after a leave of absence.

(4) The written work schedule shall include all work shifts and on-call shifts for the work period.

(5) If the employer requests changes to the written work schedule after the advance notice required in this section:

(a) The employer shall provide the employee with timely notice of the change by in-person conversation, telephone call, electronic mail, text message or other accessible electronic or written format; and

(b) The employee may decline any work shifts not included in the employee's written work schedule.

(6) At any time after the advance notice of written work schedule required in this section, an employee may request in writing that the employer add the employee to one or more work shifts or on-call work shifts. Any changes to the employee's written work schedule resulting from such employee-requested work schedule changes are not subject to the advance notice requirements of this section.

Note: See second note under 653.412.

653.440 [Repealed by 1971 c.626 §7]

653.442 Right to rest between work shifts. (1) Unless the employee requests or consents to work such hours, an employer may not schedule or require an employee to work during the following rest periods:

(a) The first 10 hours following the end of the previous calendar day's work shift or on-call shift; or

(b) The first 10 hours following the end of a work shift or on-call shift that spanned two calendar days.

(2) Except as provided in subsection (3) of this section, an employer shall compensate an employee for each hour or portion of an hour that the employee works during a rest period described in subsection (1) of this section at one and one-half times the employee's regular rate of pay.

(3) Subsection (2) of this section does not apply to any hour or portion of an hour an employee works during the rest period described in subsection (1) of this section during which the employee is engaged in providing roadside assistance services. As used in this subsection, "roadside assistance" means offsite repair assistance rendered to a motorist with a disabled vehicle. [2017 c.691 §6]

Note: 653.442 becomes operative July 1, 2018. See section 16, chapter 691, Oregon Laws 2017.

Note: See second note under 653.412.

653.445 [Amended by 1967 c.67 §23; repealed by 1971 c.626 §7]

653.450 Employee right to input into work schedule. (1) At time of hire and during employment, an employee may identify any limitations or changes in the employee's work schedule availability. The employee may also request not to be scheduled for work shifts during certain times or at certain locations.

(2)(a) An employer may require the employee to provide reasonable verification of the need for a request made under subsection (1) of this section.

(b) The employer shall pay any reasonable costs for providing verification that is medical verification required under this subsection, including lost wages, that are not paid under a health benefit plan in which the employee is enrolled.

(c) Nothing in this subsection is intended to limit the application of ORS 659A.306.

(3) An employer may not retaliate against an employee for making a request under subsection (1) of this section.

(4) An employer is under no obligation to grant an employee's request under subsection (1) of this section. [2017 c.691 §6a]

Note: 653.450 becomes operative July 1, 2018. See section 16, chapter 691, Oregon Laws 2017.

Note: See second note under 653.412.

653.455 Compensation for work schedule changes; exceptions. (1) As used in this section:

(a) “Group communication” means communication to all eligible employees, either written or oral.

(b) “Ticketed event” means a sporting, entertainment, civic, charitable or other event that requires a ticket for admission. The ticket may be electronic, physical or a name on a list held by the event organizer.

(2) An employer shall provide the following compensation to an employee for each employer-requested change that occurs to the employee’s written work schedule without the advance notice required in ORS 653.436:

(a) One hour of pay at the employee’s regular rate of pay, in addition to wages earned, when the employer:

(A) Adds more than 30 minutes of work to the employee’s work shift;

(B) Changes the date or start or end time of the employee’s work shift with no loss of hours; or

(C) Schedules the employee for an additional work shift or on-call shift.

(b) One-half times the employee’s regular rate of pay per hour for each scheduled hour that the employee does not work when the employer:

(A) Subtracts hours from the employee’s work shift before or after the employee reports for duty;

(B) Changes the date or start or end time of the employee’s work shift, resulting in a loss of work shift hours;

(C) Cancels the employee’s work shift; or

(D) Does not ask the employee to perform work when the employee is scheduled for an on-call shift.

(3) The requirements for additional compensation in this section do not apply when:

(a) An employer changes the start or end time of an employee’s work shift by 30 minutes or less;

(b) An employee mutually agrees with another employee to employee-initiated work shift swaps or coverage. The employer may require that work shift swaps or coverage under this paragraph be preapproved by the employer. The employer may assist employees in finding such arrangements, provided that any employer assistance must be limited to helping an employee identify other employees who may be available to provide work shift swaps or coverage and may not include the employer arranging the work shift swap or coverage;

(c) An employee requests changes to the employee’s written work schedule, including adding or subtracting hours, and the employee documents the request in writing;

(d) An employer makes changes to an employee’s written work schedule at the employee’s request under ORS 653.436 (6);

(e) An employer subtracts hours from an employee’s work schedule for disciplinary reasons for just cause, provided the employer documents the incident leading to the employee’s discipline in writing;

(f) An employee’s work shift or on-call shift cannot begin or continue due to threats to employees or property or due to the recommendation of a public official;

(g) Operations cannot begin or continue because public utilities fail to supply electricity, water or gas or there is a failure in the public utilities or sewer system;

(h) Operations cannot begin or continue due to a natural disaster or a similar cause not within the employer’s control, including when the natural disaster or similar cause physically affects the work site;

(i) Operations hours change or are substantially altered because a ticketed event is cancelled, rescheduled or changes in duration due to circumstances that are outside the employer’s control and that occur after the employer provides the written work schedule under ORS 653.436;

(j) An employer requests that an employee on a voluntary standby list work additional hours as described in ORS 653.432 and the employee consents to work the additional hours; or

(k)(A) An employer requests that an employee work additional hours to address unanticipated customer needs or unexpected employee absence;

(B) The employee consents in writing to work the additional hours;

(C) If the employer maintains a voluntary standby list described in ORS 653.432, the employer has contacted all of the employees listed on the voluntary standby list and requires additional employee coverage; and

(D)(i) If the employee is working a work shift at the time the employer makes the request, the employer makes the request either individually or as part of a group communication; or

(ii) If the employee is not working a work shift at the time the employer makes the request, the employer makes the request through a group communication. [2017 c.691 §7]

Note: 653.455 becomes operative July 1, 2018. See section 16, chapter 691, Oregon Laws 2017.

Note: See second note under 653.412.

653.460 Notice and posting requirements. (1) The Commissioner of the Bureau of Labor and Industries shall make available to employers a template of a poster giving notice of the rights described in ORS 653.412 to 653.485. The poster must be in English.

(2) Employers shall display the poster at the workplace. If displaying the poster is not feasible, including situations in which the employees work remotely or do not have a regular workplace or job site, the employer may provide the poster on an individual basis in a physical or electronic format that is reasonably conspicuous and accessible. [2017 c.691 §8]

Note: 653.460 becomes operative July 1, 2018. See section 16, chapter 691, Oregon Laws 2017.

Note: See second note under 653.412.

653.465 Record retention requirements. An employer shall retain records that document the employer's compliance with ORS 653.412 to 653.485 for three years. [2017 c.691 §9]

Note: 653.465 becomes operative July 1, 2018. See section 16, chapter 691, Oregon Laws 2017.

Note: See second note under 653.412.

653.470 Retaliation prohibited. It is an unlawful practice for an employer to:

(1) Interfere with, restrain, deny or attempt to deny the exercise of any right protected under ORS 653.412 to 653.485; or

(2) Retaliate or in any way discriminate against an individual with respect to hire or tenure or any other term or condition of employment because the individual has inquired about the provisions of ORS 653.412 to 653.485. [2017 c.691 §10]

Note: 653.470 becomes operative July 1, 2018. See section 16, chapter 691, Oregon Laws 2017.

Note: See second note under 653.412.

653.480 Enforcement; right of action; penalties. (1) An employee asserting a violation of ORS 653.470 may file a complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820 or a civil action as provided in ORS 659A.885.

(2) The commissioner has the same enforcement powers with respect to the rights established under this section and ORS 653.422, 653.432, 653.436, 653.442, 653.450, 653.455, 653.465, 653.470 and 653.485 as are established in this chapter and ORS chapter 652.

(3) In addition to any other damages provided by law, the commissioner may assess a statutory penalty as follows:

(a) \$500 for any violation of ORS 653.460.

(b) \$1,000 for any violation of ORS 653.422, 653.432, 653.436, 653.442, 653.450, 653.455, 653.465 or 653.470.

(4) If the commissioner determines that the employer paid the full remedy due, not including any statutory penalty, within 14 days of service of an order, the commissioner shall waive 50 percent of the amount of any statutory penalty imposed by order under this section. [2017 c.691 §11]

Note: 653.480 becomes operative January 1, 2019. See section 16, chapter 691, Oregon Laws 2017.

Note: See second note under 653.412.

653.485 Legislative intent. Nothing in ORS 653.412 to 653.485 is intended to:

(1) Limit employee rights or protections otherwise provided by law;

(2) Create an additional remedy for an employee if a remedy equal to or better than a remedy in ORS 653.442 or 653.455 is required by a collective bargaining agreement or other contract; or

(3) Provide a cause of action to an employee for work schedule changes necessary to accommodate that employee under state or federal family or medical leave laws, state or federal disability laws or ORS 659A.043 or 659A.046 or ORS chapter 656. [2017 c.691 §12]

Note: 653.485 becomes operative July 1, 2018. See section 16, chapter 691, Oregon Laws 2017.

Note: See second note under 653.412.

653.490 Local work schedule requirements; preemption; exceptions. (1) As used in this section:

(a) "Enact" includes but is not limited to adopt, amend, refer or pass with a delayed operative or effective date.

(b) "Local government" includes a county, city, district or other public corporation, authority or entity organized and existing under statute or city or county charter.

(c) "Work schedule" means the days and times during which an employee is required by an employer to perform the duties for which the employee will receive compensation. "Work schedule" does not include employee time off for medical reasons or sick time.

(2) The State of Oregon preempts all charter and statutory authority of local governments to enact a requirement relating to work schedules.

(3) Notwithstanding subsection (2) of this section, a local government may set work schedule requirements:

(a) For public employers; and

(b) In specifications for public contracts or subcontracts entered into by the local government. [2015 c.591 §1; 2017 c.691 §14]

Note: 653.490 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 653 or any series therein by legislative

action. See Preface to Oregon Revised Statutes for further explanation.

653.505 [Amended by 1967 c.596 §17; 1973 c.792 §27; repealed by 2013 c.296 §9]

653.510 [Amended by 1961 c.337 §2; 1969 c.314 §68; 1993 c.18 §132; repealed by 2013 c.296 §9]

653.515 [Repealed by 2013 c.296 §9]

653.520 [Amended by 1975 c.605 §30; 2013 c.296 §10; renumbered 653.560 in 2013]

653.525 [Amended by 1961 c.205 §2; 1993 c.18 §133; 2013 c.296 §11; renumbered 653.400 in 2017]

653.530 [Amended by 1983 c.740 §241; 1989 c.980 §17a; 1993 c.18 §134; 2007 c.277 §2; repealed by 2013 c.296 §9]

653.535 [Amended by 1993 c.18 §135; 2013 c.296 §12; renumbered 653.565 in 2013]

653.540 [Amended by 1993 c.18 §136; repealed by 2013 c.296 §9]

653.545 [Amended by 1971 c.626 §4; 1993 c.18 §136a; 1995 c.133 §3; 2013 c.296 §13; renumbered 653.403 in 2017]

**DOMESTIC WORKERS’
PROTECTION ACT**

653.547 Definitions; overtime; meal and rest periods; employment conditions; rules. (1) As used in this section:

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

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

(B) “Domestic worker” does not include:

(i) A parent or spouse of the employer.

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

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

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

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

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

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

(viii) Independent contractors.

(ix) Individuals performing companionship services exempt from the provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

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

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

(c) “Employer” means a person that employs another person in this state.

(2) A person employing a domestic worker shall:

(a) Notwithstanding ORS 653.020, pay the domestic worker an overtime wage at a rate of one and one-half times the worker’s base rate for hours worked in excess of 40 hours in a workweek, or in excess of 44 hours in a workweek if the domestic worker lives in the home of the employer.

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

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

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

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

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

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

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

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

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

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

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

(c) Subject a domestic worker to harassment based on gender, race, religion, disability, sexual orientation or national origin if the harassment has the purpose or effect of unreasonably interfering with the worker's work performance by creating an intimidating, hostile or offensive work environment.

(d) Retaliate or in any way discriminate against an individual with respect to hire or tenure or any other term or condition of employment because the individual has inquired about the provisions of this section and ORS 653.549 or has reported a violation to, or filed a complaint with, the Bureau of Labor and Industries alleging a violation of this section. [2015 c.457 §1]

Note: 653.547 to 653.553 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 653 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

653.549 Rules. (1) The Bureau of Labor and Industries shall adopt rules necessary for the implementation and administration of ORS 653.547.

(2) Rules adopted under this section shall include, but are not limited to:

(a) Meal periods, rest periods and paid personal leave for domestic workers; and

(b) Uninterrupted rest periods of at least eight hours within each 24-hour period and compensation for interruptions of rest periods for domestic workers. [2015 c.457 §2]

Note: See note under 653.547.

653.551 Unlawful employment discrimination; civil remedies and penalties. (1) Except as provided in subsection (4) of this section, any violation of ORS 653.547 or rules adopted under ORS 653.549 by an employer is an unlawful employment practice.

(2) Domestic workers may file complaints alleging a violation of ORS 653.547 or of a rule adopted under ORS 653.549 with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820. The commissioner shall enforce ORS 653.547 and the rules adopted under ORS 653.549 in the manner provided in ORS chapter 659A regarding other unlawful employment practices.

(3) Violation of ORS 653.547 or of a rule adopted under ORS 653.549 subjects the violator to the same civil remedies and penalties as provided in ORS chapter 659A.

(4) Domestic workers may file complaints alleging violations of ORS 653.547 (2)(a) under ORS 652.310 to 652.414. [2015 c.457 §3]

Note: See note under 653.547.

653.553 Short title. ORS 653.547 to 653.551 may be referred to as the Domestic Workers' Protection Act. [2015 c.457 §4]

Note: See note under 653.547.

ADMINISTRATION

653.560 Authority of Bureau of Labor and Industries. The Bureau of Labor and Industries shall administer, execute and carry out the provisions of ORS 653.010 to 653.565 and 653.991. [Formerly 653.520]

653.565 Investigating compliance with rules; prosecution for violation. The Bureau of Labor and Industries shall, from time to time, investigate and ascertain whether employers are observing and complying with its rules under ORS 653.010 to 653.565 and take such steps as may be necessary to prosecute employers that are not observing or complying with its rules. [Formerly 653.535]

653.600 [1973 c.564 §2; repealed by 1975 c.114 §1]

SICK LEAVE

653.601 Definitions for ORS 653.601 to 653.661. As used in ORS 653.601 to 653.661:

(1)(a) "Employee" means an individual who renders personal services at a fixed rate to an employer if the employer either pays or agrees to pay for personal services or permits the individual to perform personal services.

(b) "Employee" includes, but is not limited to:

(A) An individual who is paid on a piece-rate basis or the basis of the number of operations accomplished or quantity produced or handled;

(B) Individuals paid on an hourly, salary or commission basis;

(C) Individuals for whom withholding is required under ORS 316.162 to 316.221; and

(D) Home care workers as defined in ORS 410.600.

(c) "Employee" does not include:

(A) An employee who receives paid sick time under federal law;

(B) An independent contractor;

(C) A participant in a work training program administered under a state or federal assistance program;

(D) A participant in a work-study program that provides students in secondary or post-secondary educational institutions with employment opportunities for financial assistance or vocational training;

(E) A railroad worker exempted under the federal Railroad Unemployment Insurance Act; and

(F) An individual employed by that individual's parent, spouse or child.

(2)(a) "Employer" means any person that employs one or more employees working anywhere in this state, a political subdivision of the state and any county, city, district, authority, public corporation or entity, and any instrumentality of a county, city, district, authority, public corporation or entity, organized and existing under law or charter.

(b) "Employer" includes an employer located in a city with a population exceeding 500,000.

(c) "Employer" does not include the federal government.

(3)(a) "Employer located in a city with a population exceeding 500,000" includes, but is not limited to, an employer that maintains any office, store, restaurant or establishment in that city.

(b) "Employer located in a city with a population exceeding 500,000" does not include an employer that maintains only a seasonal farm stand or a trailer that is used temporarily on a construction site for office purposes only.

(4) "Family member" has the meaning given that term in ORS 659A.150.

(5)(a) "Front-load," except as provided in paragraph (b) of this subsection, means to assign and make available a certain number of hours of sick time to an employee as soon as the employee becomes eligible to use sick time and on the first day of the immediately subsequent year without regard to an accrual rate.

(b) For employees employed by an employer for less than a full year, "front-load" means to assign and make available to an employee as soon as the employee becomes eligible to use sick time a number of hours of sick time that is the pro rata percentage of the hours the employee would be entitled to for an entire year based on the number of hours the employee was actually employed by the employer for the year.

(6) "Paid sick time" means time off:

(a) That is provided to an employee by an employer that employs 10 or more employees;

(b) That may be used for the purposes specified in ORS 653.616; and

(c) That is compensated at the regular rate of pay and without reductions in benefits, including but not limited to health care benefits, that the employee earns from the employer at the time the employee uses the paid sick time.

(7) "Sick time" means time during which an employee is permitted to be absent from work for a reason authorized under ORS 653.616 without a reduction in benefits, including but not limited to health care benefits, that the employee earns from the employer.

(8) "Year" includes any consecutive 12-month period, such as a calendar year, a tax year, a fiscal year, a contract year or the 12-month period beginning on the anniversary of the date of employment of the employee. [2015 c.537 §2; 2017 c.520 §1]

Note: Section 4, chapter 520, Oregon Laws 2017, provides:

Sec. 4. The amendments to ORS 653.601, 653.606 and 653.611 by sections 1 to 3 of this 2017 Act apply to hours worked and sick time accrued or used on or after January 1, 2018. [2017 c.520 §4]

653.605 [1973 c.564 §1; repealed by 1975 c.114 §1]

653.606 Employee count; paid and unpaid sick time; rules; accrual, use and carryover amounts. (1)(a) Employers that employ at least 10 employees working anywhere in this state shall implement a sick time policy that allows an employee to accrue at least one hour of paid sick time for every 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works. Employers may limit the number of hours of paid sick time that employees may accrue to 40 hours per year.

(b) Employers that employ fewer than 10 employees working anywhere in this state shall implement a sick time policy that allows an employee to accrue at least one hour of unpaid sick time for every 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works. Employers may limit the number of hours of unpaid sick time that employees may accrue to 40 hours per year.

(c) Employers that employ at least 10 employees working anywhere in this state and front-load for employees at least 40 hours of paid sick time or paid time off at the beginning of each year used to calculate the accrual and usage of sick time or time off need not comply with subsections (1)(a) and (3) of this section.

(d) Employers that employ fewer than 10 employees working anywhere in this state and front-load for employees at least 40 hours of unpaid sick time or unpaid time off at the beginning of each year used to calculate the accrual and usage of sick time or time off need not comply with subsections (1)(b) and (3) of this section.

(2)(a) The number of employees employed by an employer shall be ascertained by determining that the per-day average number of employees is 10 or greater for each of 20 workweeks in the calendar year or the fiscal

year of the employer immediately preceding the year in which the leave is to be taken.

(b) If the business of the employer was not in existence for the entire year preceding the determination made under paragraph (a) of this subsection, the number of employees shall be based on any 20 workweeks preceding the request for sick time, which may include workweeks in the current year, the preceding year or a combination of workweeks in the current year and the preceding year.

(c) As used in this subsection, "employee" does not include an individual or the parent, spouse or child of an individual who is:

(A) A director of a corporation who has a substantial ownership interest in the corporation;

(B) A member of a limited liability company who has:

(i) A right to vote on or consent to any matter submitted to a vote or requiring the consent of the members of the limited liability company; and

(ii) A substantial ownership interest in the limited liability company;

(C) A partner of a limited liability partnership who has a substantial ownership interest in the limited liability partnership; or

(D) A sole proprietor of a business.

(d) As used in paragraph (c) of this subsection, "substantial ownership interest" means a percentage of ownership equal to or greater than the average percentage of ownership of all owners, but not less than 15 percent.

(3) An employee shall begin to earn and accrue sick time on the first day of employment with an employer. The employee may carry over up to 40 hours of unused sick time from one year to a subsequent year. However, an employer:

(a) May adopt a policy that limits an employee to accruing no more than 80 total hours of sick time; and

(b) May adopt a policy that limits an employee to using no more than 40 hours of sick time in a year.

(4)(a) An employer is not required to carry over unused sick time if, by mutual consent, the employer and an employee agree that:

(A) If the employer has 10 or more employees working anywhere in this state, the employee will be paid for all unused paid sick time at the end of the year in which the sick time is accrued and the employer will credit the employee with an amount of paid sick time that meets the requirements of this

section on the first day of the immediately subsequent year; or

(B) If the employer has fewer than 10 employees working anywhere in this state, the employer will credit the employee with an amount of sick time that meets the requirements of this section on the first day of the immediately subsequent year.

(b) The Commissioner of the Bureau of Labor and Industries shall adopt rules for the determination of the number of employees employed by an employer.

(5)(a) An employee is eligible to use sick time beginning on the 91st calendar day of employment with the employer and may use sick time as it is accrued.

(b) An employer may authorize an employee to use accrued sick time prior to the 91st calendar day of employment.

(c)(A) An employer that employs 10 or more employees working anywhere in this state shall pay an employee for accrued sick time used at the regular rate of pay of the employee.

(B) For an employee who is paid on a commission or piece-rate basis by an employer that employs 10 or more employees working anywhere in this state, the employer shall pay the employee for accrued sick time used at a rate equal to at least the minimum wage specified in ORS 653.025.

(C) For an employee who is paid an hourly, weekly or monthly wage and is also paid on a piece-rate or commission basis by an employer that employs 10 or more employees working anywhere in this state, the employer shall pay the employee for accrued sick time used at a rate equivalent to the employee's hourly, weekly or monthly wage or equal to the minimum wage specified in ORS 653.025, whichever is greater.

(6) An employee who is exempt from overtime requirements under 29 U.S.C. 213(a)(1) of the federal Fair Labor Standards Act of 1938 is presumed to work 40 hours in each workweek for the purpose of accrual of sick time unless the actual workweek of the employee is less than 40 hours, in which case sick time accrues based on the actual workweek of the employee.

(7) Nothing in ORS 653.601 to 653.661 requires an employer to compensate an employee for accrued unused sick time upon the employee's termination, resignation, retirement or other separation from employment.

(8) An employer may not require an employee to:

(a) Search for or find a replacement worker as a condition of the employee's use of accrued sick time; or

(b) Work an alternate shift to make up for the use of sick time.

(9) Upon mutual consent by the employee and the employer, an employee may work additional hours or shifts to compensate for hours or shifts during which the employee was absent from work without using accrued sick time for the hours or shifts missed. However, the employer may not require the employee to work additional hours or shifts authorized by this subsection. If the employee works additional hours or shifts, the employer must comply with any applicable federal, state or local laws regarding over-time pay.

(10) An employee retains accrued sick time if the employer sells, transfers or otherwise assigns the business or an interest in the business to another employer.

(11)(a) An employer shall restore previously accrued unused sick time to an employee who is reemployed by that employer within 180 days of separation from employment with the employer.

(b) If an employee leaves employment with an employer before the 91st day of employment and subsequently is reemployed by that employer within 180 days of separation from employment, the employer shall restore the accrued sick time balance the employee had when the employee left the employment of the employer and the employee may use accrued sick time after the combined total of days of employment with the employer exceeds 90 calendar days.

(12) If an employee is transferred to a separate division, entity or location of the employer but remains employed by that same employer, the employee is entitled to use all sick time accrued while working at the former division, entity or location of the employer and is entitled to retain or use all sick time as provided by ORS 653.601 to 653.661.

(13) Employers located in a city with a population exceeding 500,000 shall comply with ORS 653.601 to 653.661, except that:

(a) If an employer located in a city with a population exceeding 500,000 employs at least six employees working anywhere in this state, the employer shall implement a policy consistent with this section as it applies to employers with at least 10 employees working anywhere in this state.

(b) If an employer located in a city with a population exceeding 500,000 employs fewer than six employees working anywhere in this state, the employer shall implement a policy consistent with this section as it applies to employers with fewer than 10 employees working anywhere in this state. [2015 c.537 §3; 2017 c.520 §2]

Note: See note under 653.601.

653.610 [1973 c.564 §6; repealed by 1975 c.114 §1]

653.611 Substantially equivalent policies. (1) An employer with a sick leave policy, paid vacation policy, paid personal time off policy or other paid time off program that is substantially equivalent to or more generous to the employee than the minimum requirements of ORS 653.601 to 653.661:

(a) Must, at a minimum, comply with the requirements of ORS 653.601 to 653.661 for the first 40 hours that the employer's policy provides per year; and

(b) Need not comply with the requirements of ORS 653.601 to 653.661 beyond the first 40 hours that the employer's policy provides per year.

(2) If an employee of an employer that has a policy for paid sick time, paid vacation leave, paid personal time off or other paid time off programs has exhausted all paid and unpaid leave available to the employee, the employer is not obligated to provide additional leave for paid or unpaid sick time as required by ORS 653.601 to 653.661. However, the employer may be obligated to provide paid or unpaid sick time by federal or state law that provides for paid or unpaid leave for similar purposes. [2015 c.537 §4; 2017 c.520 §3]

Note: See note under 653.601.

653.615 [1973 c.564 §3; repealed by 1975 c.114 §1]

653.616 Allowable uses of sick time. An employee may use sick time earned under ORS 653.606:

(1) For an employee's mental or physical illness, injury or health condition, need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive medical care.

(2) For care of a family member with a mental or physical illness, injury or health condition, care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition or care of a family member who needs preventive medical care.

(3) Notwithstanding ORS 659A.153, for any other purpose specified in ORS 659A.159.

(4) For a purpose specified in ORS 659A.272, notwithstanding ORS 659A.270 (1).

(5) To donate accrued sick time to another employee if the other employee uses the donated sick time for a purpose specified in this section and the employer has a policy that allows an employee to donate sick time to a coworker for a purpose specified in this section.

(6) In the event of a public health emergency. For purposes of this subsection, a public health emergency includes, but is not limited to:

(a) Closure of the employee's place of business, or the school or place of care of the employee's child, by order of a public official due to a public health emergency;

(b) A determination by a lawful public health authority or by a health care provider that the presence of the employee or the family member of the employee in the community would jeopardize the health of others, such that the employee must provide self care or care for the family member; or

(c) The exclusion of the employee from the workplace under any law or rule that requires the employer to exclude the employee from the workplace for health reasons. [2015 c.537 §6]

653.620 [1973 c.564 §5; repealed by 1975 c.114 §1]

653.621 Minimum use increments; notice to employer; rules. (1)(a) Upon request of an employee with accrued sick time available, an employer must allow the employee to use sick time. If possible, the employee shall include the anticipated duration of the sick time requested in the request.

(b) Sick time earned under ORS 653.606 shall be taken in hourly increments unless:

(A) To do so would impose an undue hardship on the employer; and

(B) The employer has a policy or combination of policies that allows an employee to use at least 56 hours of paid leave per year that may be taken in minimum increments of four hours and may be used for the purposes specified in ORS 653.616.

(c) The Commissioner of the Bureau of Labor and Industries shall adopt rules for the implementation and administration of this subsection. The rules adopted shall include, but need not be limited to, criteria for establishment of undue hardship under this section that are based on the difficulty of securing a replacement worker while allowing the employer to apply a consistent policy to all employees.

(2) An employer may require the employee to comply with the employer's usual and customary notice and procedural requirements for absences or for requesting time off if those requirements do not interfere with the ability of the employee to use sick time.

(3) If the need to use sick time is foreseeable:

(a) The employer may require reasonable advance notice of the employee's intention to use sick time, not to exceed 10 days prior to the date the sick time is to begin or as soon as otherwise practicable; and

(b) The employee shall make a reasonable attempt to schedule the use of sick time in

a manner that does not unduly disrupt the operations of the employer.

(4) If the need to use sick time is unforeseeable, the employee shall provide notice to the employer as soon as practicable and must comply generally with the employer's notice or procedural requirements for requesting or reporting other time off if those requirements do not interfere with the ability of the employee to use sick time. [2015 c.537 §7]

653.625 [1973 c.564 §7; repealed by 1975 c.114 §1]

653.626 Medical verification. (1)(a) If an employee takes more than three consecutive scheduled workdays of sick time for a purpose described in ORS 653.616 (1) to (4), an employer may require the employee to provide verification from a health care provider of the need for the sick time, or certification of the need for leave for purposes of ORS 659A.272 as provided in ORS 659A.280.

(b) If the need for sick time is foreseeable and is projected to last more than three scheduled workdays and an employee is required to provide notice under ORS 653.621, the employer may require that verification or certification be provided before the sick time commences or as soon as otherwise practicable.

(c) If the employee commences sick time without providing prior notice required by the employer under ORS 653.621:

(A) Medical verification shall be provided to the employer within 15 calendar days after the employer requests the verification; or

(B) Certification provided as specified in ORS 659A.280 shall be provided to the employer within a reasonable time after the employee receives the request for certification.

(2) The employer shall pay any reasonable costs for providing medical verification or certification required under this section, including lost wages, that are not paid under a health benefit plan in which the employee is enrolled.

(3)(a) An employer may not require that the verification or certification required under this section explain the nature of the illness or details related to the domestic violence, sexual assault, harassment, or stalking that necessitates the use of sick time.

(b) If an employer suspects that an employee is abusing sick time, including engaging in a pattern of abuse, the employer may require verification from a health care provider of the need of the employee to use sick time, regardless of whether the employee has used sick time for more than three consecutive days. As used in this paragraph, "pattern of abuse" includes, but is not limited to,

repeated use of unscheduled sick time on or adjacent to weekends, holidays, vacation days or paydays.

(4) As used in this section, “health care provider” has the meaning given that term in ORS 659A.150. [2015 c.537 §8]

653.630 [1973 c.564 §8; repealed by 1975 c.114 §1]

653.631 Accrual amount records. (1) An employer shall:

(a) Provide written notification at least quarterly to each employee of the amount of accrued and unused sick time available for use by the employee. Inclusion of the amount of accrued and used sick time on the statement required under ORS 652.610 meets the requirements of this paragraph.

(b) Provide written notice of the requirements of ORS 653.601 to 653.661 to each employee in accordance with rules adopted by the Commissioner of the Bureau of Labor and Industries.

(2) The notices provided under this section must be in the language the employer typically uses to communicate with the employee.

(3) The Bureau of Labor and Industries shall make available to employers a template that meets the required notice provisions of this section.

(4) Health information of an employee related to sick time is confidential and may not be released without the permission of the employee. Information pertaining to leave under ORS 659A.272 that is provided by an employee in accordance with ORS 653.601 to 653.661 is confidential as provided in ORS 659A.280. [2015 c.537 §9]

653.635 [1973 c.564 §11; repealed by 1975 c.114 §1]

653.636 Minimum requirements. ORS 653.601 to 653.661 establish minimum requirements pertaining to sick time and may not be construed to preempt, limit or otherwise affect the applicability of any employer policy, standard or collective bargaining agreement that provides for greater use of paid or unpaid sick time. [2015 c.537 §10]

653.640 [1973 c.564 §9; repealed by 1975 c.114 §1]

653.641 Unlawful practices. It is an unlawful practice for an employer or any other person to:

(1) Deny, interfere with, restrain or fail to pay for sick time to which an employee is entitled under ORS 653.601 to 653.661;

(2) Retaliate or in any way discriminate against an employee with respect to any term or condition of employment because the

employee has inquired about the provisions of ORS 653.601 to 653.661, submitted a request for sick time, taken sick time, participated in any manner in an investigation, proceeding or hearing related to ORS 653.601 to 653.661, or invoked any provision of ORS 653.601 to 653.661; or

(3) Apply an absence control policy that includes sick time absences covered under ORS 653.601 to 653.661 as an absence that may lead to or result in an adverse employment action against the employee. [2015 c.537 §11]

653.645 [1973 c.564 §10; repealed by 1975 c.114 §1]

653.646 Multiemployer exception; mandate to establish sick time policy for home care workers. (1) The requirements of ORS 653.601 to 653.661 do not apply to an employee:

(a) Whose terms and conditions of employment are covered by a collective bargaining agreement;

(b) Who is employed through a hiring hall or similar referral system operated by the labor organization or a third party; and

(c) Whose employment-related benefits are provided by a joint multiemployer-employee trust or benefit plan.

(2)(a) The Home Care Commission created under ORS 410.602 shall establish a paid sick time policy for consumer employed home care workers.

(b) A policy for paid sick time for consumer employed home care workers implemented by the Home Care Commission that allows an eligible home care worker to accrue and use up to 40 hours of paid time off a year, including but not limited to sick time, is deemed to meet the requirements of ORS 653.601 to 653.661 and is exempt from the provisions of ORS 653.601 (6), 653.606 (5), 653.611, 653.621, 653.626 and 653.631.

(3) As used in this section, “consumer employed home care worker” has the meaning given the term “home care worker” in ORS 410.600. [2015 c.537 §12]

653.650 [1973 c.564 §12; repealed by 1975 c.114 §1]

653.651 Enforcement. (1) An employee asserting a violation of ORS 653.641 (2) or (3) may file a complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820 or a civil action as provided in ORS 659A.885.

(2) The commissioner has the same enforcement powers with respect to the rights established under ORS 653.601 to 653.661 as

are established in ORS chapters 652 and 653. [2015 c.537 §13]

653.655 [1973 c.564 §13; repealed by 1975 c.114 §1]

653.656 Rules. The Commissioner of the Bureau of Labor and Industries:

(1) Shall enforce the provisions of ORS 653.601 to 653.661; and

(2) May adopt rules necessary for the implementation and enforcement of ORS 653.601 to 653.661. [2015 c.537 §14]

653.661 Preemption. The State of Oregon preempts all charter and statutory authority of local governments as defined in ORS 174.116 to set any sick leave requirements. [2015 c.537 §15]

653.675 [1973 c.564 §14; repealed by 1975 c.114 §1]

653.680 [1973 c.564 §15; repealed by 1975 c.114 §1]

653.685 [1973 c.564 §17; repealed by 1975 c.114 §1]

653.690 [1973 c.564 §18; repealed by 1975 c.114 §1]

653.695 [1973 c.564 §19; repealed by 1975 c.114 §1]

653.700 [1973 c.564 §20; repealed by 1975 c.114 §1]

653.705 [1987 c.591 §2; 1997 c.170 §35; renumbered 735.700 in 2001]

653.715 [1987 c.591 §1; 1997 c.170 §36; 1999 c.547 §1; 2001 c.943 §19; renumbered 735.702 in 2001]

653.717 [1989 c.381 §1; repealed by 1999 c.547 §9]

653.725 [1987 c.591 §3; 1989 c.381 §17; renumbered 735.704 in 2001]

653.735 [1987 c.591 §5; renumbered 735.708 in 2001]

653.745 [1987 c.591 §§6,7; 1997 c.170 §37; 1999 c.547 §2; 2001 c.943 §20; renumbered 735.710 in 2001]

653.747 [1993 c.815 §34; 1999 c.547 §3; renumbered 735.712 in 2001]

653.748 [1989 c.381 §2; 1993 c.18 §137; repealed by 1999 c.547 §9]

653.750 [1989 c.381 §16a; repealed by 1999 c.547 §9]

653.755 [1987 c.591 §8; repealed by 1999 c.547 §9]

653.765 [1987 c.591 §9; 1989 c.171 §75; 1989 c.381 §4; 1997 c.170 §38; repealed by 1999 c.547 §9]

653.767 [1989 c.1092 §2; renumbered 279.315 in 1993]

653.770 [1989 c.381 §5a; repealed by 1995 c.79 §329]

653.775 [1987 c.591 §10; 1989 c.381 §5; 1993 c.815 §36; 1997 c.170 §39; repealed by 1999 c.547 §9]

653.785 [1987 c.591 §11; 1997 c.170 §40; repealed by 1999 c.547 §9]

653.800 [1997 c.683 §2; 1999 c.634 §1; renumbered 735.720 in 2001]

653.805 [1997 c.683 §3; renumbered 735.722 in 2001]

653.810 [1997 c.683 §5; 1999 c.634 §2; renumbered 735.724 in 2001]

653.815 [1997 c.683 §6; 1999 c.634 §3; renumbered 735.726 in 2001]

653.820 [1997 c.683 §7; 1999 c.634 §4; renumbered 735.728 in 2001]

653.825 [1997 c.683 §8; renumbered 735.730 in 2001]

653.830 [1997 c.683 §9; renumbered 735.732 in 2001]

653.835 [1997 c.683 §4; renumbered 735.734 in 2001]

653.840 [1997 c.683 §11; renumbered 735.736 in 2001]

653.845 [1997 c.683 §12; renumbered 735.738 in 2001]

653.850 [1997 c.683 §10; 1999 c.634 §5; renumbered 735.740 in 2001]

653.990 [Subsections (1) and (2) enacted as 1967 c.596 §14; repealed by 1971 c.626 §7]

PENALTIES

653.991 Penalties. Violation of any provision of this section or ORS 653.010 to 653.565 or of any rule adopted by the Bureau of Labor and Industries under ORS 653.307 is punishable as a misdemeanor. [1971 c.626 §6; 1993 c.18 §138; 2013 c.296 §28]

653.992 [1973 c.564 §16; repealed by 1975 c.114 §1]