

Chapter 653

2011 EDITION

Minimum Wages; Employment Conditions; Minors

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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. (1) Except as provided by 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 em-

ployee at wages computed at a rate lower than:

(a) For calendar year 1997, \$5.50

(b) For calendar year 1998, \$6.00

(c) For calendar years after December 31, 1998, and before January 1, 2003, \$6.50.

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

(e) For calendar years after 2003, a rate adjusted for inflation.

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

(b) No later than September 30 of each year, beginning in calendar year 2003, the commissioner shall calculate an adjustment of the wage amount specified in subsection (1) of this section based upon the increase (if any) from August of the preceding year to August 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 established under this subsection shall:

(A) Be rounded to the nearest five cents; and

(B) Become effective as the new Oregon minimum wage, replacing the dollar figure specified in subsection (1) of this section, on January 1 of the following year. [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]

Note: The amendments to ORS 653.025 by section 1, chapter 2, Oregon Laws 2003 (Ballot Measure No. 25 (2002)), incorrectly set forth paragraphs (1)(a) to (e) as subsections (1) to (5) and included nonstandard internal references. These form and style errors have been corrected by Legislative Counsel pursuant to ORS 173.160.

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 sub-

stantially 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, summaries of all rules promulgated by the Commissioner of the Bureau of Labor and Industries pursuant to ORS 653.010 to 653.261 and summaries of all rules promulgated by the Wage and Hour Commission 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 promulgated pursuant to ORS 653.010 to 653.261 and by the Wage and Hour Commission to any employer without charge. [1967 c.596 §10; 1977 c.238 §4; 1985 c.99 §6; 2011 c.348 §4]

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 proceeding 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 made complaint that the employee has not been paid wages in accordance with ORS 653.010 to 653.261.

(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.

(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]

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 apprenticeship 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 prox-

imity 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 who willfully violates ORS 653.025, 653.030, 653.045, 653.050, 653.060 or 653.261 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 who 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 commissioner 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]

653.260 [Repealed by 1967 c.596 §15]

653.261 Minimum employment conditions; overtime; rules; meal periods; exemptions; penalty. (1) 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 week; however, after 40 hours of work in one week 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.

(2) Nothing contained in ORS 653.010 to 653.261 shall be construed to confer authority upon the commissioner to regulate the hours of employment of employees engaged in production, harvesting, packing, curing, canning, freezing or drying any variety of agricultural crops, livestock, poultry or fish.

(3) 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 sub-

section (1) of this section, including meal periods, rest periods, maximum hours of work and overtime.

(4) 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.

(5)(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]

653.265 Overtime for persons employed in canneries, driers and packing plants. When employed in canneries or driers or packing plants, excluding canneries or driers or packing plants located on farms and primarily processing products produced on such farms, employees shall be paid time and a half for time over 10 hours per day and piece workers shall be paid one and a half the regular prices for all work done during the time they are employed over 10 hours per day. [Amended by 1971 c.492 §2]

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 over-

time 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 develop-

ment 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 two years from the date of the employee's termination. The remainder of a term of a noncompetition agreement in excess of two years 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 injunction or any other lawful means under other applicable laws.

(6) Notwithstanding subsection (1)(b) and (d) of this section, a noncompetition agree-

ment is enforceable for the full term of the agreement, for up to two years, 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]

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 Commission's inquiry and order on employment of minors. (1) The Wage and Hour Commission 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.

(2) When the commission has made such determination, it may issue an obligatory order in compliance with ORS chapter 183.

(3) After such order is effective, no employer in the occupation affected shall employ a minor for more hours or under different conditions of labor than are specified or required by the order; but no such order nor the commission shall authorize or permit the employment of any minor for more hours per day or per week than the maximum fixed by law or at times or under conditions prohibited by law. [Amended by 1967 c.596 §16; 1979 c.886 §3; 1993 c.18 §131]

653.307 Annual employment certificates; effect of failure by employer to comply; school districts required to cooperate with commission; rules.

(1) In accordance with the applicable provisions of ORS chapter 183, the Wage and Hour Commission 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 requirements 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 Wage and Hour Commission for an annual employment certificate to employ minors. The application shall be on a form provided by the commission and shall include, but 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 of Labor and Industries 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 Wage and Hour Commission pursuant to this section shall subject the employer to revocation of the right to hire minors in the future at the discretion of the Wage and Hour Commission, provided that an employer shall be granted a hearing before the Wage and Hour Commission prior to such action being taken.

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

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 Wage and Hour Commission, an annual employment certificate as prescribed by the rules adopted by the commission 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]

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) No child under 14 years of age shall be employed or permitted to work in, or in connection with, any factory, workshop, mercantile establishment, store, business office, restaurant, bakery, hotel or apartment house.

(3) The Wage and Hour Commission 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 commission 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 Wage and Hour Commission exempting a minor or class of minors from the above provisions. The child so employed under this provision shall be given notice of confidential access to the Wage and Hour Commission. [Amended by 1971 c.625 §1]

653.325 [Repealed by 1967 c.527 §3]

653.326 Employment of professionally trained minors allowed with permit. (1) The Wage and Hour Commission 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 commission 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 commission or its representatives shall investigate periodically the conditions of the employment for which a special permit has been issued, to determine whether or not the permit should be continued. [1967 c.347 §2; 1995 c.343 §51]

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 Wage and Hour Commission. [1979 c.626 §2; 1995 c.477 §1]

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 Wage and Hour Commission thereunder, 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 hear-

ings 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]

653.405 [Repealed by 1971 c.626 §7]

653.410 [Repealed by 1971 c.626 §7]

653.415 [Repealed by 1971 c.626 §7]

653.420 [Repealed by 1971 c.626 §7]

653.425 [Repealed by 1971 c.626 §7]

653.430 [Repealed by 1971 c.626 §7]

653.435 [Repealed by 1971 c.626 §7]

653.440 [Repealed by 1971 c.626 §7]

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

WAGE AND HOUR COMMISSION

653.505 Wage and Hour Commission; appointment; confirmation; term; vacancies. (1) The Wage and Hour Commission is established and shall be composed of three commissioners who shall be appointed by the Governor for the term of four years and until their successors are appointed and qualified. In selection of the members of the commission, the Governor shall give due consideration to the interests of labor, industry and the public. Not more than two of the mem-

bers of said commission shall belong to the same political party.

(2) Upon the expiration of the term of any commissioner, the Governor shall appoint a successor.

(3) The Governor shall fill any vacancy on the commission by appointment for the unexpired portion of the term in which the vacancy occurs.

(4) All appointments of members of the commission by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. [Amended by 1967 c.596 §17; 1973 c.792 §27]

653.510 Chairperson of commission; quorum; compensation and expenses. (1) On or before January 20 of each year, the commissioners shall elect a chairperson. Each chairperson shall hold the position until a successor is elected.

(2) A majority of the commissioners shall constitute a quorum to transact business. The act or decision of such majority is considered the act or decision of the Wage and Hour Commission. No vacancy shall impair the right of the remaining commissioners to exercise all the powers of the commission.

(3) Each commissioner is entitled to compensation and expenses as provided in ORS 292.495. [Amended by 1961 c.337 §2; 1969 c.314 §68; 1993 c.18 §132]

653.515 Commissioner as secretary; personnel and expenses. (1) The Commissioner of the Bureau of Labor and Industries shall be the secretary and executive officer of the Wage and Hour Commission.

(2) The secretary of the commission may employ such clerical assistance and incur such expenses as may be necessary in performing the duties of the secretary.

653.520 Duties of commission generally. The Wage and Hour Commission shall administer, execute and carry out the provisions of ORS 653.010 to 653.545 and 653.991. [Amended by 1975 c.605 §30]

653.525 Rules of commission. The Wage and Hour Commission may prepare, adopt and promulgate rules for the carrying into effect of ORS 653.305, 653.315 and 653.505 to 653.540, including rules for the selection of members and the mode of procedure of conferences. [Amended by 1961 c.205 §2; 1993 c.18 §133]

653.530 Meetings and hearings; authority of commission; rules; witness fees. (1) The Wage and Hour Commission may hold meetings for the transaction of any of its business at such times and places as it may prescribe.

(2) The commission may hold public hearings at such times and places as it deems fit and proper for the purpose of in-

vestigating any of the matters it is authorized to investigate under ORS 653.535.

(3) At any such public hearing any person interested in the matter being investigated may appear and testify.

(4) The commission may conduct investigations, issue subpoenas and subpoenas duces tecum, administer oaths, obtain evidence and take testimony in all matters relating to the commission's duties when the information sought is relevant to a lawful investigative purpose and is reasonable in scope. The commission shall adopt rules for gathering information through subpoenas or testimony. The rules must include procedures through which a party may object to providing information. After being served with a subpoena, if a person refuses, without reasonable cause, to be examined, to answer any question or to produce any document or other thing as required by the subpoena, the commission may petition the circuit court in the county in which the investigation is pending for an order directing the person to show cause why the person has not complied with the subpoena and should not be held in contempt. The commission shall serve the court's order upon the person in the manner provided by ORCP 55 D. If the person fails to show cause for the noncompliance, the court shall order the person to comply with the subpoena within such time as the court shall direct and may hold the person in contempt.

(5) All witnesses subpoenaed by the commission shall be paid the same mileage and per diem as are allowed by law to witnesses under ORS 44.415 (2). [Amended by 1983 c.740 §241; 1989 c.980 §17a; 1993 c.18 §134; 2007 c.277 §2]

653.535 Investigating compliance with orders; prosecution for violation. The Wage and Hour Commission shall, from time to time, investigate and ascertain whether or not employers are observing and complying with its orders and take such steps as may be necessary to prosecute such employers as are not observing or complying with its orders. [Amended by 1993 c.18 §135]

653.540 Assistance to commission. The Commissioner of the Bureau of Labor and Industries shall, at all times, give to the Wage and Hour Commission any information or statistics in the office of the commissioner that would assist the commission in carrying out ORS 653.305 and 653.505 to 653.535 and render such assistance to the commission as is consistent with the performance of the official duties of the commissioner. [Amended by 1993 c.18 §136]

653.545 Visitation rights of commission; prosecution of offenses against child labor laws. (1) The Wage and Hour Com-

mission or anyone authorized by the commission in writing may visit the factories, workshops and mercantile establishments in their several towns and cities and ascertain whether any minors are employed therein contrary to ORS 653.310, 653.315, 653.320 and 653.340 and the rules promulgated by the Wage and Hour Commission pursuant to ORS 653.307 and shall report any cases of illegal employment to the proper school authorities and to the district attorney of the county. The commission may require that the annual employment certificates and lists of minors employed in such factories, workshops, or mercantile establishments, shall be produced for their inspection.

(2) The commission 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. [Amended by 1971 c.626 §4; 1993 c.18 §136a; 1995 c.133 §3]

- 653.600** [1973 c.564 §2; repealed by 1975 c.114 §1]
- 653.605** [1973 c.564 §1; repealed by 1975 c.114 §1]
- 653.610** [1973 c.564 §6; repealed by 1975 c.114 §1]
- 653.615** [1973 c.564 §3; repealed by 1975 c.114 §1]
- 653.620** [1973 c.564 §5; repealed by 1975 c.114 §1]
- 653.625** [1973 c.564 §7; repealed by 1975 c.114 §1]
- 653.630** [1973 c.564 §8; repealed by 1975 c.114 §1]
- 653.635** [1973 c.564 §11; repealed by 1975 c.114 §1]
- 653.640** [1973 c.564 §9; repealed by 1975 c.114 §1]
- 653.645** [1973 c.564 §10; repealed by 1975 c.114 §1]
- 653.650** [1973 c.564 §12; repealed by 1975 c.114 §1]
- 653.655** [1973 c.564 §13; repealed by 1975 c.114 §1]
- 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]

PENALTIES

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

653.991 Penalties. Violation of any provision of this section or ORS 653.010 to 653.545 or of any rule adopted by the Wage and Hour Commission under ORS 653.307 shall be punishable as a misdemeanor. [1971 c.626 §6; 1993 c.18 §138]

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