

# Chapter 652

## Hours of Labor; Payment of Wages

### Chapter 652

CASE CITATIONS: State ex rel. Nilsen v. Cushing, (1969) 253 Or 262, 453 P2d 945.

#### 652.010

#### NOTES OF DECISIONS

1913 c. 102 [ORS 652.010, 652.020, 652.030 and 652.990] is a legitimate exercise of the police power. State v. Bunting, (1914) 71 Or 259, 139 P 731, Ann Cas 1916C, 1003, LRA 1917C, 1162, aff'd, 243 US 426, 37 S Ct 435, 61 L Ed 830; Sumpter v. St. Helens Creosoting Co., (1917) 84 Or 167, 164 P 708.

#### 652.020

#### NOTES OF DECISIONS

The proviso permitting overtime not to exceed three hours a day does not render the whole Act void. State v. Bunting, (1914) 71 Or 259, 139 P 731, Ann Cas 1916C, 1003, LRA 1917C, 1162.

The prohibition of this section does not apply to a servant making ordinary repairs as the term "necessary repairs" is construed as convenient or needful repairs. State v. Young, (1915) 74 Or 399, 145 P 647.

There is an account stated which bars an action for overtime where an employe signs a time check stating the time and amount due, and receives payment without objection. Sumpter v. St. Helens Creosoting Co., (1917) 84 Or 167, 164 P 708.

A waiver of an employe's civil remedy after labor is performed is possible in spite of OL 6-710 [ORS 652.990 (1)] which relates only to the criminal prosecution; such a waiver results from signing a time check amounting to an account stated. Id.

#### 652.050

ATTY. GEN. OPINIONS: Fire house custodian as a "fire fighter," 1948-50, p 247.

#### 652.110

CASE CITATIONS: Chamberlain v. Townsend, (1914) 72 Or 207, 142 P 782, 143 P 924; Coos Bay Lbr. Co. v. Local 7-116, Intl. Woodworkers of America, (1955) 203 Or 342, 279 P2d 508, 280 P2d 412; McClendon v. Kenin, (1963) 235 Or 588, 385 P2d 615; State ex rel. Nilsen v. Whited, (1964) 239 Or 149, 396 P2d 758.

ATTY. GEN. OPINIONS: Negotiability of "identification certificate" and "certificate of time" issued by contractors, 1924-26, p 168; issuance and sale of coupon books by construction companies in connection with its store and commissary as a violation of law, 1928-30, p 220; payment of wages in cash or order, check or memorandum to be paid without discount in cash on demand in county where issued, 1942-44, p 126.

### 652.120

#### NOTES OF DECISIONS

An employer may deduct insurance premium payments from wages in accordance with a contract with a union even though such deductions were not authorized by the individual employe. Coos Bay Lbr. Co. v. Local 7-116, Intl. Woodworkers of America, (1955) 203 Or 342, 279 P2d 508, 280 P2d 412.

### 652.130

#### NOTES OF DECISIONS

This section does not prevent the provisions of OCLA 102-604 [ORS 652.140 to 652.170] from being applicable to employers engaged in the logging business who hire piece work employes. McGinnis v. Keen, (1950) 189 Or 445, 221 P2d 907.

### 652.140

#### NOTES OF DECISIONS

Termination of employment due to completion of the work is a "discharge" within the meaning of this section. McGinnis v. Keen, (1950) 189 Or 445, 221 P2d 907.

Loggers are not dealing with "perishable or seasonal commodities" within the meaning of the proviso to this Act. Id.

An employe who brings an action under OCLA 102-604 [ORS 652.140 to 652.170] need not negative his possible status as an independent contractor. Id.

Employers engaged in forest product industries are subject to the penalties listed in OCLA 102-604 [ORS 652.140 to 652.170] despite their inclusion in OCLA 102-605 and 102-606 [ORS 652.130 and 652.990(4)]. Id.

"Wages" means all earned compensation contracted for, including vacation pay. State ex rel. Nilsen v. Oregon State Motor Assn., (1967) 248 Or 133, 432 P2d 512.

The allegation that money became due on a certain date, as a basis for interest allowance under OL 7988 [ORS 82.010] supported by a statement of the time labor was performed and when it was terminated was more than a mere conclusion of law in view of this section. Carlson v. New Amsterdam Cas. Co., (1925) 118 Or 542, 247 P 804.

It was for the jury to determine whether there was a termination and whether the employer should be charged with knowledge of such termination. State v. Johnson, (1962) 233 Or 103, 377 P2d 331.

FURTHER CITATIONS: Nordling v. Johnston, (1955) 205 Or 315, 283 P2d 994, 287 P2d 420; State ex rel. Nilsen v. Whited, (1964) 239 Or 149, 396 P2d 758.

### 652.150

#### NOTES OF DECISIONS

The piecework employe receives the benefits of ORS 652.140 to 652.170 with the penalty recovery being measured by the amount earned in a period immediately preceding

the cessation of the employment equal to the delay in payment, but under no circumstances more than 30 days. *McGinnis v. Keen*, (1950) 189 Or 445, 221 P2d 907; *State ex rel. Nilsen v. Adams*, (1967) 248 Or 269, 431 P2d 270. **But see** *Nordling v. Johnston*, (1955) 205 Or 315, 283 P2d 994, 287 P2d 420.

Termination of employment due to completion of the work is a "discharge" within the meaning of this section. *McGinnis v. Keen*, (1950) 189 Or 445, 221 P2d 907.

Workmen performing under a joint contract can join in a single action to recover the penalty prescribed in this section. *Id.*

This section is penal in character. *Nordling v. Johnston*, (1955) 205 Or 315, 283 P2d 994, 287 P2d 420.

Rights arising under this section are assignable. *Id.*

The amount of the penalty is not to be determined by the amount which the employe earned, but by the rate of pay at which he worked. *Id.*

Section was not unconstitutional for uncertainty or as a violation of due process. *State v. Johnson*, (1962) 233 Or 103, 377 P2d 331.

"Wages" means all earned compensation contracted for, including vacation pay. *State ex rel. Nilsen v. Oregon State Motor Assn.*, (1967) 248 Or 133, 432 P2d 512.

Plaintiff's claims for penalties under this section may be included in determining the jurisdictional amount. *Rake v. City Lbr. Co.*, (1967) 283 F Supp 870.

Plaintiff has the burden of showing the failure was wilful. *State ex rel. Nilsen v. Lee*, (1968) 251 Or 284, 444 P2d 548.

This section leaves no discretion with the court in fixing the amount of the penalty. *State ex rel. Nilsen v. Cushing*, (1969) 253 Or 262, 453 P2d 945.

The penalty under this section is mandatory. *Id.*

**FURTHER CITATIONS:** *State ex rel. Nilsen v. Whited*, (1964) 239 Or 149, 396 P2d 758; *State ex rel. Nilsen v. Berry*, (1967) 248 Or 391, 434 P2d 471.

**LAW REVIEW CITATIONS:** 37 OLR 88, 91; 40 OLR 60.

652.160

#### NOTES OF DECISIONS

See also cases under ORS 652.140 and 652.150.

**FURTHER CITATIONS:** *State ex rel. Nilsen v. Adams*, (1967) 248 Or 269, 433 P2d 831.

652.170

#### NOTES OF DECISIONS

See cases under ORS 652.140 and 652.150.

652.200

#### NOTES OF DECISIONS

In an action for labor against surety on road contractor's bond under facts warranting recovery against principal, attorney's fees may be recovered. *Carlson v. New Amsterdam Cas. Co.*, (1926) 118 Or 542, 247 P 804.

The only instance in which a laborer cannot recover attorney's fee in action to collect wages not paid within 48 hours of demand is where he voluntarily quits without giving three days' notice. *Id.*

Under a statute, where attorney fees are made a part of costs, allowance is to be considered as a part of the cost bill. *State ex rel. Nilsen v. Adams*, (1967) 248 Or 269, 433 P2d 831.

Plaintiff's claim for attorney fees under this section may be included in determining the jurisdictional amount. *Rake v. City Lbr. Co.*, (1967) 283 F Supp 870.

An employe, suing for wages after remaining on job until

its completion and after statutory demand, was entitled to attorney's fees without having given three-day notice. *Nirschl v. Nirschl*, (1926) 119 Or 478, 249 P 1099.

**FURTHER CITATIONS:** *Chamberlain v. Townsend*, (1914) 72 Or 207, 142 P 782, 143 P 924; *Olson v. Heisen*, (1918) 90 Or 176, 175 P 859; *Martin v. Glenbrook Farms Corp.*, (1924) 110 Or 87, 222 P 1102; *Cummings v. Cent. Ore. Bank*, (1924) 110 Or 101, 223 P 236; *Tenlason v. Pac. Fruit Package Co.*, (1924) 112 Or 633, 230 P 547; *Nordling v. Johnston*, (1955) 205 Or 315, 283 P2d 994, 287 P2d 420; *State ex rel. Nilsen v. Whited*, (1964) 239 Or 149, 396 P2d 758.

**ATTY. GEN. OPINIONS:** Enforcement of "equal pay for equal work law" by commissioner, 1954-56, p 132.

652.220

**ATTY. GEN. OPINIONS:** Enforcement of "equal pay for equal work law" by commissioner, 1954-56, p 132.

652.230

**ATTY. GEN. OPINIONS:** Enforcement of "equal pay for equal work law" by commissioner, 1954-56, p 132.

652.310 to 652.410

**CASE CITATIONS:** *State ex rel. Nilsen v. Whited*, (1964) 239 Or 149, 396 P2d 758; *State ex rel. Nilsen v. Ore. State Motor Assn.*, (1967) 248 Or 133, 432 P2d 512.

652.310

#### NOTES OF DECISIONS

Person hiring a baby sitter is an employer as defined by this section. *State ex rel. Nilsen v. Cushing*, (1969) 253 Or 262, 453 P2d 945.

Defendants were not successors to the business of the former employer but only new managers. *State ex rel. Nilsen v. Lee*, (1968) 251 Or 284, 444 P2d 548.

**FURTHER CITATIONS:** *State ex rel. Nilsen v. Bean*, (1959) 218 Or 506, 346 P2d 652.

**ATTY. GEN. OPINIONS:** School districts as "employers," teachers as "employees," 1950-52, p 309; contract for deduction of insurance premiums from wages, 1954-56, p 79; enforcement of "equal pay for equal work" law by commissioner, 1954-56, p 132.

652.320

#### NOTES OF DECISIONS

"Wages" means all earned compensation contracted for, including vacation pay. *State ex rel. Nilsen v. Ore. State Motor Assn.*, (1967) 248 Or 133, 432 P2d 512.

652.330

#### NOTES OF DECISIONS

The commissioner's authority extends to collection of vacation pay. *State ex rel. Nilsen v. Ore. State Motor Assn.*, (1967) 248 Or 133, 432 P2d 512.

If wrongfully discharged employe resorts to courts before grievance procedure of collective bargaining agreement has been fully exhausted, employer in industry affecting interstate commerce may defend on the ground that the exclusive remedies provided by a contract have not been exhausted. *State ex rel. Nilsen v. Berry*, (1967) 248 Or 391, 434 P2d 471.

**FURTHER CITATIONS:** State v. Bean, (1959) 218 Or 506, 346 P2d 652; State v. Johnson, (1962) 233 Or 103, 377 P2d 331; State v. Dental Serv., Inc., (1962) 232 Or 474, 376 P2d 91; State ex rel. Nilsen v. Dent, (1966) 243 Or 396, 413 P2d 58; State ex rel. Nilsen v. Adams, (1967) 248 Or 269, 431 P2d 270; State ex rel. Nilsen v. Cushing, (1969) 253 Or 262, 453 P2d 945.

**ATTY. GEN. OPINIONS:** Right to recover attorney's fees and costs in cases prosecuted by commissioner for the collection of wages, 1934-36, p 186; necessity for advancement of filing or other fees by commissioner in connection with action to collect assigned labor claims, 1936-38, p 598; enforcement of "equal pay for equal work law" by commissioner, 1954-56, p 132.

652.335

**NOTES OF DECISIONS**

This section was constitutional and not an arbitrary or unreasonable exercise of the state's police power. State ex rel. Nilsen v. Whited, (1964) 239 Or 149, 396 P2d 758.

This section did not violate the equal protection clause. Id.

652.340

**CASE CITATIONS:** State ex rel. Nilsen v. Whited, (1964) 239 Or 149, 396 P2d 758.

652.350

**NOTES OF DECISIONS**

Recovery of the penalty is dependent upon determination that wages are due and unpaid. State v. Dental Serv., Inc., (1962) 232 Or 474, 376 P2d 91.

**FURTHER CITATIONS:** State v. Bean, (1959) 218 Or 506, 346 P2d 652; State ex rel. Nilsen v. Berry, (1967) 248 Or 391, 434 P2d 471; State ex rel. Nilsen v. Lee, (1968) 251 Or 284, 444 P2d 548; State ex rel. Nilsen v. Cushing, (1969) 253 Or 262, 453 P2d 945.

652.360

**ATTY. GEN. OPINIONS:** Applicability to school districts, 1950-52, p 309.

652.370

**CASE CITATIONS:** State ex rel. Nilsen v. Bean, (1959) 218 Or 506, 346 P2d 652.

652.390

**CASE CITATIONS:** State ex rel. Nilsen v. Bean, (1959) 218 Or 506, 346 P2d 652; State v. Dental Serv., Inc., (1962) 232 Or 474, 376 P2d 91.

652.400

**ATTY. GEN. OPINIONS:** Contract for deduction of insurance premiums from wages, 1954-56, p 79.

652.410

**ATTY. GEN. OPINIONS:** Authority of employer rejecting the provisions of the Workmen's Compensation Law to deduct insurance costs from the earnings of the employee, 1954-56, p 79.

652.510

**NOTES OF DECISIONS****1. In general**

This Act [ORS 652.510 to 652.570] is to be strictly construed. Johnston v. Barrills, (1895) 27 Or 251, 256, 41 P 656, 50 Am St Rep 717.

This section charges property that is seized or assigned with prior payment of accrued claims of laborers and employes. Falconio v. Larsen, (1897) 31 Or 137, 144, 48 P 703, 37 LRA 254.

The statute creates a substantive right, and not the right to acquire it by the doing of certain things or the observance of certain conditions. Id.

This enactment does not create a lien but invests a laborer or employe with the rights and privileges of a preferred creditor, and directs the order of his payment out of a fund which is already in the custody of the law for the purpose of administration. Id.

**2. "Laborers or employes"**

A laborer or employe is one who performs work in person and who earns his livelihood by personal manual labor. Johnston v. Barrills, (1895) 27 Or 251, 256, 41 P 656, 50 Am St Rep 717.

Members of a copartnership engaged to thresh grain for a fixed price are not "laborers or employes" within the meaning of this section, and their compensation is not wages. Id.

**3. Assignment of claim**

A claim for wages under this Act [ORS 652.510 to 652.570] is assignable after presentation, and when it is assigned, the assignee may maintain a suit thereon in his own name, and the fact that the claim is assigned for collection only does not destroy its validity or affect the right of the holder to sue in his own name. Falconio v. Larsen, (1897) 31 Or 137, 146, 48 P 703, 37 LRA 254.

**FURTHER CITATIONS:** Marquam v. Sengfelder, (1893) 24 Or 2, 15, 32 P 676; Security Trust Co. v. Goble R.R., (1904) 44 Or 370, 74 P 919, 75 P 697; In re Western Condensed Milk Co., (1919) 261 Fed 62, 171 CCA 658; Nordling v. Johnston, (1955) 205 Or 315, 283 P2d 994, 287 P2d 420.

652.520

**NOTES OF DECISIONS**

See cases under ORS 652.510.

652.530

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See cases under ORS 652.510.

652.540

**NOTES OF DECISIONS**

See also cases under ORS 652.510

A claim for preference may be considered as a complaint in intervention and the exceptions thereto as an answer. Johnston v. Barrills, (1895) 27 Or 251, 256, 41 P 656, 50 Am St Rep 717.

Exceptions to a claim for preference should raise an issue as to the material allegations of the claim, and, unless they do, the claimant need not establish his claim by a judgment. Id.

652.710

**ATTY. GEN. OPINIONS:** Extent to which federal regulation

of the care and treatment of injured railway workers pre-empt the field, 1966-68, p 266.

652.990

NOTES OF DECISIONS

The penalty prescribed in subsection (4) should only be

executed when the employer fails to furnish the statement required by OCLA 102-605 [ORS 652.130]. McGinnis v. Keen, (1950) 189 Or 445, 221 P2d 907.

Subsection (4) does not prevent the provisions of OCLA 102-604 [ORS 652.140 to 652.170] from being applicable to employers engaged in the logging business who hire piece work employees. Id.