

Enrolled Senate Bill 1587

Sponsored by Senators DEMBROW, BURDICK, COURTNEY; Senators JOHNSON, ROSENBAUM
(Pre-session filed.)

CHAPTER

AN ACT

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

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

SECTION 1. ORS 652.610 is amended to read:

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

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

- (A) The date of the payment;**
- (B) The dates of work covered by the payment;**
- (C) The name of the employee;**
- (D) The name and business registry number or business identification number;**
- (E) The address and telephone number of the employer;**
- (F) The rate or rates of pay;**
- (G) Whether the employee is paid by the hour, shift, day or week or on a salary, piece or commission basis;**
- (H) Gross wages;**
- (I) Net wages;**
- (J) The amount and purpose of each deduction made during the respective period of service that the payment covers;**
- (K) Allowances, if any, claimed as part of minimum wage;**
- (L) Unless the employee is paid on a salary basis and is exempt from overtime compensation as established by local, state or federal law, the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked and pay for those hours, and the number of overtime hours worked and pay for those hours; and**

(M) If the employee is paid a piece rate, the applicable piece rate or rates of pay, the number of pieces completed at each piece rate and the total pay for each rate.

(c) Notwithstanding paragraph (b) of this subsection, the employer may provide the statement required under this subsection to the employee in electronic form pursuant to ORS 84.001 to 84.061 if:

(A) The statement contains the information described in paragraph (b) of this section;

(B) The employee expressly agrees to receive the statement in electronic form; and

(C) The employee has the ability to print or store the statement at the time of receipt.

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

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

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

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

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

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

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

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

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

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

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

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

(A) The employee has voluntarily signed the agreement;

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

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

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

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

(4) When an employer deducts an amount from an employee's wages as required or authorized by law or agreement, the employer shall pay the amount deducted to the appropriate recipient as required by the law or agreement. The employer shall pay the amount deducted within the time required by the law or the agreement or, if the time for payment is not specified by the law or agreement, within seven days after the date the wages from which the deductions are made are due. Failure to pay the amount as required constitutes an unlawful deduction.

(5) This section does not:

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

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

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

SECTION 2. ORS 652.750 is amended to read:

652.750. (1) As used in this section:

(a) "Employer" has the meaning given that term in ORS 656.005.

(b) "Personnel records" does not include records of an individual relating to the conviction, arrest or investigation of conduct constituting a violation of the criminal laws of this state or another state or the United States, confidential reports from previous employers or records maintained in compliance with ORS 352.226.

(c) "Public safety officer" has the meaning given that term in ORS 236.350.

(d) "Time and pay records" means payroll records and other records and data described under the administrative rules established by the Bureau of Labor and Industries pursuant to ORS 653.010 to 653.261.

(2) Except as provided in subsection (7) of this section, within 45 days after receipt of an employee's request, an employer shall provide reasonable opportunity for the employee to inspect, at the place of employment or place of work assignment, the personnel records of the employee that are used or have been used to determine the employee's qualification for employment, promotion, additional compensation, [or] employment termination or other disciplinary action **and time and pay records of the employee for the period required by the Fair Labor Standards Act, 29 U.S.C. 211(c), and accompanying regulations.** Within 45 days after receipt of the employee's request, the employer shall furnish a certified copy of the records.

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

(a) The terminated employee's personnel records for not less than 60 days. [*Within the 60-day period, the employer shall provide the employee with a certified copy of the records within 45 days of receiving the employee's request. After the 60-day period, the employer shall provide the certified copy within 45 days of receiving the employee's request if the employer has the records at the time of the request.*]

(b) The terminated employee's time and pay records for not less than the period required by the Fair Labor Standards Act, 29 U.S.C. 211(c), and accompanying regulations.

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

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

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

(b) If a public safety officer refuses to sign a document containing an adverse comment, the employer may place the document in the officer's personnel records with a notation that the document was presented to the officer and the officer refused to sign it.

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

(d) A public safety officer may write a response within 30 days of being presented with a document containing an adverse comment. If a public safety officer writes a response to a document containing an adverse comment, the response must be attached to the original document and placed in the officer's personnel records.

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

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

SECTION 3. ORS 652.409 is amended to read:

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

(2) All income earned on moneys in the Wage Security Fund, and all other moneys in the fund, are appropriated continuously to the Commissioner of the Bureau of Labor and Industries **primarily** to carry out the provisions of ORS 652.414. **Moneys in the fund may also be used, within the division of the Bureau of Labor and Industries that enforces wage and hour laws, to investigate and enforce claims of underpaid and unpaid wages under ORS chapters 652 and 653.**

SECTION 4. (1) **A contractor or subcontractor, or an agent of a contractor or subcontractor, may not intentionally:**

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

(b) **Reduce the rate of wage that an employee would ordinarily receive for work that is not subject to ORS 279C.800 to 279C.870 in order to recoup wages the contractor, subcontractor or agent paid in accordance with ORS 279C.840;**

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

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

(e) **Otherwise deprive an employee, permanently or indefinitely, of wages due to an employee under ORS 279C.840 in an amount that equals or exceeds 25 percent of wages due to the employee under ORS 279C.840 or \$1,000 in a single pay period, whichever is greater.**

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

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

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

(b) **Adopt rules necessary to implement the provisions of this section.**

SECTION 5. (1) **Section 4 of this 2016 Act and the amendments to ORS 652.610 and 652.750 by sections 1 and 2 of this 2016 Act become operative on January 1, 2017.**

(2) **The Commissioner of the Bureau of Labor and Industries may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the commissioner, on or after the operative date specified in subsection (1) of this section, to exercise all of the duties, functions and powers conferred on the commissioner by section 4 of this 2016 Act and the amendments to ORS 652.610 and 652.750 by sections 1 and 2 of this 2016 Act.**

SECTION 6. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (1), chapter 693, Oregon Laws 2015, for the biennium beginning July 1, 2015, as the maximum limit for payment of administrative expenses by the Bureau of Labor and Industries from the Wage Security Fund is increased by \$325,954.

SECTION 7. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.

Passed by Senate March 2, 2016

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House March 3, 2016

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2016

Approved:

.....M.,....., 2016

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2016

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Jeanne P. Atkins, Secretary of State