

Enrolled
House Bill 3458

Sponsored by COMMITTEE ON RULES (at the request of Representative Jennifer Williamson)

CHAPTER

AN ACT

Relating to work time limits; creating new provisions; amending ORS 652.010, 652.020, 652.355, 652.990, 653.060, 653.256, 653.261, 653.265 and 659A.885; and declaring an emergency.

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

SECTION 1. ORS 652.020 is amended to read:

652.020. (1)(a) No person shall be employed in any mill, factory or manufacturing establishment in this state more than 10 hours in any one day, or in sawmills, planing mills, shingle mills and logging camps more than eight hours, exclusive of one hour, more or less, in one day or more than 48 hours in one [calendar week] **workweek**, except logging train crews, guards, boiler operators and persons engaged in the transportation to and from work, and employees when engaged in making necessary repairs, or in the case of emergency where life and property are in imminent danger. However, employees may work overtime not to exceed three hours in one day, conditioned that payment be made for said overtime at the rate of time and one-half the regular wage.

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

(c) **An employer shall calculate an employee’s overtime compensation on a daily basis under paragraph (a) of this subsection and on a weekly basis under ORS 653.261 (1) and pay the greater of the two amounts if, during the same workweek, the employee works more than:**

(A) **The applicable limit for the maximum allowable hours of employment in one day as described in paragraph (a) of this subsection; and**

(B) **Forty hours in one workweek as described in ORS 653.261 (1).**

(d) **An employer that makes an overtime payment to an employee pursuant to paragraph (c) of this subsection satisfies the overtime compensation requirements under this subsection and ORS 653.261 (1).**

(2) No employer shall require or permit any person to work in any place mentioned in this section more than the hours provided for in this section during any day of 24 hours. No employer shall permit or suffer an overseer, superintendent or other agent of the employer to violate this section.

(3) This section does not apply to persons employed in the care of quarters or livestock, conducting mess halls, superintendence and direction of work, or to the loading and removal of the finished forest product.

(4) Subsections (1) and (2) of this section do not apply to employees who are represented by a labor organization for purposes of collective bargaining with their employer, provided limits on the required hours of work and overtime payment have been agreed to between the employer and labor organization, or if no agreement is reached, then, for the purposes of this subsection, such limits and payments shall not be deemed to be changed from the previous collective bargaining agreement between the employer and labor organization unless the employees have been locked out, are engaged in a strike or the employer has unilaterally implemented new terms and conditions of employment.

SECTION 2. ORS 652.020, as amended by section 1 of this 2017 Act, is amended to read:

652.020. (1) As used in this section:

(a) **“Machinery” means material-handling equipment and power-driven machines powered by electricity, nuclear or fossil fuels, hydroelectric power, geothermal power or another power source other than by human hand, foot or breath.**

(b) **“Manufacturing” means the process of using machinery to transform materials, substances or components into new products.**

(c) **“Manufacturing establishment” means an establishment engaged in manufacturing.**

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

(e) **“Undue hardship period” means the period of time during which perishable product must be processed after harvesting, slaughter or catch.**

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

[(1)(a)] **(2)(a) [No person shall be] Except as provided in paragraphs (b) and (c) of this subsection and subsection (3) of this section, an employer may not require or permit an employee employed in any mill, factory or other manufacturing establishment in this state to work more than:**

(A) 10 hours in any one day[, or in sawmills, planing mills, shingle mills and logging camps more than]; or

(B) 55 hours in any one workweek.

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

(c) Notwithstanding paragraph (b) of this subsection, during the period of time that an employer is eligible for an undue hardship period exemption under subsection (4) of this section, an employer may permit an employee described in paragraph (a) of this subsection to work:

(A) Up to 84 hours per workweek for four workweeks; and

(B) Up to 80 hours per workweek for the remainder of the undue hardship period.

(d) Except as provided in subsection (3) of this section, an employer may not require or permit an employee employed in a sawmill, planing mill, shingle mill or logging camp to work more than:

(A) Eight hours, exclusive of one hour, more or less, in one day; or [more than]

(B) 48 hours in one workweek[, except logging train crews, guards, boiler operators and persons engaged in the transportation to and from work, and employees when engaged in making necessary repairs, or in the case of emergency where life and property are in imminent danger. However, employees may work overtime not to exceed three hours in one day, conditioned that payment be made for said overtime at the rate of time and one-half the regular wage.]

[(b) As used in this section, “workweek” means a fixed period of time established by an employer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods. A

workweek may begin on any day of the week and any hour of the day and need not coincide with a calendar week. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade overtime requirements.]

(3)(a) An employee may work overtime up to three hours more than the applicable limit for the maximum allowable hours of employment in one day as described in subsection (2) of this section.

(b) An employer shall compensate an employee who works overtime hours described in paragraph (a) of this subsection at one and one-half times the employee's regular rate of pay for each overtime hour or portion of an hour the employee works.

(c) An employer shall calculate an employee's overtime compensation on a daily basis under paragraph [(a)] (b) of this subsection and on a weekly basis under ORS 653.261 (1) and pay the greater of the two amounts if, during the same workweek, the employee works more than:

(A) The applicable limit for the maximum allowable hours of employment in one day as described in [paragraph (a) of this] subsection **(2) of this section**; and

(B) Forty hours in one workweek as described in ORS 653.261 (1).

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

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

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

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

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

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

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

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

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

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

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

(vii) Any other information required by the commissioner.

(5) An employer may not:

(a) Require any employee employed in a mill, factory or other manufacturing establishment in this state to begin a work shift less than 10 hours after the end of the employee's previous work shift if the employee's previous work shift totaled eight or more hours, unless the employer requires the employee to work additional hours due to disruptions in business

operations caused by a power outage, major equipment breakdown, severe weather or similar emergency outside the employer's control;

[(2)] **(b)** *[No employer shall]* Require or permit any *[person]* **employee** to work in any place *[mentioned]* **described** in this section **for more hours** than the hours provided for in this section during any day of 24 hours[.];

(c) *[No employer shall permit or suffer]* **Permit** an overseer, superintendent or other agent of the employer to violate this section[.]; **or**

(d) Coerce an employee into consenting to work more than 55 hours in a given workweek.

[(3)] **(6)** This section does not apply to:

(a) An employee performing work as a member of a logging train crew, as a guard or as a boiler operator;

(b) An employee engaged in the transportation of workers to and from work;

(c) *[persons employed]* **An employee engaged** in the care of quarters or livestock, **the** conducting of mess halls, **the** superintendence and direction of work[,], or *[to]* the loading and removal of *[the]* finished forest product[.];

(d) An employee when engaged in making necessary repairs or in the case of emergency where life or property is in imminent danger; or

(e) An employee employed in a mill, factory or other manufacturing establishment whose principal duties are administrative in nature or who is not otherwise engaged in the direct processing of goods in the usual course of the employee's duties.

[(4)] **(7)** Subsections *[(1) and]* **(2) to (5)** of this section do not apply to employees who are represented by a labor organization for purposes of collective bargaining with their employer, provided limits on the required hours of work and overtime payment have been agreed to between the employer and labor organization, or if no agreement is reached, then, for the purposes of this subsection, such limits and payments shall not be deemed to be changed from the previous collective bargaining agreement between the employer and labor organization unless the employees have been locked out[,], **or** are engaged in a strike or the employer has unilaterally implemented new terms and conditions of employment.

(8)(a) In addition to any other remedy provided by law, an employee has a private cause of action against an employer if the employer violates subsection (2) or (3) of this section by requiring the employee to work more than:

(A) Three hours more than the applicable limit for the maximum allowable hours of employment in one day; or

(B) The applicable limit for the maximum allowable hours of employment in one workweek.

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

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

(B) Equitable relief; and

(C) Liquidated damages in an amount equal to twice the employee's overtime wages earned during the period not allowed under subsection (2) or (3) of this section.

(c) In an action brought under this section, the court may award to the prevailing plaintiff costs, disbursements and reasonable attorney fees. Any attorney fee agreement is subject to approval by the court.

(9)(a) Notwithstanding ORS 652.900, in addition to any other penalty provided by law, the commissioner may assess the following civil penalties against an employer that the commissioner determines has coerced an employee into consenting to work more than 55 hours in one workweek:

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

(B) \$3,000 per violation if the employer coerced an employee into consenting under subsection (4) of this section to work more than 55 hours per workweek in any given workweek during an undue hardship period.

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

(c) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS 183.745. All sums collected as penalties under this subsection shall be applied and paid over as provided in ORS 652.900.

SECTION 3. ORS 652.355 is amended to read:

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

(a) The employee has made a wage claim or discussed, inquired about or consulted an attorney or agency about a wage claim[.];

(b) The employee has caused to be instituted any proceedings under or related to ORS 652.310 to 652.414[.];

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

(d) The employee has inquired about the provisions of ORS 652.020 or has reported a violation of or filed a complaint related to ORS 652.020;

(e) The employee has declined to consent to work more than 55 hours in any given workweek under ORS 652.020 or 653.265; or

(f) The employee has declined to consent to work more than 55 hours per workweek in any given workweek during an undue hardship period under ORS 652.020 or 653.265.

(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.

SECTION 4. ORS 653.060 is amended to read:

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

(a) The employee has *[made a complaint that the employee has not been paid wages in accordance with]* **inquired about the provisions of ORS 653.010 to 653.261 or 653.265 or has reported a violation of or filed a complaint related to ORS 653.010 to 653.261 or 653.265.**

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

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

(2) A violation of this section is an unlawful employment practice under ORS chapter 659A. A person unlawfully discriminated against under this section may file a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries.

SECTION 5. ORS 653.256 is amended to read:

653.256. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person that willfully violates ORS 653.025, 653.030, 653.045, 653.050, 653.060, 653.261, **653.265**, *[or]* 653.606, 653.611, 653.616, 653.621, 653.626, 653.631 *[and]* **or** 653.636 *[and]* **or** section 5, chapter 537, Oregon Laws 2015, or any rule adopted thereunder.

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

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

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

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

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

SECTION 6. ORS 653.261 is amended to read:

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

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

(2) 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 subsection (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).

SECTION 7. ORS 653.261, as amended by section 6 of this 2017 Act, is amended to read:

653.261. (1)(a) The Commissioner of the Bureau of Labor and Industries may adopt rules prescribing such minimum conditions of employment, excluding minimum wages, in any occupation as may be necessary for the preservation of the health of employees. The rules may include, but are

not limited to, minimum meal periods and rest periods, and maximum hours of work, but not less than eight hours per day or 40 hours per workweek; however, after 40 hours of work in one workweek overtime may be paid, but in no case at a rate higher than one and one-half times the regular rate of pay of the employees when computed without benefit of commissions, overrides, spiffs and similar benefits.

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

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

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

[(5)(a)] (4)(a) The commissioner shall adopt rules regarding meal periods for employees who serve food or beverages, receive tips and report the tips to the employer.

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

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

(d) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS 183.745. All sums collected as penalties under this subsection shall be applied and paid over as provided in ORS 653.256 (4).

SECTION 8. ORS 653.265 is amended to read:

653.265. (1) 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.

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

(A) 10 hours in one day as described in subsection (1) of this section; and

(B) 40 hours in one workweek as described in ORS 653.261 (1).

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

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

SECTION 9. ORS 653.265, as amended by section 8 of this 2017 Act, is amended to read:

653.265. *[(1) 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.]*

(1) As used in this section:

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

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

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

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

(A) 10 hours in any one day; or

(B) 55 hours in one workweek.

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

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

(A) Up to 84 hours per workweek for four workweeks; and

(B) Up to 80 hours per workweek for the remainder of the undue hardship period.

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

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

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

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

[(A)] (a) 10 hours in one day as described in subsection (1) of this section; and

[(B)] (b) 40 hours in one workweek as described in ORS 653.261 (1).

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

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

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

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

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

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

- (i) A description of the employer's reasons for the undue hardship period;**
- (ii) The start and expected end dates of the undue hardship period;**
- (iii) A statement that the employer may require the employee to work up to 84 hours per workweek for up to four workweeks during the undue hardship period;**
- (iv) A statement that the employer may require the employee to work up to 80 hours per workweek for the remainder of the undue hardship period;**
- (v) A statement that the employee consents to working up to 84 hours per workweek for up to four workweeks during the undue hardship period and up to 80 hours per workweek for the remainder of the undue hardship period;**
- (vi) Contact information for the Bureau of Labor and Industries; and**
- (vii) Any other information required by the commissioner.**

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

(7) This section does not apply to:

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

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

(c) An employee employed by a seafood processor, as that term is defined in section 10 of this 2017 Act; or

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

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

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

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

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

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

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

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

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

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

(B) Equitable relief; and

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

(c) In an action brought under this section, the court may award to the prevailing plaintiff costs, disbursements and reasonable attorney fees. Any attorney fee agreement is subject to approval by the court.

SECTION 10. (1) As used in this section:

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

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

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

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

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

(3) This section does not apply to:

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

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

SECTION 11. (1) Any employee asserting a violation of ORS 652.020 or 653.265 or section 10 of this 2017 Act may file a complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820 or a civil action as provided in ORS 659A.885.

(2) In addition to any other damages provided by law, the commissioner may assess a civil penalty against the employer in the amount of \$1,000.

(3) **The commissioner shall waive 50 percent of the amount of any civil penalty imposed by order under this section if the commissioner determines that the employer paid the full remedy due, not including any civil penalty, within 14 days after the order imposing the remedy became final by operation of law or on appeal.**

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

(5) **An employer may not retaliate or in any way discriminate against an individual with respect to hire or tenure or any other term or condition of employment because the individual has inquired about the provisions of this section or ORS 652.020, 653.261 or 653.265 or has reported a violation to, or filed a complaint with, the Bureau of Labor and Industries.**

SECTION 12. ORS 659A.885, as amended by section 5, chapter 73, Oregon Laws 2016, is amended to read:

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and any other equitable relief that may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

(a) The judge shall determine the facts in an action under this subsection; and

(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.233, 476.574, **652.020**, 652.355, 653.060, **653.265**, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549 **or section 10 of this 2017 Act.**

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.421, 653.547 or 653.549:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater, and punitive damages;

(b) At the request of any party, the action shall be tried to a jury;

(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and

(d) Any attorney fee agreement shall be subject to approval by the court.

(4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater.

(5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$250, whichever is greater.

(6) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section, a civil penalty in the amount of \$720.

(7) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual

is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory and punitive damages;

(b) The operator or manager of the place of public accommodation, the employee or person acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all damages awarded in the action;

(c) At the request of any party, the action shall be tried to a jury;

(d) The court shall award reasonable attorney fees to a prevailing plaintiff;

(e) The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails only if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court; and

(f) Upon any appeal of a judgment under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1).

(8) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved persons in the same manner as a person or group of persons may file a civil action under this section. In a civil action filed under this subsection, the court may assess against the respondent, in addition to the relief authorized under subsections (1) and (3) of this section, a civil penalty:

(a) In an amount not exceeding \$50,000 for a first violation; and

(b) In an amount not exceeding \$100,000 for any subsequent violation.

(9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to the commissioner if the commissioner prevails in the action. The court may award reasonable attorney fees and expert witness fees incurred by a defendant that prevails in the action if the court determines that the commissioner had no objectively reasonable basis for asserting the claim or for appealing an adverse decision of the trial court.

(10) In an action under subsection (1) or (8) of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law:

(a) "Aggrieved person" includes a person who believes that the person:

(A) Has been injured by an unlawful practice or discriminatory housing practice; or

(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(b) An aggrieved person in regard to issues to be determined in an action may intervene as of right in the action. The Attorney General may intervene in the action if the Attorney General certifies that the case is of general public importance. The court may allow an intervenor prevailing party costs and reasonable attorney fees at trial and on appeal.

SECTION 13. ORS 652.010 is amended to read:

652.010. (1) It is the public policy of this state that no person shall be hired, nor permitted to work for wages, under any conditions or terms, for longer hours or days of service than is consistent with the person's health and physical well-being and ability to promote the general welfare by the person's increasing usefulness as a healthy and intelligent citizen.

(2) It hereby is declared that the working of any person more than 10 hours in one day in any mill, factory or **other** manufacturing establishment or the working of any person more than eight hours, exclusive of one hour, more or less, in one day, or more than 48 hours in one [*calendar week*] **workweek, as defined in ORS 652.020**, in sawmills, planing mills, shingle mills and logging camps is injurious to the physical health and well-being of such person, and tends to prevent the person from acquiring that degree of intelligence that is necessary to make the person a useful and desirable citizen of the state.

SECTION 14. ORS 652.990 is amended to read:

652.990. (1) Violation of ORS 652.020 [(2)] **(5)(b) or (c)** is a Class A violation. Every day's violation is deemed a separate offense.

(2) Any person, body corporate, general manager or employer who violates ORS 652.040 or causes ORS 652.040 to be violated commits a Class C misdemeanor.

(3) Violation of ORS 652.110 or 652.120 is a Class A violation.

(4) Violation of ORS 652.130 by any employer is a Class C misdemeanor.

(5) In addition to the civil damages recoverable under ORS 652.230, violation of ORS 652.210 to 652.230 is a Class A misdemeanor.

(6) The violation of ORS 652.240 is a Class A misdemeanor.

(7) Violation of ORS 652.355 is a Class C misdemeanor.

(8) Violation of ORS 652.610 or 652.620 is a Class D violation.

(9) Willful violation of ORS 652.635 or 652.640 by a producer or agent of the producer is a Class A misdemeanor.

(10) Violation of any of the provisions of ORS 652.710 or 652.720 by any employer is a Class A violation.

SECTION 15. Sections 10 and 11 of this 2017 Act and the amendments to ORS 652.020, 652.355, 653.060, 653.256, 653.261, 653.265, 659A.885, and 652.990 by sections 2 to 5, 7, 9, 12 and 14 of this 2017 Act become operative on January 1, 2018.

SECTION 16. The Commissioner of the Bureau of Labor and Industries may take any action before the operative date specified in section 15 of this 2017 Act that is necessary for the commissioner to exercise, on and after the operative date specified in section 15 of this 2017 Act, all of the duties, functions and powers conferred on the commissioner by sections 10 and 11 of this 2017 Act and the amendments to ORS 652.020, 652.355, 653.060, 653.256, 653.261, 653.265, 659A.885, and 652.990 by sections 2 to 5, 7, 9, 12 and 14 of this 2017 Act.

SECTION 17. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by House June 28, 2017

Repassed by House July 6, 2017

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate July 5, 2017

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

.....
Dennis Richardson, Secretary of State