

# DRAFT

## SUMMARY

Directs portion of remainder of moneys collected from employers as civil penalties for violations of certain employment laws to be credited to Bureau of Labor and Industries Account to provide technical assistance to employers.

Directs portion of remainder of moneys collected from employers as civil penalties for violations of certain employment laws to be credited to Wage Security Fund.

Allows payment from Wage Security Fund to be made to wage claimant for wages earned and unpaid in event that Commissioner of Bureau of Labor and Industries has obtained judgment in action or has issued final order in administrative proceeding for collection of wage claim.

Requires Bureau of Labor and Industries to study provisions of state law relating to employee rights and protections. Directs bureau to submit to interim committees of Legislative Assembly related to business and labor, by September 15, 2022, report that includes results of study, including any recommended legislative changes, and describes how moneys credited to Bureau of Labor and Industries Account were spent on providing technical assistance to employers. Sunsets provisions on January 1, 2023.

## A BILL FOR AN ACT

1  
2 Relating to employment; creating new provisions; and amending ORS 652.414,  
3 653.256 and 653.370.

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

5 **SECTION 1.** ORS 653.256 is amended to read:

6 653.256. (1) In addition to any other penalty provided by law, the Com-  
7 missioner of the Bureau of Labor and Industries may assess a civil penalty  
8 not to exceed \$1,000 against any person that willfully violates ORS 653.025,  
9 653.030, 653.045, 653.050, 653.060, 653.261, 653.265, 653.606, 653.611, 653.616,  
10 653.621, 653.626, 653.631 or 653.636 or section 5, chapter 537, Oregon Laws

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 2015, or any rule adopted thereunder.

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

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

7 (4)(a) All sums collected as penalties under this section shall be first ap-  
8 plied toward reimbursement of costs incurred in determining the violations,  
9 conducting hearings under this section and addressing and collecting the  
10 penalties.

11 (b) The remainder, if any, of the sums collected as penalties under sub-  
12 section (1) of this section shall be paid over by the commissioner [*to the*  
13 *Department of State Lands for the benefit of the Common School Fund of this*  
14 *state. The department shall issue a receipt for the money to the*  
15 *commissioner.*] **as follows:**

16 **(A) Fifty percent of the remainder of the moneys shall be credited**  
17 **and paid into the Bureau of Labor and Industries Account under ORS**  
18 **651.160 for the purpose of providing technical assistance to employers;**  
19 **and**

20 **(B) Fifty percent of the remainder of the moneys shall be paid into**  
21 **the State Treasury and credited to the Wage Security Fund under ORS**  
22 **652.409.**

23 (c) The remainder, if any, of the sums collected as penalties under sub-  
24 section (2) of this section shall be paid over by the commissioner [*to the*  
25 *Department of Human Services for the benefit of the Breastfeeding Mother*  
26 *Friendly Employer Project. The department shall issue a receipt for the moneys*  
27 *to the commissioner.*] **as follows:**

28 **(A) Fifty percent of the remainder of the moneys shall be credited**  
29 **and paid into the Bureau of Labor and Industries Account under ORS**  
30 **651.160 for the purpose of providing technical assistance to employers;**  
31 **and**

1       **(B) Fifty percent of the remainder of the moneys shall be paid into**  
2 **the State Treasury and credited to the Wage Security Fund under ORS**  
3 **652.409.**

4       **SECTION 2.** ORS 653.370 is amended to read:

5       653.370. (1) In addition to any other penalty provided by law, the Com-  
6 missioner of the Bureau of Labor and Industries may impose upon any person  
7 who violates ORS 653.305 to 653.370, or any rule adopted by the Bureau of  
8 Labor and Industries under ORS 653.305 to 653.370 or 653.400, a civil penalty  
9 not to exceed \$1,000 for each violation.

10       (2) Notwithstanding ORS 183.482, any petition for review of an order im-  
11 posing a civil penalty under this section must be filed within 30 days fol-  
12 lowing the date the order upon which the petition is based is served.

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

15       (4) All sums collected as penalties pursuant to this section shall be first  
16 applied toward reimbursement of the costs incurred in determining the vio-  
17 lations, conducting hearings under this section and assessing and collecting  
18 such penalties. The remainder, if any, of the sums collected as penalties  
19 pursuant to this section shall be paid over by the commissioner [*to the De-*  
20 *partment of State Lands for the benefit of the Common School Fund of this*  
21 *state. The department shall issue a receipt for the money to the*  
22 *commissioner.*] **as follows:**

23       **(a) Fifty percent of the remainder of the moneys shall be credited**  
24 **and paid into the Bureau of Labor and Industries Account under ORS**  
25 **651.160 for the purpose of providing technical assistance to employers;**  
26 **and**

27       **(b) Fifty percent of the remainder of the moneys shall be paid into**  
28 **the State Treasury and credited to the Wage Security Fund under ORS**  
29 **652.409.**

30       (5)(a) Notwithstanding subsection (1) of this section, the commissioner  
31 may not impose a civil penalty pursuant to this section upon any person who

1 provides evidence satisfactory to the commissioner that:

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

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

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

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

14 (B) The civil penalty involved the same factual circumstances underlying  
15 the commissioner's imposition of a civil penalty.

16 **SECTION 3.** ORS 652.414 is amended to read:

17 652.414. Notwithstanding any other provision of law:

18 (1) When an employee files a wage claim under this chapter for wages  
19 earned and unpaid[,] and the Commissioner of the Bureau of Labor and In-  
20 dustries:

21 (a) Determines that the employer against whom the claim was filed has  
22 ceased doing business and is without sufficient assets to pay the wage claim  
23 and the wage claim cannot otherwise be fully and promptly paid, the com-  
24 missioner, after determining that the claim is valid, shall pay the claimant,  
25 to the extent provided in subsection (2) of this section:

26 [(a)] (A) The unpaid amount of wages earned within 60 days before the  
27 date of the cessation of business; or

28 [(b)] (B) If the claimant filed a wage claim before the cessation of busi-  
29 ness, the unpaid amount of wages earned within 60 days before the last day  
30 the claimant was employed[.]; **or**

31 (b) **Obtains a judgment or issues a final order, including an order**

1 **of determination that has become final, under ORS 652.332 on the wage**  
2 **claim, the commissioner shall pay the claimant, to the extent provided**  
3 **in subsection (2) of this section, the amount of wages due pursuant to**  
4 **the judgment or the final order.**

5 (2) The commissioner shall pay the unpaid amount of wages earned as  
6 provided in subsection (1) of this section only to the extent of \$10,000 from  
7 such funds as may be available pursuant to ORS 652.409 (2).

8 (3) The commissioner may commence an appropriate action, suit or pro-  
9 ceeding to recover from the employer, or other persons or property liable for  
10 the unpaid wages, amounts paid from the Wage Security Fund under sub-  
11 section (1) of this section. In addition to costs and disbursements, the com-  
12 missioner is entitled to recover reasonable attorney fees at trial and on  
13 appeal, together with a penalty of 25 percent of the amount of wages paid  
14 from the Wage Security Fund or \$200, whichever amount is the greater. All  
15 amounts recovered by the commissioner under this subsection and subsection  
16 (4) of this section are appropriated continuously to the commissioner to carry  
17 out the provisions of this section.

18 (4) The commissioner has a lien on the personal property of the employer  
19 for the benefit of the fund when the claim is paid under subsection (1) of this  
20 section for the amount so paid and the penalty referred to in subsection (3)  
21 of this section. The commissioner may cause to be filed a verified written  
22 notice of claim of lien with the recording officer of the county in which the  
23 employer has its principal place of business no later than 30 days after the  
24 date the claim was paid under subsection (1) of this section. The notice of  
25 claim of lien shall contain:

26 (a) A true statement of the sums paid to wage claimants and the amount  
27 of the penalty provided for in subsection (3) of this section;

28 (b) The name of the owner of the personal property to be charged with  
29 the lien;

30 (c) A description of the personal property to be charged with the lien  
31 sufficient for identification. If a lien is being claimed against all personal

1 property of the employer, the description is sufficient if it states that all  
2 personal property of the employer is covered; and

3 (d) The date the wage claim was paid.

4 (5) Liens created by subsection (4) of this section shall be recorded in the  
5 same manner as provided for in ORS 87.246 and may be foreclosed in the  
6 manner provided for in ORS 87.262.

7 (6) Liens created by subsection (4) of this section shall have priority over  
8 any other liens or security interests perfected after the date the notice of  
9 claim is filed with the county recording officer under subsections (4) and (5)  
10 of this section.

11 (7) The commissioner shall promulgate rules to carry out the provisions  
12 of this section that include, but are not limited to, prescribing procedures for  
13 a timely and cost efficient method for the payment of wage claims from the  
14 Wage Security Fund and procedures for prorating wage claims if insufficient  
15 funds are available for payment.

16 (8) Nothing in this section is intended to require the commissioner to pay  
17 wage claims for which moneys are not available under ORS 652.409 (2).

18 **SECTION 4. The Bureau of Labor and Industries shall conduct a**  
19 **study of provisions of state law relating to employee rights and pro-**  
20 **tections. The bureau shall:**

21 **(1) Identify existing statutes that impose penalties, including fines**  
22 **and civil penalties, against employers who violate or fail to comply**  
23 **with statutory requirements concerning employee rights, including,**  
24 **but not limited to, the right to meal periods and rest periods under**  
25 **ORS 653.261; and**

26 **(2) Explore options and recommend legislative changes to provide**  
27 **a means, through civil action or otherwise, by which an employee may**  
28 **be compensated for any loss or harm due to an employer's failure to**  
29 **comply with any statutory requirements relating to employee rights**  
30 **and protections.**

31 **SECTION 5. No later than September 15, 2022, the Commissioner**

1 of the Bureau of Labor and Industries shall submit a report, in the  
2 manner provided in ORS 192.245, to the interim committees of the  
3 Legislative Assembly relating to business and labor that:

4 (1) Describes how the moneys credited to the Bureau of Labor and  
5 Industries Account under ORS 653.256 and 653.370 were spent on pro-  
6 viding technical assistance to employers; and

7 (2) Includes the results of the study conducted under section 4 of  
8 this 2020 Act along with any recommended legislative changes.

9 SECTION 6. Sections 4 and 5 of this 2020 Act are repealed on Jan-  
10 uary 1, 2023.

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