

House Bill 3398

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of Northwest Workers' Justice Project)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Standardizes definitions of "employ," "employee," "employer" and "wages" for purposes of statutes relating to hours, wages, wage claims, employment conditions, minors, employment agencies, farm labor contractors and farmworker camps.

A BILL FOR AN ACT

1
2 Relating to definitions of terms concerning employment; creating new provisions; and amending ORS
3 653.010, 658.005 and 658.405.

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

5 **SECTION 1.** ORS 653.010 is amended to read:

6 653.010. As used in ORS 653.010 to 653.261, unless the context requires otherwise:

7 (1) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

8 (2) "Employ" includes to suffer or permit to work but does not include voluntary or donated
9 services performed for no compensation or without expectation or contemplation of compensation
10 as the adequate consideration for the services performed for a public [*employer referred to in sub-*
11 *section (3) of this section*] **body as defined in ORS 174.109**, or a religious, charitable, educational,
12 public service or similar nonprofit corporation, organization or institution for community service,
13 religious or humanitarian reasons or for services performed by general or public assistance recipi-
14 ents as part of any work training program administered under the state or federal assistance laws.

15 **(3) "Employee" means an individual employed by an employer in this state.**

16 [(3)] **(4) "Employer" means any person [*who employs another person including the State of Oregon*
17 *or a political subdivision thereof or any county, city, district, authority, public corporation or entity and*
18 *any of their instrumentalities organized and existing under law or charter*] **that employs an indi-**
19 **vidual, including a public body as defined in ORS 174.109, or another person acting directly**
20 **or indirectly in the interest of an employer in relation to an employee.****

21 [(4)] **(5) "Minor" means any person under 18 years of age.**

22 [(5)] **(6) "Occupation" means any occupation, service, trade, business, industry, or branch or**
23 **group of industries or employment or class of employment in which employees are gainfully em-**
24 **ployed.**

25 [(6)] **(7) "Organized camp" means a day or resident camp, whether or not operated for profit,**
26 **established to give campers recreational, creative, religious or educational experience in cooperative**
27 **group living wherein the activities are conducted on a closely supervised basis, whether or not the**
28 **camp is used primarily by an organized group or by members of the public and whether or not the**
29 **activities or facilities are furnished free of charge or for the payment of a fee.**

30 [(7)] **(8) "Outside salesperson" means any employee who is employed for the purpose of and who**
31 **is customarily and regularly engaged away from the employer's place or places of business in mak-**

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.

ing sales, or obtaining orders, or obtaining contracts for services and whose hours of work of any other nature for the employer do not exceed 30 percent of the hours worked in the workweek by the nonexempt employees of the employer.

[(8)] (9) "Piece-rate" means a rate of pay calculated on the basis of the quantity of the crop harvested.

[(9)] (10) "Salary" means no less than the wage set pursuant to ORS 653.025, multiplied by 2,080 hours per year, then divided by 12 months.

[(10)] (11) "Wages" means [compensation due to an employee by reason of employment] **all compensation for performance of service by an employee for an employer, including penalty wages owed under ORS 652.150, whether paid by the employer or another person**, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to such deductions, charges or allowances as are permitted in ORS 653.035.

[(11)] (12) "Work time" includes both time worked and time of authorized attendance.

SECTION 2. Section 3 of this 2007 Act is added to and made a part of ORS chapter 652.

SECTION 3. As used in this chapter, unless a specially applicable definition requires otherwise, "employ," "employee," "employer" and "wages" have the meanings given those terms in ORS 653.010.

SECTION 4. ORS 658.005 is amended to read:

658.005. As used in ORS 658.005 to 658.245, unless the context requires otherwise:

(1) "Applicant for employment" or "applicant" means an individual who is seeking or who has obtained employment through the services of an employment agency.

(2) "Charge for services" means any money or other consideration paid or promised to be paid by an applicant for employment for services rendered by an employment agency.

(3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

(4) "Employ" has the meaning given that term in ORS 653.010.

(5) "Employee" has the meaning given that term in ORS 653.010.

(6) "Employer" has the meaning given that term in ORS 653.010.

[(4)(a)] (7)(a) "Employment agency" or "agency" [means] **includes** a business, service, bureau or club operated by a person, firm, organization, limited liability company or corporation engaged in procuring for a fee[,] employment for others and employees for employers.

(b) "Employment agency" or "agency" does not include:

(A) A nursing school, business school or career school that does not charge a fee for placement.

(B) [Any] **A** business, person, service, bureau, organization or club that by advertisement or otherwise offers as its main object or purpose to counsel, teach or prepare individuals to obtain employment, and [which] **that** charges for its services, whether in the form of dues, tuition, membership fees, registration fees or any other valuable service.

(C) Any business, service, bureau or club operated by a person engaged in procuring employment for others when the charges for services are paid, directly or indirectly, by anyone other than the applicant for employment.

(D) An employment listing service, as defined in ORS 658.250.

(8) "Wages" has the meaning given that term in ORS 653.010.

SECTION 5. ORS 658.405 is amended to read:

658.405. As used in ORS 658.405 to 658.503 and 658.991 (2) and (3), unless the context requires otherwise:

(1) "Agricultural association" means a nonprofit or cooperative association of farmers, growers

1 or ranchers that is incorporated under applicable state law and that acts as a farm labor contractor
 2 solely on behalf of members of the association.

3 (2) “Commissioner” means the Commissioner of the Bureau of Labor and Industries.

4 (3) “Crew leader” means the member of a group of workers who (a) acts as spokesman for the
 5 group, (b) travels with the group from another state into Oregon and (c) performs the same work
 6 along with other group members. A crew leader may transport workers from their local place of
 7 residence to their place of employment so long as the crew leader does not perform this service for
 8 a profit.

9 (4) **“Employ” has the meaning given that term in ORS 653.010.**

10 (5) **“Employee” has the meaning given that term in ORS 653.010.**

11 (6) **“Employer” has the meaning given that term in ORS 653.010.**

12 [(4)] (7) “Farm labor contractor” means any person who, for an agreed remuneration or rate of
 13 pay, recruits, solicits, supplies or employs workers to perform labor for another to work in fore-
 14 station or reforestation of lands, including but not limited to the planting, transplanting, tubing,
 15 precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of
 16 brush and slash and other related activities or the production or harvesting of farm products; or
 17 who recruits, solicits, supplies or employs workers to gather evergreen boughs, yew bark, bear
 18 grass, salal or ferns from public lands for sale or market prior to processing or manufacture; or who
 19 recruits, solicits, supplies or employs workers on behalf of an employer engaged in these activities;
 20 or who, in connection with the recruitment or employment of workers to work in these activities,
 21 furnishes board or lodging for such workers; or who bids or submits prices on contract offers for
 22 those activities; or who enters into a subcontract with another for any of those activities. However,
 23 “farm labor contractor” does not include:

24 (a) Farmers, including owners or lessees of land intended to be used for the production of tim-
 25 ber, their permanent employees, advertising media, platoon leaders or individuals engaged in the
 26 solicitation or recruitment of persons for dayhaul work in connection with the growing, production
 27 or harvesting of farm products;

28 (b) The Employment Department;

29 (c) A crew leader;

30 (d) An individual who performs work, other than recruiting, supplying, soliciting or employing
 31 workers to perform labor for another, alone or only with the assistance of the individual’s spouse,
 32 son, daughter, brother, sister, mother or father;

33 (e) Individuals who perform labor pursuant to an agreement for exchanging their own labor or
 34 services with each other, provided the work is performed on land owned or leased by the individuals;

35 (f) An educational institution that is recognized as such by the Department of Education; or

36 (g) A farmer who operates a farmworker camp, regulated under ORS 658.750, who recruits,
 37 supplies, solicits or employs workers only for the farmer’s own operations, and has farmworkers
 38 living in the camp who are employed by another on no more than an incidental basis, and the farmer
 39 receives no remuneration by virtue of such incidental employment.

40 (8) **“Wages” has the meaning given that term in ORS 653.010.**

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