

Minority Report No. 2
A-Engrossed
House Bill 2386

Ordered by the House March 24
Including House Minority Report No. 2 Amendments dated March 24

Sponsored by nonconcurring members of the House Committee on Business and Labor: Representatives
KENNEMER, BARRETO

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.

Authorizes Commissioner of Bureau of Labor and Industries to issue temporary cease and desist order under certain circumstances.

A BILL FOR AN ACT

1
2 Relating to enforcement authority of the Commissioner of the Bureau of Labor and Industries; cre-
3 ating new provisions; and amending ORS 651.060 and 652.332.

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

5 **SECTION 1.** ORS 651.060 is amended to read:

6 651.060. (1) The Commissioner of the Bureau of Labor and Industries may conduct investigations,
7 issue subpoenas and subpoenas duces tecum, administer oaths, obtain evidence and take testimony
8 in all matters relating to the duties required under ORS 279C.800 to 279C.870, 651.030, 651.050,
9 651.120 and 651.170 and ORS chapters 652, 653, 658 and 659A and in all contested cases scheduled
10 for hearing by the Bureau of Labor and Industries pursuant to ORS chapter 183 when the informa-
11 tion sought is relevant to a lawful investigative purpose and is reasonable in scope. The testimony
12 shall be taken in some suitable place in the vicinity to which testimony is applicable. The commis-
13 sioner shall adopt rules for gathering information through subpoenas or testimony. The rules must
14 include procedures through which a party may object to providing information. After being served
15 with a subpoena, if a person refuses, without reasonable cause, to be examined, to answer any
16 question or to produce any document or other thing as required by the subpoena, the commissioner
17 may petition the circuit court in the county in which the investigation is pending for an order di-
18 recting the person to show cause why the person has not complied with the subpoena and should
19 not be held in contempt. The commissioner shall serve the court's order upon the person in the
20 manner provided by ORCP 55 D. If the person fails to show cause for the noncompliance, the court
21 shall order the person to comply with the subpoena within such time as the court shall direct and
22 may hold the person in contempt.

23 (2) Witnesses subpoenaed and testifying before any officer of the bureau shall be paid the fees
24 and mileage provided for witnesses in ORS 44.415 (2). The payment shall be made from the fund
25 appropriated for the use of the bureau and in the manner provided in ORS 651.170 for the payment
26 of other expenses of the bureau.

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 (3) The commissioner shall employ a deputy commissioner and *[such]* other assistants or per-
 2 sonnel as may be necessary to carry into effect the powers and duties of the commissioner or of the
 3 bureau and may prescribe the duties and responsibilities of the employees. The commissioner may
 4 delegate any of the powers of the commissioner or of the bureau to the deputy commissioner and
 5 to the other assistants employed under this subsection for the purpose of transacting the business
 6 of the commissioner's office or of the bureau. In the absence of the commissioner, the deputy com-
 7 missioner and the other assistants whom the commissioner employs have full authority, under the
 8 commissioner's direction, to do and perform any duty that the law requires the commissioner to
 9 perform. However, the commissioner is responsible for all acts of the deputy commissioner and of
 10 the assistants employed under this subsection.

11 (4) The commissioner may adopt *[such]* reasonable rules *[as]* **that** may be necessary to adminis-
 12 ter and enforce *[any]* **the** statutes over which the commissioner or the bureau has jurisdiction.

13 (5) The commissioner may conduct, and **may** charge and collect fees for, public information
 14 programs pertaining to *[any of]* the statutes over which the commissioner or the bureau has juris-
 15 diction.

16 **(6) If the commissioner has reason to believe that an employer has violated the pro-**
 17 **visions of ORS 279C.800 to 279C.870 or 658.405 to 658.503 or of ORS chapter 652 or 653, the**
 18 **commissioner may issue a temporary cease and desist order requiring an employer to refrain**
 19 **from the unlawful practice alleged. The commissioner may not issue a temporary cease and**
 20 **desist order under this subsection that would preclude the production or distribution of**
 21 **perishable agricultural products.**

22 **(7) If the commissioner issues a temporary cease and desist order as described in sub-**
 23 **section (6) of this section and the defendant prevails in a contested case hearing or upon**
 24 **appeal of a final order, the commissioner shall pay reasonable attorney fees to the defendant**
 25 **in an amount up to \$50,000.**

26 **SECTION 2.** ORS 652.332 is amended to read:

27 652.332. (1) In any case when the Commissioner of the Bureau of Labor and Industries has re-
 28 ceived a wage claim complaint *[which]* **that** the commissioner could seek to collect through court
 29 action, the commissioner may instead elect to seek collection of *[such]* **the** claim through adminis-
 30 trative proceedings in the manner provided in this section, subject to the employer's right to request
 31 a trial in a court of law. The commissioner may join in a single administrative proceeding any
 32 number of wage claims against the same employer. Upon making such election, the commissioner
 33 shall serve upon the employer and the wage claimant an order of determination directing the em-
 34 ployer to pay to the commissioner the amount of the wage claim and any penalty amounts under
 35 ORS 279C.855 (1), 652.150 and 653.055 (1) determined to be owed the wage claimant. Service shall
 36 be made in the same manner as service of summons or by certified mail, return receipt requested.
 37 The order of determination shall include:

38 (a) A reference to the particular sections of the statutes or rules involved;

39 (b) A short and concise statement of the basis for the amounts determined to be owed to each
 40 wage claimant;

41 (c) A statement of the party's right to request a contested case hearing and to be represented
 42 by counsel at *[such a]* **the** hearing, and of the employer's right to a trial in a court of law, provided
 43 that any request for a contested case hearing or trial in a court of law must be received by the
 44 commissioner in writing within 20 days after receipt by the party of the order of determination;

45 (d) A statement that the employer must, within 20 days after receipt of the order of determi-

1 nation, either pay in full the wage claim and any penalties assessed, or present to the commissioner
2 a written request for a contested case hearing or a trial in a court of law as provided in this section;

3 (e) A statement that failure to make a written request to the commissioner for a contested case
4 hearing or a trial of the claim in a court of law within the time specified shall constitute a waiver
5 of the right [*thereto*] **to a contested case hearing** and a waiver of the right to a trial by jury; and

6 (f) A statement that unless the written requests provided for in paragraph (c) of this subsection
7 are received by the commissioner within the time specified for making [*such*] **the** requests, the order
8 of determination shall become final.

9 (2) Upon failure of the employer to pay the amount specified in the order of determination or
10 to request a trial in a court of law within the time specified, and upon failure of any party to request
11 a contested case hearing within the time specified, the order of determination shall become final.

12 (3) If a party makes a timely request for a contested case hearing, a hearing shall be held in
13 accordance with the applicable provisions of ORS 183.415 to 183.500 by the commissioner or the
14 commissioner's designee. The commissioner shall adopt rules for [*such*] **the** hearing. In any hearing
15 before the commissioner's designee, the designee is authorized to issue the final order in the case.
16 If the employer makes a timely request for a trial in a court of law, the commissioner may proceed
17 against the employer as provided in ORS 652.330 (1)(b).

18 (4) **The commissioner or the commissioner's designee may include in a final order issued**
19 **under this section a cease and desist order against an employer found to have engaged in**
20 **an unlawful practice alleged in the order of determination. The final order must take into**
21 **account the need to supervise compliance with the terms of the final order. The final order**
22 **may require the employer to:**

23 (a) **Perform an act or a series of acts designated in the final order that are reasonably**
24 **calculated to:**

25 (A) **Carry out the purposes of ORS 279C.800 to 279C.870, 658.405 to 658.503 or ORS chap-**
26 **ters 652 or 653;**

27 (B) **Eliminate the effects of the unlawful practice that the employer has been found to**
28 **have engaged in, including but not limited to paying all wages and penalties due and owing**
29 **to the wage claimant and complying with injunctive or other equitable relief; and**

30 (C) **Protect the rights of the wage claimant and other persons similarly situated;**

31 (b) **Submit reports to the commissioner on the manner of compliance with other terms**
32 **and conditions specified in the final order, and take other action as may be required to en-**
33 **sure compliance with the final order; and**

34 (c) **Refrain from an action specified in the final order that would jeopardize the rights**
35 **of the wage claimant or other persons similarly situated, or that would otherwise frustrate**
36 **the purposes of ORS 279C.800 to 279C.870, 658.405 to 658.503 or ORS chapters 652 or 653.**

37 [(4)] (5) Final administrative orders issued in a wage claim proceeding are subject to review by
38 the Court of Appeals as provided in ORS 183.480 and 183.482.

39 [(5)] (6) When an order issued under this section becomes final, it may be recorded in the County
40 Clerk Lien Record in any county of this state. In addition to any other remedy provided by law,
41 recording [*an*] **a final** order in the County Clerk Lien Record pursuant to the provisions of this
42 section has the effect provided for in ORS 205.125 and 205.126, and the **final** order may be enforced
43 as provided in ORS 205.125 and 205.126. **The final order may also be enforced by writ of**
44 **mandamus or civil action to compel performance of the final order.**

45 [(6)] (7) [*Where*] **If** the wage claim arose out of work performed by the claimant for the employer

1 on any public works project to which ORS 279C.830 or 279C.840 applies, and a state agency holds
2 sufficient funds as retainage on [*such*] **the** project to pay [*such*] **the** claim or [*any portion thereof*]
3 **a portion of the claim**, the state agency may, at the request of the commissioner, pay to the com-
4 missioner from the retainage all or part of the amount due on the claim under the final order.

5 **SECTION 3. The amendments to ORS 652.332 by section 2 of this 2015 Act apply to orders**
6 **that become final on or after the effective date of this 2015 Act.**

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