

B-Engrossed
House Bill 2818

Ordered by the Senate June 7
Including House Amendments dated March 5 and Senate Amendments
dated June 7

Sponsored by Representative FAHEY; Representatives ALONSO LEON, DEXTER, HAYDEN, REARDON, WILDE,
WILLIAMS, WITT (Presession filed.)

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.

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.

Modifies definition of "compensation," for purposes of pay equity requirements, to exclude vaccine incentives, hiring bonuses and retention bonuses. Provides that changes to definition apply only to complaints filed with Commissioner of Bureau of Labor and Industries and claims filed in circuit court on or after specific dates.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to employment; creating new provisions; amending ORS 652.210 and 652.414; and declaring
3 an emergency.

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

5 **SECTION 1.** ORS 652.414 is amended to read:

6 652.414. Notwithstanding any other provision of law:

7 (1) When an employee files a wage claim under this chapter for wages earned and unpaid, and
8 the Commissioner of the Bureau of Labor and Industries:

9 (a) Determines that the employer against whom the claim was filed has ceased doing business
10 and is without sufficient assets to pay the wage claim and the wage claim cannot otherwise be fully
11 and promptly paid, the commissioner, after determining that the claim is valid, shall pay the claim-
12 ant, to the extent provided in subsection (2) of this section:

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

15 [(b)] (B) If the claimant filed a wage claim before the cessation of business, the unpaid amount
16 of wages earned within 60 days before the last day the claimant was employed[.]; or

17 (b) **Obtains a judgment or issues a final order, including an order of determination that**
18 **has become final, under ORS 652.332 on the wage claim, the commissioner shall pay the**
19 **claimant, to the extent provided in subsection (2) of this section, the amount of wages due**
20 **pursuant to the judgment or the final order.**

21 (2) The commissioner shall pay the unpaid amount of wages earned as provided in subsection (1)
22 of this section only to the extent of \$10,000 from such funds as may be available pursuant to ORS
23 652.409 (2).

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

9 (4) The commissioner has a lien on the personal property of the employer for the benefit of the
10 fund when the claim is paid under subsection (1) of this section for the amount so paid and the
11 penalty referred to in subsection (3) of this section. The commissioner may cause to be filed a veri-
12 fied written notice of claim of lien with the recording officer of the county in which the employer
13 has its principal place of business no later than 30 days after the date the claim was paid under
14 subsection (1) of this section. The notice of claim of lien shall contain:

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

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

18 (c) A description of the personal property to be charged with the lien sufficient for identifica-
19 tion. If a lien is being claimed against all personal property of the employer, the description is suf-
20 ficient if it states that all personal property of the employer is covered; and

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

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

24 (6) Liens created by subsection (4) of this section shall have priority over any other liens or
25 security interests perfected after the date the notice of claim is filed with the county recording of-
26 ficer under subsections (4) and (5) of this section.

27 (7) The commissioner shall promulgate rules to carry out the provisions of this section that in-
28 clude, but are not limited to, prescribing procedures for a timely and cost efficient method for the
29 payment of wage claims from the Wage Security Fund and procedures for prorating wage claims if
30 insufficient funds are available for payment.

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

33 **SECTION 2.** ORS 652.210 is amended to read:

34 652.210. As used in ORS 652.210 to 652.235, unless the context requires otherwise:

35 (1)(a) "Compensation" includes wages, salary, bonuses, benefits, fringe benefits and equity-based
36 compensation.

37 (b) "**Compensation**" does not include vaccine incentives.

38 (2) "Employee" means any individual who, otherwise than as a copartner of the employer, as an
39 independent contractor or as a participant in a work training program administered under the state
40 or federal assistance laws, renders personal services wholly or partly in this state to an employer
41 who pays or agrees to pay such individual at a fixed rate. However, when services are rendered only
42 partly in this state, an individual is not an employee unless the contract of employment of the em-
43 ployee has been entered into, or payments thereunder are ordinarily made or to be made, within this
44 state.

45 (3)(a) "Employer" means any person employing one or more employees, including the State of

1 Oregon or any political subdivision thereof or any county, city, district, authority, public corpo-
2 ration or entity and any of their instrumentalities organized and existing under law or charter.

3 (b) "Employer" does not include the federal government.

4 (4) "Equal-pay analysis" means an evaluation process to assess and correct wage disparities
5 among employees who perform work of comparable character.

6 (5) "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual
7 orientation, national origin, marital status, veteran status, disability or age.

8 **(6) "Public health emergency" means:**

9 **(a) A public health emergency declared under ORS 433.441.**

10 **(b) An emergency declared under ORS 401.165 if related to a public health emergency as**
11 **defined in ORS 433.442.**

12 [(6)] (7) "Rate" with reference to wages means:

13 (a) The basis of compensation for services by an employee for an employer; and

14 (b) Compensation based on the time spent in the performance of the services, on the number of
15 operations accomplished or on the quantity produced or handled.

16 [(7)] (8) "Sexual orientation" has the meaning given that term in ORS 174.100.

17 [(8)] (9) "System" means a consistent and verifiable method in use at the time that a violation
18 is alleged under ORS 652.220.

19 [(9)] (10) "Unpaid wages" means the difference between the wages actually paid to an employee
20 and the wages required under ORS 652.220 to be paid to the employee.

21 **(11) "Vaccine incentives" means monetary or nonmonetary incentives, including but not**
22 **limited to additional paid time off or protected time off from work provided by employers to**
23 **employees who have been immunized against infectious diseases for which a public health**
24 **emergency has been declared.**

25 [(10)] (12) "Veteran status" means an individual is a veteran as defined in ORS 408.225.

26 [(11)] (13) "Wages" means all compensation for performance of service by an employee for an
27 employer, whether paid by the employer or another person, or paid in cash or any medium other
28 than cash.

29 [(12)] (14) "Working conditions" includes work environment, hours, time of day, physical sur-
30 roundings and potential hazards encountered by an employee.

31 [(13)] (15) "Work of comparable character" means work that requires substantially similar
32 knowledge, skill, effort, responsibility and working conditions in the performance of work, regardless
33 of job description or job title.

34 **SECTION 3.** ORS 652.210, as amended by section 2 of this 2021 Act, is amended to read:

35 652.210. As used in ORS 652.210 to 652.235, unless the context requires otherwise:

36 (1)(a) "Compensation" includes wages, salary, bonuses, benefits, fringe benefits and equity-based
37 compensation.

38 (b) "Compensation" does not include:

39 **(A) Vaccine incentives.**

40 **(B) A hiring bonus offered to a prospective employee.**

41 **(C) A retention bonus offered to an employee.**

42 (2) "Employee" means any individual who, otherwise than as a copartner of the employer, as an
43 independent contractor or as a participant in a work training program administered under the state
44 or federal assistance laws, renders personal services wholly or partly in this state to an employer
45 who pays or agrees to pay such individual at a fixed rate. However, when services are rendered only

1 partly in this state, an individual is not an employee unless the contract of employment of the em-
2 ployee has been entered into, or payments thereunder are ordinarily made or to be made, within this
3 state.

4 (3)(a) "Employer" means any person employing one or more employees, including the State of
5 Oregon or any political subdivision thereof or any county, city, district, authority, public corpo-
6 ration or entity and any of their instrumentalities organized and existing under law or charter.

7 (b) "Employer" does not include the federal government.

8 (4) "Equal-pay analysis" means an evaluation process to assess and correct wage disparities
9 among employees who perform work of comparable character.

10 (5) "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual
11 orientation, national origin, marital status, veteran status, disability or age.

12 (6) "Public health emergency" means:

13 (a) A public health emergency declared under ORS 433.441.

14 (b) An emergency declared under ORS 401.165 if related to a public health emergency as defined
15 in ORS 433.442.

16 (7) "Rate" with reference to wages means:

17 (a) The basis of compensation for services by an employee for an employer; and

18 (b) Compensation based on the time spent in the performance of the services, on the number of
19 operations accomplished or on the quantity produced or handled.

20 (8) "Sexual orientation" has the meaning given that term in ORS 174.100.

21 (9) "System" means a consistent and verifiable method in use at the time that a violation is al-
22 leged under ORS 652.220.

23 (10) "Unpaid wages" means the difference between the wages actually paid to an employee and
24 the wages required under ORS 652.220 to be paid to the employee.

25 (11) "Vaccine incentives" means monetary or nonmonetary incentives, including but not limited
26 to additional paid time off or protected time off from work provided by employers to employees who
27 have been immunized against infectious diseases for which a public health emergency has been de-
28 clared.

29 (12) "Veteran status" means an individual is a veteran as defined in ORS 408.225.

30 (13) "Wages" means all compensation for performance of service by an employee for an em-
31 ployer, whether paid by the employer or another person, or paid in cash or any medium other than
32 cash.

33 (14) "Working conditions" includes work environment, hours, time of day, physical surroundings
34 and potential hazards encountered by an employee.

35 (15) "Work of comparable character" means work that requires substantially similar knowledge,
36 skill, effort, responsibility and working conditions in the performance of work, regardless of job de-
37 scription or job title.

38 **SECTION 4.** ORS 652.210, as amended by sections 2 and 3 of this 2021 Act, is amended to read:
39 652.210. As used in ORS 652.210 to 652.235, unless the context requires otherwise:

40 (1)(a) "Compensation" includes wages, salary, bonuses, benefits, fringe benefits and equity-based
41 compensation.

42 (b) "Compensation" does not include[:]

43 [(A)] vaccine incentives.

44 [(B)] A hiring bonus offered to a prospective employee.]

45 [(C)] A retention bonus offered to an employee.]

1 (2) "Employee" means any individual who, otherwise than as a copartner of the employer, as an
2 independent contractor or as a participant in a work training program administered under the state
3 or federal assistance laws, renders personal services wholly or partly in this state to an employer
4 who pays or agrees to pay such individual at a fixed rate. However, when services are rendered only
5 partly in this state, an individual is not an employee unless the contract of employment of the em-
6 ployee has been entered into, or payments thereunder are ordinarily made or to be made, within this
7 state.

8 (3)(a) "Employer" means any person employing one or more employees, including the State of
9 Oregon or any political subdivision thereof or any county, city, district, authority, public corpo-
10 ration or entity and any of their instrumentalities organized and existing under law or charter.

11 (b) "Employer" does not include the federal government.

12 (4) "Equal-pay analysis" means an evaluation process to assess and correct wage disparities
13 among employees who perform work of comparable character.

14 (5) "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual
15 orientation, national origin, marital status, veteran status, disability or age.

16 (6) "Public health emergency" means:

17 (a) A public health emergency declared under ORS 433.441.

18 (b) An emergency declared under ORS 401.165 if related to a public health emergency as defined
19 in ORS 433.442.

20 (7) "Rate" with reference to wages means:

21 (a) The basis of compensation for services by an employee for an employer; and

22 (b) Compensation based on the time spent in the performance of the services, on the number of
23 operations accomplished or on the quantity produced or handled.

24 (8) "Sexual orientation" has the meaning given that term in ORS 174.100.

25 (9) "System" means a consistent and verifiable method in use at the time that a violation is al-
26 leged under ORS 652.220.

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28 the wages required under ORS 652.220 to be paid to the employee.

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30 to additional paid time off or protected time off from work provided by employers to employees who
31 have been immunized against infectious diseases for which a public health emergency has been de-
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33 (12) "Veteran status" means an individual is a veteran as defined in ORS 408.225.

34 (13) "Wages" means all compensation for performance of service by an employee for an em-
35 ployer, whether paid by the employer or another person, or paid in cash or any medium other than
36 cash.

37 (14) "Working conditions" includes work environment, hours, time of day, physical surroundings
38 and potential hazards encountered by an employee.

39 (15) "Work of comparable character" means work that requires substantially similar knowledge,
40 skill, effort, responsibility and working conditions in the performance of work, regardless of job de-
41 scription or job title.

42 **SECTION 5. (1) The amendments to ORS 652.210 by section 2 of this 2021 Act apply to**
43 **complaints filed with the Commissioner of the Bureau of Labor and Industries and to claims**
44 **filed in a circuit court on or after April 29, 2021.**

45 **(2) The amendments to ORS 652.210 by section 3 of this 2021 Act apply to complaints filed**

1 with the Commissioner of the Bureau of Labor and Industries and to claims filed in a circuit
2 court on or after May 25, 2021.

3 SECTION 6. The amendments to ORS 652.210 by section 4 of this 2021 Act become oper-
4 ative on March 1, 2022.

5 SECTION 7. This 2021 Act being necessary for the immediate preservation of the public
6 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect
7 on its passage.

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