

DRAFT

SUMMARY

Digest: This Act updates the laws on what wages must be paid to workers who engage in certain domestic services. (Flesch Readability Score: 67.3).

Clarifies the meaning of “companionship services” for purposes of minimum wage and overtime requirements for certain individuals performing such services.

A BILL FOR AN ACT

Relating to wage requirements for individuals performing companionship services; amending ORS 653.020 and 653.547.

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

SECTION 1. ORS 653.020 is amended to read:

653.020. ORS 653.010 to 653.261 do not apply to any of the following employees:

(1) An individual employed in agriculture if:

(a) Such individual is employed as a hand harvest or pruning laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment and is employed by an employer who did not, during any calendar quarter during the preceding year, use more than 500 piece-rate-work-days of agricultural labor;

(b) Such individual is the parent, spouse, child or other member of the employer’s immediate family;

(c) Such individual:

(A) Is employed as a hand harvest or pruning laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and

1 generally recognized as having been, paid on a piece-rate basis in the region
2 of employment;

3 (B) Commutes daily from a permanent residence to the farm on which the
4 individual is so employed; and

5 (C) Has been employed in agricultural labor less than 13 weeks during the
6 preceding calendar year;

7 (d) Such individual, other than an individual described in paragraph (c)
8 of this subsection:

9 (A) Is 16 years of age or under and is employed as a hand harvest laborer,
10 is paid on a piece-rate basis in an operation which has been, and is custom-
11 arily and generally recognized as having been, paid on a piece-rate basis in
12 the region of employment; and

13 (B) Is paid at the same piece-rate as employees over 16 years of age on
14 the same farm; or

15 (e) Such employee is principally engaged in the range production of live-
16 stock and earns a salary and is paid on a salary basis.

17 (2) An individual employed in domestic service on a casual basis in or
18 about a family home.

19 (3) An individual engaged in administrative, executive or professional
20 work who:

21 (a) Performs predominantly intellectual, managerial or creative tasks;

22 (b) Exercises discretion and independent judgment; and

23 (c) Earns a salary and is paid on a salary basis.

24 (4) An individual employed by the United States.

25 (5) An individual who is employed by an institution whose function is
26 primary or secondary education, and in which the individual is an enrolled
27 student.

28 (6) An individual engaged in the capacity of an outside salesperson or
29 taxicab operator.

30 (7) An individual domiciled at a place of employment for the purpose of
31 being available for emergency or occasional duties for time other than that

1 spent performing these duties, provided that when the individual performs
2 emergency or occasional duties, the individual must be paid no less than the
3 wage specified in ORS 653.025.

4 (8) An individual paid for specified hours of employment, the only purpose
5 of which is to be available for recall to duty.

6 (9) An individual domiciled at multiunit accommodations designed to
7 provide other people with temporary or permanent lodging, for the purpose
8 of maintenance, management or assisting in the management of same.

9 (10) An individual employed on a seasonal basis at:

10 (a) An organized camp operated for profit that generates gross annual
11 income of less than \$500,000; or

12 (b) A nonprofit organized camp.

13 (11) An individual employed at a nonprofit conference ground or center
14 operated for educational, charitable or religious purposes.

15 (12) An individual who performs services as a volunteer firefighter, as
16 defined in ORS 652.050.

17 (13) An individual who performs child care services in the home of the
18 individual or in the home of the child.

19 (14) An individual employed in domestic service employment in or about
20 a family home to provide companionship services, **as defined in 29 C.F.R.**
21 **552.6, as in effect on January 1, 2016**, for individuals who, because of age
22 or infirmity, are unable to care for themselves, **unless, and only to the**
23 **extent that, the individual is employed, singly or jointly, by a third-**
24 **party home care agency.**

25 (15) An individual who performs service as a caddy at a golf course in
26 an established program for the training and supervision of caddies under the
27 direction of a person who is an employee of the golf course.

28 (16) An individual who volunteers as a golf course marshal if:

29 (a) The services the individual provides are limited to monitoring starting
30 times and speed of play and informing golfers of golf course etiquette;

31 (b) The individual is not allowed to provide volunteer golf course marshal

services for more than 30 hours in a calendar week; and

(c) The individual receives no wage other than golf passes for providing the volunteer golf course marshal services.

(17) An individual employed as a resident manager by an adult foster home that is licensed pursuant to ORS 443.705 to 443.825 and who is domiciled at the adult foster home.

(18) An individual residing in a mobile home park or manufactured dwelling park designed to provide other people with temporary or permanent lodging, for the purpose of maintenance, management or in assisting in the management of same.

(19) An individual who volunteers as a campground host and who resides in a campground owned by a public agency that provides temporary accommodations for travelers, whether under public or private management, and who provides information and emergency assistance.

(20) An individual who:

(a) Is registered with the National Ski Patrol or a similar nonprofit ski patrol organization as a nonprofessional ski patroller and who receives no wage other than passes authorizing access to and use of a ski area, as defined in ORS 30.970, for performing ski patrol services, including but not limited to services related to preserving the safety of and providing information to skiers or snowboarders; or

(b) Receives no wage other than passes authorizing access to and use of a ski area, as defined in ORS 30.970, for performing services directly related to the organizing or conducting of skiing or snowboarding races or other similar competitions that are:

(A) Sponsored and organized by a nonprofit corporation, as defined in ORS 65.001; and

(B) Held in a ski area, as defined in ORS 30.970.

(21) An individual who has entered into a contract to play minor league baseball for a professional sports organization and who is subject to a collective bargaining agreement, the terms of which provide for the payment

of wages and working conditions.

SECTION 2. ORS 653.547 is amended to read:

653.547. (1) As used in this section:

(a) “Domestic service” means services related to the care of persons in private homes or the maintenance of private homes or their premises.

(b)(A) “Domestic worker” means an individual who works in the home of another person for the purpose of caring for a child, doing housekeeping or providing other domestic service and who is not compensated with public funds for the work performed.

(B) “Domestic worker” does not include:

(i) A parent or spouse of the employer.

(ii) A child of the employer who is under 26 years of age.

(iii) Students who regularly attend elementary or secondary school during the day.

(iv) Children, other than children of the employer, who are under 14 years of age.

(v) Children under 18 years of age who provide babysitting services and persons who provide babysitting on a casual basis.

(vi) Persons who perform casual labor in private homes or the maintenance of private homes or their premises, including but not limited to yard work, washing windows and shoveling snow.

(vii) Individuals employed by organizations licensed as required by ORS 443.015 or 443.315.

(viii) Independent contractors.

(ix) Individuals performing companionship services [*exempt from the provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.)*], **as defined in 29 C.F.R. 552.6, as in effect on January 1, 2016, unless, and only to the extent that, the individuals are employed, singly or jointly, by a third-party home care agency.**

(x) Persons who perform house sitting duties that do not involve domestic service.

(xi) Persons who provide domestic service in exchange for an in-kind good or service.

(c) "Employer" means a person that employs another person in this state.

(2) A person employing a domestic worker shall:

(a) Notwithstanding ORS 653.020, pay the domestic worker an overtime wage at a rate of one and one-half times the worker's base rate for hours worked in excess of 40 hours in a workweek, or in excess of 44 hours in a workweek if the domestic worker lives in the home of the employer.

(b) Provide the domestic worker at least 24 consecutive hours of rest each workweek. If the domestic worker agrees to work on the anticipated day of rest, the employer shall pay the employee the overtime rate specified in paragraph (a) of this subsection.

(c) If the domestic worker lives in the home of the employer, provide at least eight consecutive hours of rest within each 24-hour period and provide a space with adequate conditions for uninterrupted sleep.

(d) If the domestic worker lives in the home of the employer, permit the domestic worker to cook the worker's own food, subject to reasonable restrictions based on the religious or health needs of the home's residents.

(e) If the domestic worker worked an average of at least 30 hours per week during the previous year, provide the domestic worker with at least three paid personal leave days off.

(3) Notwithstanding subsection (2)(a) of this section, the Commissioner of the Bureau of Labor and Industries shall adopt rules for the calculation of overtime wages for domestic workers during periods of travel and medical emergencies.

(4) A person that employs a domestic worker may not:

(a) Request that the domestic worker allow the employer, on either a mandatory or voluntary basis, to have possession of the worker's passport.

(b) Engage in unwelcome sexual advances, request sexual favors or engage in other verbal or physical conduct of a sexual nature directed toward a domestic worker when:

1 (A) Submission to the conduct is made, either explicitly or implicitly, a
2 term or condition of the domestic worker's employment;

3 (B) Submission to or rejection of the conduct by the domestic worker is
4 used as the basis for employment decisions affecting the domestic worker;
5 or

6 (C) The conduct has the purpose or effect of unreasonably interfering
7 with the domestic worker's work performance by creating an intimidating,
8 hostile or offensive work environment.

9 (c) Subject a domestic worker to harassment based on gender, race, reli-
10 gion, disability, sexual orientation, gender identity or national origin if the
11 harassment has the purpose or effect of unreasonably interfering with the
12 worker's work performance by creating an intimidating, hostile or offensive
13 work environment.

14 (d) Retaliate or in any way discriminate against an individual with re-
15 spect to hire or tenure or any other term or condition of employment because
16 the individual has inquired about the provisions of this section and ORS
17 653.549 or has reported a violation to, or filed a complaint with, the Bureau
18 of Labor and Industries alleging a violation of this section.