Chapter 652

1979 REPLACEMENT PART

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HOURS OF LABOR

652.010 Declaration of public policy concerning maximum working hours in certain industries. (1) It is the public policy of this state that no person shall be hired, nor permitted to work for wages, under any conditions or terms, for longer hours or days of service than is consistent with his health and physical well-being and ability to promote the general welfare by his increasing usefulness as a healthy and intelligent citizen.

(2) It hereby is declared that the working of any person more than 10 hours in one day in any mill, factory or manufacturing establishment or the working of any person more than eight hours, exclusive of one hour, more or less, in one day, or more than 48 hours in one calendar week in sawmills, planing mills, shingle mills and logging camps is injurious to the physical health and well-being of such person, and tends to prevent him from acquiring that degree of intelligence that is necessary to make him a useful and desirable citizen of the state.

652.020 Maximum working hours in certain industries; overtime hours and pay. (1) No person shall be employed in any mill, factory or manufacturing establishment in this state more than 10 hours in any one day, or in sawmills, planing mills, shingle mills and logging camps more than eight hours, exclusive of one hour, more or less, in one day or more than 48 hours in one calendar week, except logging train crews, watchmen, firemen and persons engaged in the transportation of men to and from work, and employes when engaged in making necessary repairs, or in the case of emergency where life and property are in imminent danger. However, employes may work overtime not to exceed three hours in one day, conditioned that payment be made for said overtime at the rate of time and one-half the regular wage.

(2) No employer shall require or permit any person to work in any place mentioned in this section more than the hours provided for in this section during any day of 24 hours. No employer shall permit or suffer his overseer, superintendent or other agent to violate this section.

(3) This section does not apply to persons employed in the care of quarters or livestock, conducting messhalls, superintendence and direction of work, or to the loading and removal of the finished forest product.

652.030 Enforcement of ORS 652.010 and 652.020 dependent upon like laws in other states. ORS 652.010 and 652.020 shall not be enforced in so far as they relate to working hours in sawmills, planing mills, shingle mills and logging camps until laws containing like provisions regarding working hours in such places of employment in the States of California, Washington and Idaho become effective in each of those states respectively.

652.040 Maximum working hours in mines. (1) No person who operates any underground mine yielding gold or silver or copper or lead or other metal shall permit or require any person to work in such underground mine for more than eight hours in any 24 hours. The hours for such employment or work day shall be consecutive excluding, however, any intermission of time for lunch or meals.

(2) In the case of emergency, where life or property is in imminent danger, persons may work in such underground mines for a longer time during the continuance of the exigency or emergency. This section does not apply to mines in their first stages of development, such as tunnel work to a length of 200 feet, or shaft work to a depth of 150 feet, or to any surface excavation.

652.050 Definitions for ORS 652.050 to 652.080. As used in ORS 652.050 to 652.080:

(1) "Firefighter" means a person whose principal duties consist of preventing or combating fire or preventing loss of life or property from fire.

(2) "Regularly organized fire department" means any organization maintained for the purpose of preventing or combating fire and employing one or more persons on a full-time basis as firefighters.

652.060 Maximum hours for firefighters. (1) (a) No person employed on a full-time basis as a firefighter by any regularly organized fire department maintained by any incorporated city, municipality or fire district and that employs not more than three persons on a full-time basis as firefighters shall be required to be on regular duty with such fire department more than 72 hours a week. However, any affected incorporated city, municipality or fire district shall be deemed to have complied with this paragraph and ORS 652.070 if the hours of regular duty required of firefighters employed by it average not more than 72 hours a week over each quarter

of the fiscal year of the employing city, municipality or fire district.

(b) No person employed on a full-time basis as a firefighter by any regularly organized fire department maintained by any incorporated city, municipality or fire district and that employs four or more persons on a full-time basis as firefighters shall be required to be on regular duty with such fire department more than 56 hours a week. However, any affected incorporated city, municipality or fire district shall be deemed to have complied with this paragraph and ORS 652.070 if the hours of regular duty required of firefighters employed by it average not more than 56 hours a week over each quarter of the fiscal year of the employing city, municipality or fire district.

(2) In the event this section shortens the working hours of firefighters employed by any such city, municipality or fire district, the total wages of such firefighters shall not for that reason be reduced. [Amended by 1959 c.402 §1; 1969 c 581 §1]

652.070 Overtime pay for firefighters. Every affected incorporated city, municipality and fire district shall put into effect and maintain a schedule of working hours required of regularly employed firefighters which shall not be in excess of the average hours established by ORS 652.060, and which shall provide for at least 48 consecutive hours off-duty time in each seven-day period. Any affected incorporated city, municipality or fire district failing so to do shall pay to every regularly employed firefighter as additional pay for every hour of regular duty required of and performed by him over and above the average hours established by ORS 652.060 a sum equivalent to one and one-half times his regular hourly rate of pay at the time of such default. However, in the case of replacement for any authorized leave, vacation or temporary vacancy, regularly employed firefighters in a department employing four or more persons on a full-time basis as firefighters may elect to work in excess of 56 hours a week at not less than their regular hourly rate of pay. [Amended by 1959 c.402 §2; 1969 c 581 §2]

652.080 Computing hours on duty for purposes of ORS 652.060 and 652.070. In computing the average or total number of hours a week for the purposes of ORS 652.060 and 652.070, authorized vacation or sick leave time shall be considered as time on regular duty. [1959 c.402 §4]

PAYMENT AND COLLECTION OF WAGES GENERALLY

652.110 Medium of paying employes. No person engaged in any business or enterprise of any kind in this state shall issue, in payment of or as evidence of indebtedness for wages due an employe, any order, check, memorandum or other acknowledgment of indebtedness, unless the same is negotiable, and is payable without discount in cash on demand at some bank or other established place of business in the county where the same is issued, and where a sufficient amount of funds have been provided and are or will be available for the payment of such order, check or other acknowledgment of indebtedness when due. Such person shall, upon presentation and demand, pay any such order, check, memorandum or other acknowledgment of indebtedness, in lawful money of the United States. This section does not in any way limit or interfere with the right of any employe to accept from any person, as an evidence or acknowledgment of indebtedness for wages due him, a negotiable instrument, payable at some future date with interest. An employer and an employe may agree to authorize an employer to deposit without discount wages due the employe in the employe's account in a bank, national bank, mutual savings bank, or credit union or savings and loan association in this state. [Amended by 1975 c.191 §1]

652.120 Establishing regular payday; pay intervals; agreement to pay wages at future date. (1) Every employer shall establish and maintain a regular payday, at which date all employes shall be paid the wages due and owing to them.

(2) Payday shall not extend beyond a period of 35 days from the time that such employes entered upon their work, or from the date of the last regular payday.

(3) This section does not prevent the employer from establishing and maintaining paydays at more frequent intervals.

(4) This section does not prevent any employer from entering into a written agreement, prior to the rendering of any services, and mutually satisfactory with his employes, as to the payment of wages at a future date. [Amended by 1961 c.662 §1]

652.130 Payment of wages due persons employed on piece work scale or quantity basis in forest product industries; furnishing statement of scale or

quantity. Every person engaged in the business of logging or obtaining or securing sawlogs, poles, spars, piles, cordwood, posts or other timber or forest products, or engaged in the business of manufacturing sawlogs or other timber into lumber, and employing one or more employes on a piece work scale or quantity wage basis, shall furnish such employes at least once monthly, a statement of scale or quantity produced by them to their credit, and shall pay all wages or amounts so earned and due and payable under the law regulating paydays.

652.140 Payment on termination of employment; notice of intention to quit; forwarding wages by mail. (1) Whenever an employer discharges an employe, or where such employment is terminated by mutual agreement, all wages earned and unpaid at the time of such discharge shall become due and payable immediately; provided, that in establishments where perishable or seasonal commodities are processed or handled, when termination of employment results from fluctuation in or cessation of the flow of such perishable or seasonal commodities, such termination shall not be regarded as a discharge or termination by mutual agreement, within the meaning of this section, but all wages earned at the time of such termination shall become due and payable not later than the regular payday on which such wages normally would be paid.

(2) When any such employe, not having a contract for a definite period, shall quit his employment, all wages earned and unpaid at the time of such quitting shall become due and payable immediately if such employe has given not less than 48 hours' notice, excluding Saturdays, Sundays and holidays, of his intention to quit his employment. If such notice is not given, such wages shall be due and payable 48 hours, excluding Saturdays, Sundays and holidays, after such employe has so quit his employment.

(3) The employer shall forward such wages by mail to any address designated by the employe if the employe requests the employer so to do. An employer may deposit such wages without discount in the employe's account in a bank, national bank, mutual savings bank, credit union, or savings and loan association in this state, provided the employe and the employer have agreed to such deposit. [Amended by 1957 c.242 §1; 1975 c.192 §1]

652.150 Civil penalty for failure to pay wages on termination of employment. If an employer wilfully fails to pay any wages or compensation of any employe who is discharged or who quits his employment, as provided in ORS 652.140, then, as a penalty for such nonpayment, the wages or compensation of such employe shall continue from the due date thereof at the same rate until paid or until action therefor is commenced; provided, that in no case shall such wages or compensation continue for more than 30 days; and provided further, the employer may avoid liability for the penalty by showing his financial inability to pay the wages or compensation at the time they accrued. [Amended by 1957 c 244 §1]

652.160 Payment in case of dispute over wages. In case of dispute over wages, the employer must pay, without condition, and within the time set by ORS 652.140, all wages conceded by him to be due, leaving the employe all remedies he might otherwise have or be entitled to as to any balance he might claim.

652.170 Payment of wages in case of strikes. When any number of employes enter upon a strike, the wages due such striking employes at the time of entering upon such strike shall not become due and payable until the next regular payday after the commencement of such strike, if the time between the commencement of the strike and the next regular payday does not exceed a period of 30 days. If the intervening time does exceed the period of 30 days, then the wages shall be due and payable 30 days after the commencement of the strike.

652.180 [Repealed by 1953 c 515 §2]

652.190 Payment of wages to surviving spouse. All wages earned, not exceeding $1,000, which have been earned by an employe within a period of three months prior to the date of his death, shall upon his death, become due and payable to his or her surviving spouse, to the same extent as if the wages had been earned by such surviving spouse. [Amended by 1971 c.448 §1]

652.200 Attorney fee in action for wages. (1) In any action for the collection of any order, check, memorandum or other acknowledgment of indebtedness referred to in ORS 652.110, if it is shown that the order, check, memorandum or other acknowledgment of indebtedness was not paid for a period

of 48 hours, excluding Saturdays, Sundays and holidays, after presentation and demand for the payment thereof, the court shall, upon entering judgment for the plaintiff, include in such judgment, in addition to the costs and disbursements otherwise prescribed by statute, a reasonable sum for attorney's fees for prosecuting said action, unless it appears that the employe has wilfully violated his contract of employment.

(2) In any action for the collection of wages, if it is shown that the wages were not paid for a period of 48 hours, excluding Saturdays, Sundays and holidays, after the same became due and payable, the court shall upon entering judgment for the plaintiff, include in such judgment, in addition to the costs and disbursements otherwise prescribed by statute, a reasonable sum for attorney's fees for prosecuting said action, unless it appears that the employe has wilfully violated his contract of employment. [Amended by 1957 c.242 §2]

652.210 Definitions for ORS 652.210 to 652.230. (1) "Employer" means any person employing one or more employes, but does not include the state, or any municipal corporation or political subdivision of the state having in force a civil service system based on merit, or the Federal Government.

(2) "Employe" means any individual who, otherwise than as a copartner of the employer or as an independent contractor, renders personal services wholly or partly in this state to an employer who pays or agrees to pay such individual at a fixed rate. However, where services are rendered only partly in this state, an individual is not an employe unless his contract of employment has been entered into, or payments thereunder are ordinarily made or to be made, within this state.

(3) "Wages" means all compensation for performance of service by an employe for an employer whether paid by the employer or another person, including cash value of all compensation paid in any medium other than cash.

(4) "Rate" with reference to wages means the basis of compensation for services by an employe for an employer and includes compensation based on the time spent in the performance of such services, or on the number of operations accomplished, or on the quantity produced or handled.

(5) "Unpaid wages" means the difference between the wages actually paid to an employe and the wages required under ORS 652.220, to be paid to such employe. [1955 c.193 §1]

652.220 Prohibition against discriminatory wage rates based on sex; employer not to discriminate against employe-complainant. (1) No employer shall:

(a) In any manner discriminate between the sexes in the payment of wages for work of comparable character, the performance of which requires comparable skills.

(b) Pay wages to any employe at a rate less than that at which he pays wages to his employes of the opposite sex for work of comparable character, the performance of which requires comparable skills.

(2) Subsection (1) of this section does not apply where:

(a) Payment is made pursuant to a seniority or merit system which does not discriminate on the basis of sex.

(b) A differential in wages between employes is based in good faith on factors other than sex.

(3) No employer shall in any manner discriminate in the payment of wages against any employe because the employe has filed a complaint in a proceeding under ORS 652.210 to 652.230, or has testified, or is about to testify, or because the employer believes that the employe may testify, in any investigation or proceedings pursuant to ORS 652.210 to 652.230 or in a criminal action pursuant to ORS 652.210 to 652.230. [1955 c.193 §2]

652.230 Employe has right of action against employer for unpaid wages and damages. (1) Any employe whose compensation is at a rate that is in violation of ORS 652.220 shall have a right of action against his employer for the recovery of:

(a) The amount of the unpaid wages to which the employe is entitled for the one year period preceding the commencement of the action; and

(b) An additional amount as liquidated damages equal to the amount referred to in paragraph (a) of this subsection.

(2) In addition to any judgment awarded to the plaintiff, the court shall allow reasonable attorney's fees to be taxed as costs in any judgment recovered.

(3) The action for the unpaid wages and liquidated damages may be maintained by one

or more employes on behalf of themselves or other employes similarly situated.

(4) No agreement for compensation at a rate less than the rate to which such employe is entitled under ORS 652.210 to 652.230 is a defense to any action under ORS 652.210 to 652.230. [1955 c.193 §3]

652.240 Paying wage lower than that required by statute or contract prohibited. Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract. [1957 c.243 §1]

652.250 Public employe's wages as affected by absence to engage in search or rescue operation. A public employe who takes part without pay in a search or rescue operation at the request of any law enforcement agency, the Aeronautics Administrator, the United States Forest Service or any local organization for civil defense, shall not forfeit his wages while engaged in an operation for a period of not more than five days for each operation. If an operation continues for more than five days, the employing agency may allow the employe to continue to take part in the operation and to receive his wages for as long as the employing agency considers proper. [1959 c.46 §1]

ENFORCEMENT OF WAGE CLAIMS
(Generally)

652.310 Definitions of employer and employe. As used in ORS 652.310 to 652.405, unless the context requires otherwise:

(1) "Employer" means any person who in this state, directly or through an agent, engages personal services of one or more employes and includes any producer-promoter, and any successor to the business of any employer, or any lessee or purchaser of any employer's business property for the continuance of the same business, so far as such employer has not paid employes in full. "Employer" does not include:

(a) The United States or any state, county, municipal corporation, town or other governmental division.

(b) Trustees and assignees in bankruptcy or insolvency, and receivers, whether appointed by federal or state courts, and persons otherwise falling under the definition of employers so far as the times or amounts of their payments to employes are regulated by laws of the United States, or regulations or orders made in pursuance thereof.

(2) "Employe" means any individual who otherwise than as copartner of the employer or as an independent contractor renders personal services wholly or partly in this state to an employer who pays or agrees to pay such individual at a fixed rate, based on the time spent in the performance of such services or on the number of operations accomplished, or quantity produced or handled. However:

(a) Where services are rendered by an independent contractor, an individual shall not be an employe under this section unless the individual is a musician or supporting technical person.

(b) Where services are rendered only partly in this state, an individual shall not be an employe under this section unless his contract of employment has been entered into, or payments thereunder are ordinarily made or to be made, within this state. [Amended by 1963 c.348 §1; 1975 c.488 §1]

652.320 General definitions for ORS 652.310 to 652.405. As used in ORS 652.310 to 652.405, unless the context requires otherwise:

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

(2) "Court" means a court of competent jurisdiction and proper venue to entertain a proceeding referred to in ORS 652.310 to 652.405.

(3) "Demand" means a written demand for payment made during business hours on an employer or any appropriate representative of an employer by an employe or by some person having and exhibiting due authority to act in said employe's behalf.

(4) "Pay" means to deliver or tender compensation at a previously designated and reasonably convenient place in this state, during working hours, in legal tender or by order or negotiable instrument payable and paid in legal tender without discount on demand in this state or by deposit without discount in an employe's account in a bank, national bank, mutual savings bank, credit union or savings and loan association in this state, provided the employe and the employer have agreed to such deposit.

(5) "Payment" means the delivery, tender or deposit of compensation in the medium of payment described in subsection (4) of this section. Such delivery, tender or deposit shall be made to or for the account of the employe concerned or to or for the account of any person having due authority to act in said employe's behalf.

(6) "Production" means a live presentation organized for the economic gain of any person or organization utilizing the personal services of one or more musicians and supporting technical personnel.

(7) "Producer-promoter" means a person, firm, association or corporation which supervises, finances or attempts to organize a production in this state other than:

(a) The proprietor of a commercial establishment with a Class "A" or Class "B" dispenser's license or tavern staging a production on the proprietor's own premises;

(b) Any nonprofit organization staging a production for the sole benefit of the organization, its members or the general public; or

(c) A producer of motion pictures, television shows, or commercials.

(8) "Rate of payment" means the rate at which payment is made or is to be made in the manner described in this section.

(9) "Wage claim" means an employe's claim against an employer for compensation for the employe's own personal services, and includes any wages, compensation, damages or civil penalties provided by law to employes in connection with a claim for unpaid wages. [Amended by 1975 c.190 §1; 1975 c.488 §2; 1979 c.695 §1]

652.325 Permit required for producer-promoter; application; bond; exemption. (1) Except as provided in subsection (4) of this section, any producer-promoter intending to do business in this state shall first obtain a permit from the commissioner. An application for such permit shall contain the following information:

(a) The applicant's name and address;

(b) A description of the financing for the production;

(c) The type of production, the number of artists and technical personnel to be employed and the time and place of the production; and

(d) Such other information as the commissioner may deem necessary for the protection of persons employed in the production.

(2) A permit shall not be issued unless the applicant has posted a bond with the commissioner as required by subsection (2) of ORS 652.340.

(3) The commissioner may fix permit fees not to exceed $20 to provide for the cost of processing the applications.

(4) A permit shall not be required of any producer-promoter who:

(a) Has been a producer-promoter in this state for the three-year period immediately preceding the time when a permit application would otherwise be required and has had no successful wage claims allowed against him during such period; or

(b) Has sufficient assets in this state which, if executed upon, would equal the amount of bond required by subsection (2) of ORS 652.340. [1975 c.488 §4]

652.330 Powers and duties of commissioner in enforcing wage claims; parties to wage claim action. (1) The commissioner shall enforce ORS 652.310 to 652.405 and to that end may:

(a) Investigate and attempt equitably to adjust controversies between employers and employes in respect of wage claims or alleged wage claims.

(b) Take assignments, in trust, of wage claims or judgments thereon, liens and other instruments of security for payment of wages from the assigning employes, spouses, parents or legal guardians, having a right to the wages of such employes. All such assignments shall run to the commissioner and any successors in office. The commissioner may sue employers on wage claims and other persons or property liable for any payment thereof thus assigned with the benefits and subject to existing laws applying to actions by employes for collection of wages. The commissioner is entitled to recover, in addition to other costs, such sum as the court or judge may adjudge reasonable as attorney fees. The commissioner may join in a single proceeding and in one cause of action any number of wage claims against the same employer. If the commissioner does not prevail in such action, the commissioner shall pay all costs and disbursements from the Bureau of Labor and Industries Account.

(c) Make complaint in a criminal court for any violation of any law providing for payment of wages and imposing a penalty for its violation as for a crime.

(d) In any case where a civil action may be brought under this chapter for the collection of a wage claim, provide for an administrative proceeding to determine the validity and enforce collection of the claim. The administrative proceeding shall be conducted as provided in this chapter, and is subject to the employer's right to elect a trial in a court of law.

(2) An assigning wage claimant shall not be regarded as a party to any court action brought by the commissioner under this section for any purpose. [Amended by 1957 c.465 §6; 1963 c.258 §2; 1967 c.218 §1; 1979 c.695 §2]

652.332 Administrative proceeding for wage claim collection; court enforcement and review. (1) In any case when the commissioner has received a wage claim complaint which the commissioner could seek to collect through court action, the commissioner may instead elect to seek collection of such claim through administrative proceedings in the manner provided in this section, subject to the employer's right to request a trial in a court of law. The commissioner may join in a single administrative proceeding any number of wage claims against the same employer. Upon making such election, the commissioner shall serve upon the employer and the wage claimant, by certified mail, restricted delivery, return receipt requested, an order of determination directing the employer to pay to the commissioner the amount of the wage claim and any penalty amounts under subsection (1) of ORS 279.356, ORS 652.150 and subsection (1) of 653.055 determined to be owed the wage claimant. However, if the receipt is returned unsigned, service shall be made in the same manner as service of summons. The order of determination shall include:

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

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

(c) A statement of the party's right to request a contested case hearing and to be represented by counsel at such a hearing, and of the employer's right to a trial in a court of law, provided that any request for a contested case hearing or trial in a court of law must be received by the commissioner in writing within 10 days after receipt by the party of the order of determination;

(d) A statement that the employer must, within 10 days after receipt of the order of determination, either pay in full the wage claim and any penalties assessed, or present to the commissioner a written request for a contested case hearing or a trial in a court of law as provided in this section;

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

(f) A statement that unless the written requests provided for in paragraph (c) of subsection (1) of this section are received by the commissioner within the time specified for making such requests, the order of determination shall become final.

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

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

(4) Final administrative orders issued in a wage claim proceeding are subject to review by the Court of Appeals as provided in ORS 183.480 and 183.482, except that any petition for review must be filed within 30 days following the date the order upon which the petition is based is served.

(5) Unless the amount of the wage claim and penalty specified in the final order is paid within 30 days after the final order is served, the order shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment in a court of record.

(6) Where the wage claim arose out of work performed by the claimant for the employer on any public works project to which ORS 279.350 or 279.352 applies, and a state agency holds sufficient funds as retainage on such project to pay such claim or any portion thereof, the state agency may, at the request of the commissioner, pay to the commissioner from the retainage all or part of the amount due on the claim under the final order. [1979 c.695 §4]

Note: Section 6, chapter 695, Oregon Laws 1979 provides:

Sec. 6. The provisions of this Act do not apply to wage claim complaints filed with the commissioner prior to the effective date of this Act [October 3, 1979].

652.335 Liability of liquor dispenser licensee for wage claims of certain individuals. (1) A person operating a commercial establishment where food is cooked and served who holds a dispenser's license issued under ORS 472.110 is liable for all valid wage claims of individuals employed in the kitchen facilities and dining space of such establishment who are not employed by such person, if the wage claims cannot be enforced against the employer of such individuals. The commissioner may in such a case proceed under ORS 652.310 to 652.405 against the person operating the establishment as if that person had employed the individuals assigning the wage claims.

(2) This section does not impose any liability not otherwise imposed by law for compensation for the performance of an individual's personal services in excess of a period of 60 days, nor does it subject the person operating an establishment described in this section to criminal penalties for violation of any law providing for payment of wages. [1961 c 475 §2]

652.340 Requiring bond of employer. (1) If upon investigation by the commissioner, after taking assignments of any wage claims under ORS 652.330, it appears to the commissioner that the employer is representing to his employes that he is able to pay wages for their services and that the employes are not being paid for their services, the commissioner may require the employer to give a bond in such sum as the commissioner deems reasonable and adequate in the circumstances, with sufficient surety, conditioned that the employer will for a definite future period not exceeding six months conduct his business and pay his employes in accordance with the laws of Oregon.

(2) Upon receipt of a permit application filed by a producer-promoter who is required to obtain a permit under ORS 652.325, the commissioner shall require the producer-promoter to give a bond in an amount not less than the sum of the wages to be paid to all musicians and supporting technical personnel to be employed in the production. Such bond shall be conditioned on the payment of any wages due any musicians and supporting technical personnel upon the cessation of such production or upon the subrogation of another for the liability of such producer-promoter, if such subrogation is satisfactory to the commissioner.

(3) If within 10 days after demand for such bond the employer fails to provide the same, the commissioner may commence a suit against the employer in the circuit court of appropriate jurisdiction to compel him to furnish such bond or cease doing business until he has done so. The employer shall have the burden of proving the amount thereof to be excessive.

(4) If the court finds that there is just cause for requiring such bond and that the same is reasonably necessary or appropriate to secure the prompt payment of the wages of the employes of such employer and his compliance with ORS 652.310 to 652.405, the court shall enjoin such employer from doing business in this state until the requirement is met, or shall make other, and may make further, orders appropriate to compel compliance with the requirement. [Amended by 1975 c.488 §5]

652.350 [Repealed by 1979 c.695 §7]

652.355 Prohibition against discrimination because of wage claim. No employer shall discharge or in any other manner discriminate against any employe because:

(1) The employe has made a wage claim.

(2) The employe has caused to be instituted any proceedings under or related to ORS 652.310 to 652.405.

(3) The employe has testified or is about to testify in any such proceedings. [1975 c.397 §2]

652.360 Contract exempting employer from liability or penalty not valid; exception. No employer may by special contract or any other means exempt himself from any provision of or liability or penalty imposed by ORS 652.310 to 652.405 or by any statute relating to the payment of wages, except in so far as the commissioner in writing approves a special contract or other arrangement between

an employer and one or more of such employer's employes. The commissioner shall not give his approval unless he finds that such contract or arrangement will not prejudicially affect the interest of the public or of the employes involved, and he may at any time retract such approval, first giving the employer not less than 30 days' notice in writing.

652.370 Jurisdiction; proceedings in name of the state. (1) Justice courts and district courts shall have concurrent jurisdiction with circuit courts over all cases mentioned in ORS 652.330 or 652.340.

(2) The commissioner shall prosecute all legal proceedings on his own official relation, but in the name of the State of Oregon.

652.380 Remedies are cumulative; effect of payment or tender by employer after proceeding commenced. (1) The remedies provided by ORS 652.310 to 652.405 shall be additional to and not in substitution for and in no manner impair other remedies and may be enforced simultaneously or consecutively so far as not inconsistent with each other.

(2) No payment or tender after the filing of a criminal complaint or commencement of any proceeding by the commissioner shall affect the liability therein of an employer for expenses, or prevent such employer from being subject to fine or forfeitures, or to the giving of bond under ORS 652.340.

652.390 Deduction of costs from wage claims by commissioner. The commissioner may deduct and retain any moneys collected on each wage claim as costs, attorney's fees or penalties; and the amount deducted shall be paid into the General Fund after deducting actual costs and disbursements incurred in the prosecution thereof. [Amended by 1957 c.465 §7, 1967 c.218 §2]

652.400 Deposit of moneys in Wage Collection Account; payment to persons entitled thereto. Subject to ORS 652.390, all moneys collected on judgments pursuant to ORS 652.330, or as a result of administrative proceedings pursuant to ORS 652.332, including fines, shall be paid to the commissioner and, together with all other sums collected under ORS 652.310 to 652.405, be deposited in the State Treasury to become part of a special trust account to be known as the Wage Collection Account, which account hereby is established in the State Treasury. All moneys in the Wage Collection Account hereby are appropriated continuously for the purpose of payment to the persons entitled thereto. [Amended by 1957 c.465 §8; 1979 c.695 §5]

652.405 Disposition of wages collected by commissioner where payment cannot be made to person entitled thereto. (1) The Commissioner of the Bureau of Labor and Industries shall attempt for a period of not less than seven years to make payment of wages collected under ORS 652.310 to 652.405 to the person entitled thereto.

(2) Wages collected by the commissioner under ORS 652.310 to 652.405 and remaining unclaimed for a period of more than seven years from the date of collection shall, within 30 days after June 30 of each year, be forfeited to the state and shall be paid by the commissioner to the Division of State Lands for the benefit of the Common School Fund of this state. The division shall issue a receipt for the money to the commissioner. The person entitled to the wages or his heirs or personal representatives may reclaim the wages paid into the Common School Fund pursuant to this section within the time and in the manner provided for estates which have escheated to the state. [1957 c.465 §15]

652.410 [Repealed by 1977 c.618 §2]

(Reciprocal)

652.420 Definitions for ORS 652.420 to 652.445. (1) As used in ORS 652.420 to 652.445:

(a) "Labor bureau" includes any agency, bureau, commission, board or officer in another state which performs functions substantially corresponding to those of the Commissioner of the Bureau of Labor and Industries.

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

(2) The definitions of ORS 652.310 and 652.320 shall apply to ORS 652.420 to 652.445, but nothing contained in those sections shall be construed to preclude reciprocal enforcement of wage claims under ORS 652.420 to 652.445, where the services of the employe were rendered in another state. [1953 c.256 §1]

652.425 Authority of Commissioner of the Bureau of Labor and Industries to enter into agreements with other states for reciprocal enforcement of wage

claims. The Commissioner of the Bureau of Labor and Industries may enter into agreements with the corresponding labor bureau of another state for the reciprocal enforcement and collection of wage claims, if the other state has a reciprocal statute similar to ORS 652.420 to 652.445 or otherwise authorizes the reciprocal enforcement and collection of wage claims in a manner substantially similar to ORS 652.420 to 652.445. [1953 c.256 §2]

652.430 Assigning wage claim to labor bureau of another state. Whenever a wage claim is assigned to the Commissioner of the Bureau of Labor and Industries in trust pursuant to ORS 652.330 and the employer or former employer upon whom demand for payment is made by an employe in this state has removed himself to another state, the commissioner may reassign the wage claim, with the approval of the employe, to the labor bureau of the other state, if there is in effect at the time a valid reciprocal agreement under ORS 652.425 between the commissioner and the other state. [1953 c.256 §3]

652.435 Accepting assignments of wage claims from labor bureau of another state. Whenever a labor bureau in another state, which has entered into a reciprocal agreement under ORS 652.425 with the Commissioner of the Bureau of Labor and Industries and the agreement is in effect at the time, takes an assignment of a wage claim from an employe residing in the other state for services rendered in the other state to an employer or former employer who has removed himself to Oregon, the Commissioner of the Bureau of Labor and Industries may take an assignment of the wage claim from such labor bureau and enforce the collection thereof as provided in the applicable provisions of ORS 652.330 to 652.405. [1953 c.256 §4]

652.440 Retention by commissioner or labor bureau of percentage of funds collected. Any agreement concluded by the Commissioner of the Bureau of Labor and Industries shall make provision for the transfer of funds collected pursuant to ORS 652.420 to 652.445 and for retention by the commissioner or the labor bureau in the other state of percentile amounts from the sums collected to defray the administrative costs of ORS 652.420 to 652.445. Amounts authorized pursuant to this section to be used to defray the administrative costs of ORS 652.420 to 652.445 shall be credited to the Bureau of Labor and Industries Account and shall be used only for the administration of ORS 652.420 to 652.445. [1953 c.256 §5; 1957 c.465 §9]

652.445 Deposit of moneys in Wage Collection Account. Except as provided in ORS 652.440, all moneys collected pursuant to ORS 652.420 to 652.445, including fines and costs, shall be paid to the Commissioner of the Bureau of Labor and Industries and be deposited in the State Treasury in the Wage Collection Account established by ORS 652.400. [1953 c.256 §6; 1957 c.465 §10]

PRIORITY OF WAGE CLAIMS

652.510 Payment of wage claims by receivers, assignees or court; filing statement of wages due. (1) When the property of any company, cooperative association, corporation, firm or person is seized upon by any process of any court of this state, or where their business or property is placed in the hands of a receiver, or whenever any assignment for the benefit of creditors under the laws of this state is made, then in all such cases the debts owing to laborers or employes, which have accrued by reason of their labor or employment to an amount not exceeding $600 to each employe for work or labor performed within 90 days next preceding the seizure or transfer or assignment of such property, or appointment of said receiver shall be considered and treated as preferred debts, and such laborers or employes shall be preferred creditors, and shall first be paid in full, and if there is not sufficient to pay them in full, their claims shall be paid pro rata, after paying costs.

(2) Any such laborer or employe desiring to enforce his claim for wages under ORS 652.510 to 652.570 shall present a statement under oath showing the amount due after allowing all just credits and setoffs, the kind of work for which said wages are due and when performed, to the officer or person charged with the execution of said process, within 10 days after the seizure thereof on any execution or writ of attachment, or to such receiver or assignee within 30 days after the same may have been placed in the hands of any such assignee or receiver. [Amended by 1977 c 288 §1]

652.520 Form of statement of wage claim. The statement to be presented under ORS 652.510 shall be substantially in the

following form:

State of Oregon)
) ss.
County of ———)

I, ———, being first duly sworn, say that ——— is indebted to me in the sum of —— dollars over and above all just credits and setoffs, on account of work, services and labor performed by me for the said ———, upon the following terms and conditions, to wit: That I was employed by the said ——— on or about the —— day of ———, 19—, to work (here describe character of work) at the rate of —— dollars per month (or for a reasonable consideration for such work), and that under said contract I began to work on the —— day of ———, 19—, and between that day and the —— day of ———, 19—, I performed work, services and labor —— days, amounting to the sum of —— dollars (or the reasonable value of —— dollars); that the said ——— has paid me on account of the said labor the sum of —— dollars, and no more; and that there is now due me, the sum of —— dollars, over and above all just credits and offsets; and that during the 90 days next preceding the —— day of ———, 19—, I had performed —— days' labor under said contract, amounting to the sum of —— dollars (or that said services were reasonably worth the sum of —— dollars); and that, applying all the credits above stated, there is due me from the said ———, on account of labor for the said 90 days, the sum of —— dollars, and no more; claim as due me.

Subscribed and sworn to before me this —— day of ———, 19—.

652.530 Serving copy of statement; report to court; order of payment. (1) The person claiming the benefit of ORS 652.510 to 652.570 shall serve upon the debtor, or upon the officer, assignee or receiver for the debtor where personal service cannot be had, a copy of the verified claim. Thereafter the person receiving such statement shall report the amount of such claim to the court having jurisdiction of such officer, receiver or assignee, together with a statement of all costs occasioned by the seizure of said property or of such receivership or assignment.

(2) The court shall order such claims to be paid after payment of the costs and expenses of such seizure and sale, and the costs and disbursements which have accrued before the filing of the notice under ORS 652.510 and of assignment or receivership, out of the proceeds of the sale of the property so seized, assigned, or placed in the hands of an assignee or receiver.

652.540 Exception to claim; legal action on claim. (1) Any person interested may contest all or any part of a claim mentioned in ORS 652.530, by filing in said court exceptions thereto, supported by affidavit, within 10 days from the filing of the report provided in ORS 652.530. Thereupon the claimant shall be required to establish his claim, by judgment in such court, before any part thereof shall be paid.

(2) When any claim is excepted to as provided in this section, the person desiring to establish the same shall file in said court, within 30 days after the claim is excepted to, his verified complaint as in an action at law and serve it upon the person excepting, or his attorney of record, and upon the principal debtor for the claim, or his attorney of record.

(3) Thereafter the cause shall proceed to final judgment between the parties as an action at law.

652.550 Payment of claims prerequisite to discharge of attachment or execution, assignee or receiver, or to abandonment of seizure or sale. No attachment or execution shall be discharged nor shall the seizure or sale of property seized be abandoned, or assignee or receiver discharged, until every claimant presenting his claim under ORS 652.510 to 652.570 has been paid in full, or pro rata, as provided in ORS 652.510, or has consented to such discharge or abandonment.

652.560 Costs and attorney fees. Whenever any claim has been excepted to under ORS 652.540 and the claim is established by judgment and the court rendering the judgment is satisfied that the exceptions were made without probable cause or that the person so excepting could have ascertained with reasonable diligence that such claim was true and just, the claimant in such action shall be entitled to have the costs of such action, including such sum as the court may adjudge reasonable as attorney's fees, enforced by execution against the person objecting as a judgment debtor in the first instance. However, if the court does not so find, or if execution, when issued, is returned nulla bona, then in either case such costs and attor-

ney's fees shall be ordered paid out of the proceeds of the property sold next after the payment of all claims presented under ORS 652.510 to 652.570.

652.570 Priority of wage claims over transfers in payment of preexisting obligations; payment and subrogation of transferee. (1) Every sale or transfer of any property in payment of any preexisting debt, or obligation, and every mortgage or lien created or executed to secure the payment of a preexisting debt, shall be void as against laborers or employes of such vendor, mortgagor, or other lien debtor, to the extent of their claims for wages, not exceeding the sum of $600 to each of said laborers which may be owing for work or labor performed within 90 days next preceding such sale and transfer or the execution of such lien or mortgage, if the laborer or employe claiming the benefit of this section:

(a) Within 10 days after the actual delivery of the property or within 30 days after the recording of any such deed, transfer, mortgage or lien, gives such owner or holder of such lien or such vendee notice of his claim substantially in the form and verified as provided in ORS 652.520, which notice shall be served by delivering it or a copy thereof to such owner or holder of such lien or such vendee in person or, in case he cannot be found within the county in which such lien or deed may be of record after diligent inquiry, by delivering the notice or a copy thereof to the clerk of the county court for such owner or holder of such lien or such vendee; and

(b) Within 30 days commences a suit to establish the claim and prosecute it to judgment.

(2) The vendee or mortgage or lien holder, or his assignee, may pay such claim and thereby be subrogated to the rights and lien of such laborer or employe, as against the vendor, principal debtor or mortgagor, and as against subsequent mortgagees or other subsequent lien creditors.

(3) This section does not apply to any mortgage or lien given in renewal of a preexisting mortgage or lien. [Amended by 1977 c.288 §2]

652.580 Cost of preparation of lien notice as part of claim. Whenever any person files a notice or claim of lien under ORS 652.510 to 652.570, he may add to the amount of his claim, as contained in the notice, the sum specified in ORS 87.910 as costs for the preparation of the lien notice. Such amount thereupon shall become part of the lien against the property described in the notice. However, this section does not apply to any lien claim paid in full prior to the expiration of the time allowed by law for the filing of the notice thereof, notwithstanding the notice was filed before such expiration date.

STATEMENTS RELATING TO EMPLOYE'S SALARY AND DEDUCTIONS THEREFROM

(Generally)

652.610 Itemized statement of amounts and purposes of deductions required. (1) All persons, firms, partnerships, associations, cooperative associations, corporations, municipal corporations, the state and its political subdivisions, except the Federal Government and its agencies, employing, in this state, during any calendar month one or more persons, and withholding for any purpose, any sum of money from the wages, salary or commission earned by an employe, shall provide such employe on regular paydays with a statement sufficiently itemized to show the amount and purpose of such deductions made during the respective period of service which said payment covers.

(2) The itemized statement shall be furnished to the employe at the time payment of wages, salary or commission is made, and may be attached to or be a part of the check, draft, voucher or other instrument by which payment is made, or may be delivered separately from such instrument.

(3) No employer may withhold, deduct or divert any portion of an employe's wages unless:

(a) The employer is required to do so by law;

(b) The deductions are for medical, surgical or hospital care or service, for the employe's benefit, and are recorded in the employer's books;

(c) The employe has voluntarily signed an authorization for a deduction;

(d) The deduction is pursuant to an individual employment contract with the employer; or

(e) The deduction is authorized by a collective bargaining agreement to which the employer is a party.

(4) Nothing in this section shall be construed as prohibiting the withholding of amounts authorized in writing by the employe to be contributed by him to charitable organizations; nor shall this section prohibit deductions by check-off dues to labor organizations or service fees, where such is not otherwise prohibited by law; nor shall this section diminish or enlarge the right of any person to assert and enforce a lawful setoff or counterclaim or to attach, take, reach or apply an employe's compensation on due legal process. [Amended by 1977 c 618 §1]

652.620 Statement of yearly compensation on request of employe. All persons, firms, partnerships, associations, cooperative associations, corporations, municipal corporations, the state and its political subdivisions thereof, except the Federal Government and its agencies employing, in this state, five or more persons, during any calendar month, upon the request of any employe or former employe, and upon five days' notice to said employer shall give to such employe, not later than March 10 of each year, a statement showing the total compensation paid by such employer to such employe, or former employe, during the previous calendar year.

(Agricultural Workers)

652.630 Definitions for ORS 652.635 and 652.640. As used in ORS 652.630 to 652.640, unless the context requires otherwise:

(1) "Bonus" means an increase in the agreed rate of compensation based on the amount of time worked during a perishable agricultural product season or based on the amount of a perishable agricultural product that is harvested.

(2) "Labor contractor" means a farm labor contractor as defined in ORS 658.405.

(3) "Producer" means a person who raises perishable agricultural products. [1969 c.572 §1]

Note: 652.630 to 652.640 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 652 by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

652.635 Growers to post certain terms of employment. Every producer, or his agent, who employs a labor contractor to provide a working crew for harvesting perishable agricultural products or who offers a bonus to those persons who harvest perishable agricultural products shall cause to be conspicuously posted and maintained on the premises where the agricultural products are to be harvested a notice that states:

(1) A description of the terms and conditions of any bonus offered, including the manner of determining when the bonus is earned.

(2) That portion of the labor contractor's compensation that is based on the amount of work done by each employe of the labor contractor. [1969 c.572 §2]

Note: See note under 652.630.

652.640 Itemized statement of compensation and deductions required. Each time a person who harvests perishable agricultural products receives compensation payments at a regular pay period or upon termination of employment, the producer, or his agent, or, if the person is an employe of a labor contractor, the labor contractor shall furnish to such person a written statement itemizing the total payment and each deduction therefrom. [1969 c.572 §3]

Note: See note under 652.630.

FEES OR DEDUCTIONS FOR MEDICAL CARE

652.710 Fees collected by employer for medical care contracts are trust funds; priority on liquidation. (1) All moneys collected by an employer from employes or retained from their wages for the purpose of providing for or furnishing to such employes medical and surgical attention, hospital care, X-rays, ambulance, nursing or any related service or care contingent upon sickness or injury pursuant to a contract are trust funds and shall be placed and kept in separate accounts by the employer and shall promptly be paid over to the contractor. Such funds shall in no event become a part of the assets of the employer.

(2) If the employer fails to place and keep such funds in separate accounts and pay them over to the contractor or if the funds become commingled with the funds of the employer and the employer becomes bankrupt, insolvent or goes through voluntary or involuntary

liquidation, or if a receiver is appointed to operate or liquidate the affairs of the employer, the funds not paid to the contractor shall be entitled to the same preference as given to claims of the State Accident Insurance Fund Corporation, as provided in ORS 656.562. [Formerly 655.130]

652.720 Prohibited use by employer of fees for medical care contracts withheld from employe wages. (1) No employer shall retain, directly or indirectly, from employes or from their wages any part of the money collected or retained under ORS 652.710 for his own use or benefit.

(2) No employer shall apply, directly or indirectly, any portion of the money so collected to his cost of compensation or to the cost of any medical, surgical or hospital care and attention for employes on account of injuries sustained by them in the course of their employment. [Formerly 655.110]

PERSONNEL RECORDS

652.750 Inspection of records by employe; furnishing copy to employe; disposition of record on termination of employment; charge for copies. (1) As used in this section:

(a) "Employer" has the meaning for that term provided in ORS 656.005.

(b) "Personnel records" do not include records of an individual relating to the conviction, arrest or investigation of conduct constituting a violation of the criminal laws of this state or another state or the United States, confidential reports from previous employers or records maintained in compliance with ORS 351.065.

(2) At the request of an employe, his employer shall provide reasonable opportunity for the employe to inspect, at the place of his employment or place of work assignment, those personnel records of the employe which are used or have been used to determine the employe's qualification for employment, promotion, additional compensation or employment termination or other disciplinary action. At the request of the employe, his employer shall furnish a certified copy of such records.

(3) Upon termination of employment, the employer shall keep the terminated employe's personnel records for not less than 60 days. At the request of the employe, the employer shall furnish a certified copy of such records within the 60-day period.

(4) An employer may make only such charge for the services referred to in subsections (2) and (3) of this section as is reasonably calculated to recover the actual cost of providing the service. [1977 c.861 §2]

PENALTIES

652.990 Penalties. (1) Violation of subsection (2) of ORS 652.020 is punishable, upon conviction, by a fine of not less than $50 nor more than $500. Every day's violation is deemed a separate offense.

(2) Any person, body corporate, general manager or employer who violates ORS 652.040 or causes ORS 652.040 to be violated is punishable, upon conviction, by a fine of not less than $50, nor more than $300, or by imprisonment in the county jail for not less than 30 days, nor more than three months, or both.

(3) Violation of ORS 652.110 or 652.120 is punishable, upon conviction, by a fine of not more than $500.

(4) Violation of ORS 652.130 by any employer is punishable, upon conviction, by a fine of not more than $500 or by imprisonment in the county jail for not more than 60 days, or by both. Justice courts, district courts and circuit courts shall have concurrent jurisdiction in all cases arising under this subsection.

(5) In addition to the civil damages recoverable under ORS 652.230, violation of ORS 652.210 to 652.230 is a misdemeanor.

(6) The violation of ORS 652.240 is a misdemeanor.

(7) Violation of ORS 652.355 is a Class C misdemeanor.

(8) Violation of ORS 652.610 or 652.620 is punishable, upon conviction, by a fine of not less than $10 nor more than $100 for each offense.

(9) Wilful violation of ORS 652.635 or 652.640 by a producer or his agent is a misdemeanor.

(10) Violation of any of the provisions of ORS 652.710 or 652.720 by any employer is punishable, upon conviction, by a fine of not less than $50 nor more than $500. [Subsection (5) enacted as 1955 c.193 §4; subsection (6) enacted as 1957 c.243 §2; subsection (9) formerly 655.990; subsection (8) enacted as 1969 c.572 §4; 1975 c.397 §5]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173 160 and other changes specifically authorized by law.

Done at Salem, Oregon,
October 1, 1979.

Thomas G. Clifford
Legislative Counsel