

# Chapter 657

## 1979 REPLACEMENT PART

### Unemployment Insurance

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## DEFINITIONS

**657.005 Short title.** This chapter shall be known and may be cited as the Employment Division Law. [Amended by 1959 c.583 §14]

**657.010 General definitions.** As used in this chapter, unless the context requires otherwise:

- (1) "Base year" means the first four of the last five completed calendar quarters preceding the benefit year.
- (2) "Benefits" means the money allowances payable to unemployed persons under this chapter.
- (3) "Benefit year" means a period of 52 consecutive weeks commencing with the first week with respect to which an individual files an initial valid claim for benefits, and thereafter the 52 consecutive weeks period beginning with the first week with respect to which the individual next files an initial valid claim after the termination of his last preceding benefit year except that the benefit year shall be 53 weeks if the filing of an initial valid claim would result in overlapping any quarter of the base year of a previously filed initial valid claim.
- (4) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30 or December 31, or the approximate equivalent thereof, as the assistant director may, by regulation, prescribe.
- (5) "Assistant director" means Assistant Director for Employment.
- (6) "Taxes" means the money payments to the Unemployment Compensation Trust Fund required, or voluntary payments permitted, by this chapter.
- (7) "Employment office" means a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.
- (8) "Fund" means the Unemployment Compensation Trust Fund.
- (9) "State" includes, in addition to the states of the United States of America, the District of Columbia and Puerto Rico. However, for all purposes of this chapter the Virgin Islands shall be considered a state on and after the day on which the United States Secretary of Labor first approves the Virgin Islands' law under section 3304(a) of the Federal Unemployment Tax Act as amended by Public Law 94-566.
- (10) "Week" means any period of seven consecutive calendar days ending at midnight, as the assistant director may, by regulation, prescribe. The assistant director may by regulation prescribe that a "week" shall be "in," "within," or "during" that calendar quarter which includes the greater part of such week.
- (11) "Contribution" or "contributions" means the taxes, as defined in subsection (6) of this section, which are the money payments required by this chapter, or voluntary payments permitted, to be made to the Unemployment Compensation Trust Fund.
- (12) "Valid claim" means any claim for benefits made in accordance with ORS 657.260 if the individual meets the wages-paid-for-employment requirements of ORS 657.150.
- (13) "Employment Division" or "division" means the Employment Division.
- (14) "Institution of higher education" means an educational institution which:
  - (a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;
  - (b) Is legally authorized in this state to provide a program of education beyond high school;
  - (c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit towards such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and
  - (d) Is a public or other nonprofit institution.
- (15) "Hospital" means an organization which has been licensed, certified or approved by the Health Division as a hospital.
- (16) "Educational institution," except an institution of higher education as defined in subsection (14) of this section, means an institution:
  - (a) In which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher; and

(b) Which is accredited, registered, approved, licensed or issued a permit to operate as a school by the Department of Education or other government agency, or which offers courses for credit that are transferable to an approved, registered or accredited school; and

(c) In which the course or courses of study or training which it offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation; and

(d) In which the course or courses of study or training are offered on a regular and continuing basis. [Amended by 1959 c.642 §1; 1961 c.252 §1; 1963 c.13 §1; 1969 c.597 §174; 1971 c.463 §1; 1977 c.241 §1]

**657.015 Employee.** As used in this chapter, unless the context requires otherwise, "employee" means any person, including aliens and minors, employed for remuneration or under any contract of hire, written or oral, express or implied, by an employer subject to this chapter in an employment subject to this chapter.

**657.020 Employing unit.** (1) As used in this chapter, unless the context requires otherwise, "employing unit" means:

(a) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor thereof, or the legal representative of a deceased person, who has or had in its employ one or more individuals performing services for it within this state.

(b) This state, including every state officer, board, commission, department, institution, branch and agency of the state government.

(c) Any people's utility district.

(d) Any political subdivision.

(2) All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are deemed to be employed by a single employing unit for all the purposes of this chapter, except that for the purposes of this chapter each of the various agencies, boards, commissions, departments, institutions and political subdivisions of this state shall be deemed separate employing units. [Amended by 1955 c.655 §1; 1957 c.682 §1; 1959 c.398 §1; 1973 c.715 §1; 1977 c.295 §1]

**657.025 Employer.** (1) As used in this chapter, unless the context requires otherwise, "employer" means any employing unit which after October 5, 1973, employs one or more individuals in an employment subject to this chapter in each of 18 separate weeks during any calendar year, or in which its total payroll during any calendar quarter amounts to \$225 or more. For periods prior to October 5, 1973, and subsequent to December 31, 1971, "employer" shall mean any employing unit which employs one or more individuals in an employment subject to this chapter in each of 20 separate weeks during any calendar year, or in which its total payroll during any calendar quarter amounts to \$225 or more. For periods prior to December 31, 1971, and subsequent to December 31, 1959, "employer" shall mean any employing unit which employs one or more individuals in an employment subject to this chapter during any calendar quarter in which its total payroll amounts to \$225 or more.

(2) Whenever any helper, assistant or employe of an employer engages any other person in the work which said helper, assistant or employe is doing for the employer, with the employer's actual, constructive or implied knowledge, such employer shall, for all purposes of this chapter, be deemed the employer of such other person, whether such person is paid by the said helper, assistant or employe, or by the employer. All persons employed by an employer in all of his several places of employment maintained within the state shall be treated as employed by a single employer for the purposes of this chapter.

[Amended by 1953 c.494 §1; 1955 c.655 §2; 1959 c.405 §1; 1971 c.463 §2, 1973 c.300 §1; 1975 c.257 §1]

**657.030 Employment; educational, hospital, nursing, student service exclusions.** (1) As used in this chapter, unless the context requires otherwise, and subject to ORS 657.035 to 657.090, "employment" means service for an employer, including service in interstate commerce, within or outside of the United States, performed for remuneration or under any contract of hire, written or oral, express or implied. Notwithstanding any other provisions of this chapter, after December 31, 1971, "employment" shall include service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for taxes required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemploy-

ment Tax Act is required to be covered under this chapter.

(2) Notwithstanding subsection (1) of this section, "employment" does not include:

(a) Service performed in the employ of a school, college or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university, or by the spouse of such a student, if such spouse is advised at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

(b) Service performed in the employ of a hospital, if such service is performed by a patient of such hospital.

(c) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled in a nurses' training school chartered or approved pursuant to the laws of this state.

(d) Service performed by an individual under the age of 22 who is enrolled at a non-profit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such program has been approved by the assistant director, and such institution has so certified to the employer, except that this paragraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers. [Amended by 1959 c.405 §2; 1971 c.463 §5; 1975 c.257 §2]

**657.035 Employment; effect of place of performance of services.** (1) The term "employment" includes an individual's entire service, performed within, or both within and without, this state if:

(a) The service is localized in this state; or

(b) The service is not localized in any state, and such service is not covered under the unemployment compensation law of any other state, the Virgin Islands or Canada, and

(A) The base of operations is in this state, or if there is no base of operations, then the place from which the service is directed or controlled is in this state, or

(B) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

(2) Service performed within this state but not covered under subsection (1) of this section is employment subject to this chapter if taxes are not required and paid with respect to such services under an unemployment insurance law of any other state or of the Federal Government.

(3) Services not covered under subsection (1) of this section, and performed entirely without this state, with respect to no part of which taxes are required and paid under an unemployment insurance law of any other state or of the Federal Government, are employment subject to this chapter if the assistant director approves the election of the employer for whom such services are performed that the entire service of such individual shall be employment subject to this chapter. Such an election may be canceled by the employer by filing a written notice with the assistant director between January 1 and January 15 of any year stating his desire to cancel such election or at any time by submitting to the assistant director satisfactory proof that the services designated in such election are covered by an unemployment insurance law of another state or of the Federal Government.

(4) Service is localized within this state if:

(a) The service is performed entirely within this state; or

(b) The service is performed both within and without this state, but the service performed without the state is incidental to the individual's service within the state.

(5) Employment shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada or the Virgin Islands), in the employ of an American employer (other than service which is "employment" under the provisions of subsection (1) of this section or the parallel provisions of another state's law), if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States, but

(A) The employer is an individual who is a resident of this state; or

(B) The employer is a corporation which is organized under the laws of this state; or

(C) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of paragraphs (a) and (b) of this subsection is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(6) An "American employer" for purposes of this section means a person who is:

(a) An individual who is a resident of the United States; or

(b) A partnership if two-thirds or more of the partners are residents of the United States; or

(c) A trust, if all of the trustees are residents of the United States; or

(d) A corporation organized under the laws of the United States or of any state.

(7) For the purposes of this section the term United States includes the states, the District of Columbia, and the Commonwealth of Puerto Rico. [Amended by 1971 c 463 §6; 1973 c.300 §2; 1977 c.295 §2]

**657.040 Employment; when service for pay excluded.** Services performed by an individual for remuneration are deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the assistant director that:

(1) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and

(2) (a) Such individual customarily is engaged in an independently established business of the same nature as that involved in the contract of service; or

(b) Such individual holds himself out as a contractor and employs one or more individu-

als to assist in the actual performance of services and who meets the following criteria shall be deemed to have an independently established business:

(A) The individual customarily has two or more effective contracts.

(B) The individual as a normal business practice utilizes separate telephone service, business cards and engages in such commercial advertising as is customary in operating similar businesses.

(C) The individual is recognized by the Department of Revenue as an employer.

(D) The individual furnishes substantially all of the equipment, tools and supplies necessary in carrying out his contractual obligations to his clients. [Amended by 1967 c 303 §1]

**657.045 Employment; agricultural labor excluded.** (1) "Employment" does not include agricultural labor unless such labor is performed after December 31, 1977, for an employing unit who:

(a) During any calendar quarter in the current calendar year or the preceding calendar year paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor; or

(b) On each of 20 days during the current calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor for some portion of the day (whether or not at the same moment of time) 10 or more individuals.

(2) Notwithstanding paragraphs (a) and (b) of subsection (1) of this section, "employment" does not include services performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a) (15) (H) of the Immigration and Nationality Act.

(3) "Agricultural labor" does not include services performed for the state or a political subdivision but does include all services performed:

(a) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife.

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such services is performed on a farm.

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Federal Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways not owned or operated for profit used exclusively for supplying and storing water for farming purposes.

(d) In the employ of the operator or group of operators of a farm or farms (or a cooperative organization of which such operator or operators are members) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator or group of operators produced more than one-half of the commodity, as measured by volume, weight or other customary means, with respect to which such service is performed.

(4) Paragraph (d) of subsection (3) of this section does not apply to service performed in connection with:

(a) Commercial canning, commercial freezing, brining of cherries;

(b) Any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(c) Any activity enumerated in paragraph (d) of subsection (3) of this section when performed for an employer also engaged in any activity enumerated in (a) or (b) of this subsection.

(5) "Farms," as used in this section, includes stock, dairy, poultry, fruit, fur-bearing animal, Christmas tree and truck farms, plantations, orchards, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities.

(6) For the purpose of this section:

(a) "Agricultural or horticultural commodity" does not include mushrooms.

(b) Service in connection with the raising of forestry-type seedlings is agricultural labor when performed in a nursery.

(7) (a) For purposes of this chapter, and for services performed after December 31, 1977, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other person shall be treated as an employe of such crew leader if:

(A) Such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or

(B) Substantially all the members of such crew operate or maintain mechanized equipment which is provided by such crew leader; and

(C) Such individual is not an employe of such other persons under the usual common law rules applicable in determining the employer-employe relationship.

(b) Any individual who is furnished by a crew leader to perform agricultural labor for any other person and who is not treated as an employe of such crew leader under paragraph (a) of this subsection shall be an employe of such other person and such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his behalf or on behalf of such other person, for agricultural labor performed for such other person.

(c) For purposes of this subsection, the term "crew leader" means an individual who:

(A) Furnishes individuals to perform agricultural labor for any other person;

(B) Pays, either on his behalf or on behalf of such other person, the individuals so furnished by him for the agricultural labor performed by them; and

(C) Has not entered into a written agreement with such other person under which such individual is designated as an employe of such other person. [Amended by 1955 c.655 §3; 1957 c.395 §1; 1971 c.463 §7; 1973 c.260 §1; 1977 c.446 §1]

**657.047 Employment; transportation of logs, poles and piling excluded.** (1) As used in this chapter, "employment" does not include transportation by motor vehicle of logs, poles and piling by any person who both furnishes and maintains the vehicle used in such transportation.

(2) For the purposes of this chapter, services performed in the operation of a motor vehicle specified in subsection (1) of this section shall be deemed to be performed for the person furnishing and maintaining the motor vehicle. [1963 c.469 §2]

**657.050 Employment; domestic service and certain service not in course of employer's trade excluded.** "Employment" does not include:

(1) Domestic service performed in a private home, local college club, or local chapter of a college fraternity or sorority unless such service is performed after December 31, 1977, for an employing unit who paid to individuals employed in such domestic service cash remuneration of \$1,000 or more in a calendar quarter in the current calendar year or the preceding calendar year.

(2) Service not in the course of the employer's trade or business or which does not promote or advance the trade or business of the employer unless such service is performed in each of 18 weeks in a calendar year or total payroll for such service is \$225 or more during any calendar quarter. [Amended by 1959 c.405 §3, 1975 c.156 §1; 1977 c.446 §2]

**657.055** [Amended by 1959 c.405 §4; repealed by 1961 c.349 §3]

**657.056 Employment; maritime service.** (1) "Employment" includes an individual's entire service as an officer or member of a crew of an American vessel wherever performed and whether in intrastate or interstate or foreign commerce, if the employer maintains within this state at the beginning of the pay period an operating office from which the operations of the vessel are ordinarily and regularly supervised, managed, directed and controlled.

(2) The term "employment" shall not include:

(a) Services performed as an officer or member of the crew of a vessel not an American vessel; or

(b) Services performed by an individual not a United States citizen on or in connection with an American vessel under a contract of service which is not entered into within the United States and during the performance of which the vessel does not touch a port of the United States.

(3) "American vessel" means any vessel documented or numbered under the law of the United States and includes any vessel which

is neither documented nor numbered under the laws of the United States nor documented under the laws of any foreign country if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state. [1961 c.349 §2; 1971 c.463 §8]

**657.060 Employment; family service excluded.** "Employment" does not include service performed by a person in the employ of his son, daughter, or spouse, and service performed by a child under the age of 18 in the employ of his father or mother. [Amended by 1975 c.334 §1]

**657.065 Employment; governmental service.** (1) "Employment" does not include service performed in the employ of the United States Government or any instrumentality of the United States, except that if the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment insurance law, then, to the extent permitted by Congress, and after the date such permission becomes effective, this chapter shall be effective as to such instrumentalities and as to services performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. However, if this state is not certified by the Secretary of Labor under section 3304(c) of title 26, United States Code, for any year, then the payments required of such instrumentalities with respect to such year shall be deemed to have been erroneously collected within the meaning of ORS 657.510 and shall be refunded by the assistant director from the fund in accordance with ORS 657.510.

(2) "Employment" does not include services which are performed in the employ of the state or of any political subdivision or instrumentality of the state:

(a) As an elected public official.

(b) In a position which, under or pursuant to laws of this state, is designated as a policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

(c) As an employe serving on a temporary basis in case of fire, storm, earthquake, flood or similar emergency.

(d) As a member of a legislative body or a member of the judiciary.

(e) By an inmate of a custodial or penal institution when such services are performed for the custodial or penal institution of which he is an inmate.

(f) As a member of the Oregon Army National Guard or Oregon Air National Guard.

(3) The provisions of ORS 657.425 permitting election of coverage for services that do not constitute "employment" do not apply to services performed as an elected public official.

(4) Notwithstanding the provisions of ORS 657.025, "employer" means any state government or political subdivision employing unit.

[Amended by 1955 c.655 §4; 1957 c.682 §2; subsection (2) enacted as 1957 c.682 §4; 1959 c.398 §2, 1959 c.665 §1; 1961 c.452 §1; 1969 c.275 §1; 1971 c.463 §9; 1973 c.715 §2; 1975 c.156 §2; 1977 c.446 §3]

**657.067 Employment; community work and training programs; work study, work experience and work incentive programs.** (1) As used in this chapter, "employment" does not include service performed or participation by applicants, recipients, beneficiaries, trainees or volunteers:

(a) In a community work and training program, as defined in ORS 411.855.

(b) In work training, work study and work experience programs authorized by the Economic Opportunity Act of 1964 (United States Public Law 88-452), as amended.

(c) In the Work Incentive Program, Title IV of the Social Security Act (United States Public Law 90-248), as amended.

(d) In programs of work experience and training of the Comprehensive Employment and Training Act of 1973 (United States Public Law 93-203), as amended.

(2) The exclusions stated in paragraphs (b), (c) and (d) of subsection (1) of this section do not apply to services performed by an individual participating in a program which, by federal law or regulation, requires unemployment insurance coverage to be provided to the individual. [1961 c.631 §6; 1965 c.291 §4, 1967 c.130 §9; 1975 c.107 §2; 1977 c.294 §2, 1979 c.267 §1]

**657.070** [Repealed by 1971 c.463 §20]

**657.072 Employment; certain non-profit services excluded.** (1) "Employment" does not include service performed:

(a) In the employ of:

(A) A church or convention or association of churches;

(B) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches;

(b) By a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or a member of a religious order in the exercise of duties required by such order; or

(c) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market when such service is performed by an individual receiving such rehabilitation or remunerative work.

(2) Provisions of subsection (1) of this section apply only to services performed for a nonprofit employing unit. A "nonprofit employing unit" means an organization, or group of organizations, described in section 501 (c) (3) of the U. S. Internal Revenue Code which is exempt from income tax under section 501 (a) of the U. S. Internal Revenue Code. [1971 c.463 §4; 1973 c.118 §1; 1977 c.446 §4]

**657.075 Employment; service under Railroad Unemployment Insurance Act excluded.** "Employment" does not include service performed under the Railroad Unemployment Insurance Act (52 Stat. 1094).

**657.080 Employment; news delivery service.** "Employment" does not include service performed by an individual:

(1) In the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

(2) In the delivery or distribution of newspapers whose remuneration primarily consists of the difference between the amount he pays or is obligated to pay for the newspapers and the amount he receives or is entitled to receive on distribution or resale thereof. [Amended by 1975 c.257 §3]

**657.085 Employment; service by salespersons.** "Employment" does not include service performed by any person as a newspa-

per advertising salesperson, real estate broker, real estate salesperson, real estate agent, insurance agent, insurance solicitor or securities salesperson or agent to the extent that the person is compensated by commission.

[Amended by 1965 c.131 §1; 1979 c.521 §2]

**657.087 Employment; service by individuals soliciting contracts for home improvements and consumer goods sales.** "Employment" does not include service performed:

(1) By individuals soliciting contracts for home improvements including roofing, siding and alterations of private homes to the extent that the remuneration consists of commissions, or a share of the profit realized on each contract; or

(2) By individuals to the extent that the compensation consists of commissions, overrides or a share of the profit realized on orders solicited or sales resulting from the in-person solicitation of orders for and making sales of consumer goods in the home. [1961 c.320 §2; 1977 c.101 §1]

**657.090 Employment; petroleum products distributors.** "Employment" does not include service performed by an individual or partnership in the wholesale distribution of petroleum products whose remuneration for such service primarily consists of the difference between the amount he pays or is obligated to pay for the petroleum products and the amount he receives or is entitled to receive from the sale thereof or whose remuneration for such service primarily consists of commissions. [Amended by 1961 c.252 §7]

**657.095 Payroll.** (1) As used in this chapter, unless the context requires otherwise, "payroll" means and includes all wages paid to employes in any employment subject to this chapter; provided, for payroll tax purposes pursuant to this chapter, "wages" excludes remuneration received by an employe from each employer as follows:

(a) In any calendar year after December 31, 1955, and prior to January 1, 1972, remuneration which is in excess of \$3,600.

(b) In calendar years 1972 and 1973, remuneration which is in excess of \$4,200.

(c) In calendar years 1974 and 1975, remuneration which is in excess of \$5,000.

(d) In any calendar year after December 31, 1975, remuneration which is in excess of an amount obtained by multiplying the aver-

age annual wage for the second preceding calendar year by .80 and rounding the result to the nearest multiple of \$1,000. The average annual wage shall be determined by dividing the total wages paid by subject employers during the year by the average monthly employment reported by subject employers for the year. However, "payroll" as used in this section shall not in any year be less than the amount in effect during the preceding calendar year.

(2) The remuneration paid by an employer located in this state for work performed in other states by an employe who works part of the time in a calendar year in this and other states shall be included in "payroll," as defined in subsection (1) of this section, when the work in said other states is covered by unemployment insurance laws. Proof of the payment of payroll taxes on the wages of the employe while working in such other states shall be in such manner as the assistant director shall prescribe. [Amended by 1955 c.655 §6, 1959 c.606 §1; 1965 c.205 §1, 1971 c.463 §10; 1973 c.300 §3; 1973 c.810 §1; 1975 c.354 §1]

**657.097 "Political subdivision" defined.** As used in this chapter, "political subdivision" means any county, city, district organized for public purposes, or any other political subdivision or public corporation, including any entity organized pursuant to ORS chapter 190. [1957 c.682 §5; 1977 c.446 §5]

**657.100 Unemployment.** An individual is deemed "unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount. The assistant director shall prescribe such regulations as he deems necessary with respect to the various types of unemployment.

**657.105 Wages; generally.** (1) As used in this chapter, unless the context requires otherwise, and subject to ORS 657.115 to 657.140, "wages" means all remuneration for employment, including the cash value, as determined by the assistant director under his regulations, of all remuneration paid in any medium other than cash.

(2) Notwithstanding the provisions of subsection (1) of this section, noncash remuneration paid for services performed in agricultural labor or domestic service shall not be considered remuneration or wages for any

purpose under this chapter. [Amended by 1975 c.257 §4; 1977 c.446 §6]

**657.110** [Repealed by 1973 c.300 §15]

**657.115 Wages; fringe benefits after 1950.** "Wages" does not include the amount of any payment made after 1950, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, to, or on behalf of, an individual or any of his dependents under a plan or system established by an employing unit which makes provision generally for individuals performing service for it (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of:

- (1) Retirement.
- (2) Sickness or accident disability.
- (3) Medical or hospitalization expenses in connection with sickness or accident disability.
- (4) Death.

**657.120 Wages; retirement benefits.** "Wages" does not include the amount of any payment made by an employing unit after 1950 to an individual performing service for it including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, on account of retirement.

**657.125 Wages; disability benefits.** "Wages" does not include the amount of any payment made on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, after 1950 by an employing unit to, or on behalf of, an individual performing service for it after the expiration of six calendar months following the last calendar month in which the individual worked for such employing unit.

**657.130 Wages; payments from certain trusts and annuities.** "Wages" does not include the amount of any payment made after 1950 by an employing unit to, or on behalf of, an individual performing service for it, or his beneficiary:

- (1) From or to a trust exempt from tax under section 401(a) of the United States Internal Revenue Code at the time of such payment unless such payment is made to an individual performing service for the trust as

remuneration for such service and not as a beneficiary of the trust; or

- (2) Under or to an annuity plan which, at the time of such payment, meets the requirements of section 401(a) of the United States Internal Revenue Code. [Amended by 1973 c.300 §4]

*Note:* The reference in 657.130 is to the Internal Revenue Code of 1939, repealed in 1954 26 U.S.C. §401 now deals with employes' trusts and annuity plans.

**657.135 Wages; payments to persons over 65.** "Wages" does not include the amount of any payment, other than vacation or sick pay, made after 1950 to an individual after the month in which he attains the age of 65 years, if he did not work for the employing unit in the period for which such payment is made.

**657.140 Wages; assistance to individuals under community work and training program.** As used in this chapter, "wages" or "remuneration" does not include the amount or value of public assistance provided in cash or in kind in consequence of participation in a community work and training program, as defined in ORS 411.855. [1961 c.631 §7; 1965 c.291 §5; 1967 c.130 §10]

**657.145 Wages; previously excluded employment.** (1) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for employment shall include wages paid prior to January 1, 1978, for previously excluded employment except to the extent that assistance under Title II of the Emergency Jobs and Assistance Act of 1974 was paid on the basis of such services. For the purposes of this subsection, the term "previously excluded employment" means services:

- (a) Which were not employment as defined in ORS 657.045, 657.050, 657.065 and 657.072 at any time during the calendar year ending on December 31, 1975; and

- (b) Which are employment as defined in ORS 657.045, 657.050, 657.065 and 657.072 at any time after January 1, 1978.

- (2) Notwithstanding ORS 657.504, benefits paid which are based on wages paid prior to January 1, 1978, for previously excluded employment shall not be charged to any employer's account and will be recovered for the fund as provided in Public Law 94-566. [1977 c.447 §2]

## BENEFITS AND CLAIMS

**657.150 Amount of benefits; length of employment and wages necessary to qualify for benefits.** (1) After June 30, 1959, an individual shall be paid benefits during his benefit year in an amount which is to be determined by taking into account his weeks of work in subject employment in his base year as provided in this section.

(2) To qualify for benefits an individual must have had at least 18 weeks of work with an average of \$20 per week in subject employment in his base year. However, to qualify for benefits, his total base year wages must be \$700 or more, and in addition thereto he must have earned wages equal to six times his weekly benefit amount in employment, whether or not in covered employment, for service performed subsequent to the beginning of a preceding benefit year if benefits were paid to him in such preceding benefit year.

(3) If the wages paid to an individual are not based upon a fixed period of time or if his wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, for the purposes of subsections (2) to (5) of this section, his wages shall be allocated in accordance with regulations prescribed by the assistant director. Such regulations shall, in so far as possible, produce results the same as those which would exist if the individual had been paid his wages at regular intervals.

(4) An eligible individual's weekly benefit amount shall be 1.25 percent of the total wages paid him in his base year. However, such amount shall not be less than the minimum, nor more than the maximum weekly benefit amount.

(a) The minimum weekly benefit amount shall be 15 percent (.1500) of the state average weekly covered wage for the preceding calendar year, effective for any benefit year commencing on and after the week which includes July 4, 1975, and the week that includes each July 4 thereafter.

(b) The maximum weekly benefit amount shall be 55 percent (.5500) of the state average weekly covered wage for the preceding calendar year, effective for any benefit year commencing with and after the week which includes July 4, 1975, and the week which includes each July 4 thereafter.

(c) The minimum and maximum amounts, if not a multiple of \$1, shall be computed to the nearest multiple of \$1.

(d) For the purposes of this subsection, the state average weekly covered wage means an amount determined by the Employment Division by dividing the total wages paid by subject employers during the year by 52 times the average monthly employment reported by subject employers for the year.

(5) Benefits paid to an eligible individual in a benefit year shall not exceed 26 times his weekly benefit amount, or one-third of his base year's wages paid, whichever is the lesser. If such amount is not a multiple of \$1, it shall be computed to the next lower multiple of \$1.

(6) An eligible unemployed individual who has employment in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of the remuneration, if any, payable to him with respect to such week which is in excess of one-third of his weekly benefit amount. If the resulting amount is not a multiple of \$1, it shall be computed to the nearest multiple of \$1.

(7) Payment which has been, is or will be paid to an individual for a holiday shall be considered as earnings in the determination of the amount of benefits payable with respect to the week in which the holiday falls in the same manner as provided in subsection (6) of this section. However, if payment for the holiday is delayed more than 30 days following the end of the week in which the holiday falls, the provisions of this subsection shall not apply and previously reduced benefits shall be adjusted accordingly.

(8) Payment made to an individual for vacation taken shall be considered in the determination of the amount of benefits payable with respect to the vacation period in the same manner as provided in subsection (6) of this section; however, notwithstanding any other provision of this chapter, vacation payments made to an individual who is terminated, or placed on layoff status, shall not constitute a disqualification and benefits payable under this chapter shall not be denied or reduced because of the receipt of any such payment. [1955 c.655 §15; 1957 c.699 §1; 1959 c.567 §1; 1961 c.211 §1; 1963 c.441 §1; 1967 c.434 §1; 1969 c.569 §1, 1971 c.463 §13; 1971 c.521 §1; 1973 c.146 §1; 1973 c.535 §1, 1975 c.661 §2, 1977 c.670 §1]

**657.155 Benefit eligibility conditions.**

(1) An unemployed individual shall be eligible to receive benefits with respect to any week only if the assistant director finds that:

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such rules as the assistant director may prescribe. However, the assistant director may, by rule, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which he finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this chapter; provided, that no such rule conflicts with ORS 657.255.

(b) He has made a claim for benefits with respect to such week in accordance with ORS 657.260.

(c) He is able to work, is available for work, and is actively seeking and unable to obtain suitable work. No individual participating in a community work and training program, as defined in ORS 411.855, shall, solely by reason thereof, be unavailable for work within the meaning of this section.

(d) He has been unemployed for a waiting period of one week.

(e) He is not disqualified from benefits or ineligible for benefits under any other section of this chapter.

(f) He is qualified for benefits under ORS 657.150.

(2) An individual who leaves the normal labor market area of the individual for the major portion of any week is presumed to be unavailable for work within the meaning of this section. This presumption may be overcome if the individual establishes to the satisfaction of the assistant director that the individual has conducted a bona fide search for work and has been reasonably accessible to suitable work in the labor market area in which the individual spent the major portion of the week to which the presumption applies.

(3) The assistant director shall either promptly allow credit or pay benefits for any week for which benefits are claimed or promptly give notice of denial thereof in the manner provided in subsections (4) and (5) of ORS 657.265. [Amended by 1955 c.655 §7; 1961 c.631 §8; 1967 c.130 §11; 1973 c.398 §1; 1977 c.295 §3, 1979 c.521 §1]

**657.159 Claimants required to submit job qualifications to Oregon State Employment Service; use of information; referring claimant to available jobs.**

(1) To satisfy the registration requirements of subsection (1) of ORS 657.155, an unemployed individual who submits a claim for benefits, at the request of the assistant director or his authorized representative, shall submit to the Oregon State Employment Service information regarding the individual's job qualifications, training and experience as the assistant director or his authorized representative deems necessary to carry out job placement and counseling services for the individual.

(2) Information submitted by an individual pursuant to the provisions of subsection (1) of this section shall be promptly used by the Oregon State Employment Service for matching against available job openings retained in division records. The results shall be made available to division placement personnel who will refer the claimant to any available, suitable job opening for which the individual qualifies, provided the referral is not in conflict with federal or state law.

(3) In determining the amount and type of information an individual must submit to satisfy the requirements of subsection (1) of this section, the assistant director or his authorized representative shall consider, among other factors, the individual's employer affiliation, the anticipated and actual duration of the individual's period of employment, union membership and union hiring practices, state and local labor market conditions and information from past or prospective employers of the individual. [1979 c.149 §2]

**657.160** [Amended by 1959 c.643 §1; 1961 c.209 §1; 1965 c.213 §1; 1967 c.230 §1; 1969 c.75 §1; repealed by 1973 c.398 §3]

**657.165 Waiting period eligibility condition, limitation.** No week shall be counted as a week of unemployment for the purposes of paragraph (d) of subsection (1) of ORS 657.155:

(1) Unless it occurs within the benefit year that includes the week for which the unemployed individual claims payment of benefits; provided, this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment.

(2) If benefits have been paid with respect thereto.

(3) Unless the unemployed individual was eligible for benefits with respect thereto as

provided in ORS 657.150 to 657.165, 657.170, 657.176 and 657.200 to 657.215, except for the requirements of paragraph (d) of subsection (1) of ORS 657.155. [Amended by 1959 c.642 §2; 1975 c.257 §5]

**657.167 Amount and time period for payment of benefits to educational institution employees.** (1) Benefits based on service in an instructional, research or principal administrative capacity for a school, college, university or other educational institution shall be payable to an individual in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter, except that benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years or, when an agreement provides instead for a similar period between two regular terms whether or not successive or during a period of paid sabbatical leave provided for in the individual's contract and if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. All services by an individual for an educational institution shall be deemed in instructional, research or principal administrative capacity if the individual spends at least 50 percent of his time in such activities.

(2) With respect to any services described in subsection (1) of this section compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(3) The provisions of subsections (1) and (2) of this section apply only to service performed for an educational institution or institution of higher education operated by a non-profit employing unit, as defined in subsection (2) of ORS 657.072, or by the state or by a political subdivision. [1971 c.463 §12, 1975 c.284 §1; 1977 c.241 §2]

**657.170 Extending base year; limitation.** If the assistant director finds that during his base year any individual has been incapable of work during the greater part of his working time in any calendar quarter, such base year shall be extended a calendar quarter. No such extension of an individual's base year shall exceed four calendar quarters. Notwithstanding the provisions of this section, benefits payable as a result of the use of wages paid in a calendar quarter prior to the individual's current base year as defined in subsection (1) of ORS 657.010 shall not exceed one-third of such wages less benefits paid previously as a result of the use of such wages in computing a previous benefit determination. [Amended by 1953 c.646 §2; 1961 c.208 §1]

657.175 [Repealed by 1955 c.655 §8 (657.176 and 657.181 enacted in lieu of 657.175, 657.180 and 657.185)]

**657.176 Grounds and procedure for disqualification.** (1) An authorized representative designated by the assistant director shall promptly examine each claim to determine whether an individual is subject to disqualification as a result of his separation, termination, leaving, resignation, or disciplinary suspension from work or as a result of the individual's failure to apply for or accept work and shall promptly enter an assistant director's decision if required by subsection (4) of ORS 657.265.

(2) If the authorized representative designated by the assistant director finds:

(a) The individual has been discharged for misconduct connected with his work, or

(b) The individual has been suspended from work for misconduct connected with his work, or

(c) The individual voluntarily left work without good cause, or

(d) The individual failed without good cause to apply for available suitable work when referred by the employment office or the assistant director, or

(e) The individual failed without good cause to accept suitable work when offered to him,

the individual shall be disqualified from the receipt of benefits until he has performed service for which remuneration is received equal to or in excess of his weekly benefit amount in four separate weeks subsequent to the week in which the act causing the disqualification occurred.

(3) An individual shall be disqualified from the receipt of benefits until he has performed service for which remuneration is received equal to or in excess of his weekly benefit amount in one week subsequent to any week in which the act causing the disqualification occurs if the authorized representative designated by the assistant director finds:

(a) The individual left work to be married, or

(b) The individual left work to accompany her or his spouse or companion or join her or him at a place from which it is impractical to commute to such work, or

(c) The individual left work because of his or her marital status or domestic duties.

(4) If the authorized representative designated by the assistant director finds an individual was discharged for misconduct because of the individual's commission of a felony or theft in connection with the individual's work, all benefit rights based on wages paid prior to the date of the discharge shall be canceled if the individual's employer notifies the assistant director of the discharge within 10 days following the notice provided for in subsection (1) of ORS 657.265 or within 20 days following the notice provided for in subsection (2) of ORS 657.265, and:

(a) The individual has admitted commission of the felony or theft to an authorized representative of the assistant director, or

(b) The individual has signed a written admission of such act and such written admission has been presented to an authorized representative of the assistant director, or

(c) Such act has resulted in a conviction by a court of competent jurisdiction.

(5) (a) Notwithstanding the provisions of subsections (2) and (3) of this section, if an individual who has been disqualified under these subsections establishes to the satisfaction of the assistant director that he has, in not less than eight separate weeks, subsequent to the week in which the cause for disqualification occurred, been able to work, available for work, and been actively seeking and unable to obtain suitable work, and was registered for work, and continued to report at an employment office as provided in paragraphs (a), (b) and (f) of subsection (1) of ORS 657.155, the assistant director in that event may find him eligible for benefits subsequent to such eight weeks.

(b) An individual who was disqualified from the receipt of benefits and has, subsequent to the week in which the act causing the disqualification occurred, performed service in a week for which the remuneration received equals or is in excess of the weekly benefit amount shall receive credit for that week in satisfaction of the provisions of paragraph (a) of this subsection. [1955 c.655 §9 (enacted in lieu of 657.175, 657.180 and 657.185); 1957 c.699 §2; 1959 c.643 §2; 1973 c.398 §2; 1977 c.295 §4; 1979 c.267 §2]

**657.178** [1959 c.643 §4; repealed by 1973 c.398 §3]

**657.180** [Repealed by 1955 c.655 §8 (657.176 and 657.181 enacted in lieu of 657.175, 657.180 and 657.185)]

**657.181** [1955 c.655 §10 (657.176 and 657.181 enacted in lieu of 657.175, 657.180 and 657.185); 1957 c.699 §3; repealed by 1959 c.643 §5]

**657.182** [1961 c.207 §1; 1971 c.743 §404; repealed by 1973 c.398 §3]

**657.184 Benefits payable for service by aliens.** Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who has been lawfully admitted to the United States for permanent residence or to perform such services, or otherwise is permanently residing in the United States under color of law, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a) (7) or section 212(d) (5) of the Immigration and Nationality Act. [1977 c.241 §5]

**657.185** [Repealed by 1955 c.655 §8 (657.176 and 657.181 enacted in lieu of 657.175, 657.180 and 657.185)]

**657.186 Benefits payable for service by athletes.** Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week of unemployment which commences during the period between two successive sport seasons if the individual performed such services in the first season and there is reasonable assurance that the individual will perform such services in the subsequent season. [1977 c.241 §6]

**657.190 Suitable work factors.** In determining whether or not any work is suitable for an individual, the assistant director shall consider, among other factors, the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation and

the distance of the available work from his residence.

**657.195 Suitable work exceptions.** (1) Notwithstanding any other provisions of this chapter, no work is deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due directly to a strike, lockout or other labor dispute.

(b) If the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(2) On and after November 8, 1938, and for the purposes of this chapter only, this section shall have the same meaning as the provisions of section 3304(a) (5) of the United States Internal Revenue Code. [Amended by 1973 c.300 §5]

**657.200 Labor dispute disqualification.** (1) An individual is disqualified for benefits for any week with respect to which the assistant director finds that his unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed or at which he claims employment rights by union agreement or otherwise.

(2) When an employer operates two or more premises in the conduct of his business they shall be considered one premises for the purposes of this chapter if the labor dispute at one makes it impossible or impractical to conduct work at the others or in a normal manner.

(3) This section does not apply if it is shown to the satisfaction of the assistant director that the individual:

(a) Is not participating in or financing or directly interested in the labor dispute which caused his unemployment; and

(b) Does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the labor dispute occurs, any of whom

are participating in or financing or directly interested in the dispute.

**657.205 Deduction of guaranteed wage, retirement, dismissal or separation pay; withdrawal from labor force.** (1) Subject to the provisions of subsections (2) and (3) of this section, an individual is disqualified for benefits for any week with respect to which he is receiving, will receive, or has received:

(a) Remuneration as a dismissal or separation allowance, or as a guaranteed wage.

(b) Prior to April 6, 1980, any payment under a retirement plan, other than payments of old age insurance benefits under Title II of the federal Social Security Act, which was sponsored or participated in by a base year employer of the individual when:

(A) The individual is eligible for periodic retirement payments due to attainment of a specified age or number of years of service; or

(B) The individual is eligible for periodic retirement payments due to a disability.

(c) On or after April 6, 1980, a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment based on the previous work of the individual, and the provisions of paragraph (b) of this subsection shall no longer be of any force or effect.

(2) In determining disqualification for any week under subsection (1) of this section, if the remuneration and payments referred to in paragraphs (a), (b) and (c) of subsection (1) of this section cover a period greater than and include such week, a pro rata share of such remuneration and payments shall be apportioned to such week or weeks. Such payments made in a lump sum upon separation or in weekly or other instalments shall be considered as payments with respect to weeks following separation without regard to the existence or lack thereof of an employe-employer relationship during the weeks such pay is allocated pursuant to the assistant director's rules.

(3) If under this section the remuneration and payments, or the pro rata share thereof, in any week are less than the benefits which would otherwise be due under this chapter for such week, such individual is entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration and payments.

(4) In addition to other individuals who may suffer disqualification, an individual who is unemployed and eligible to receive old age insurance benefits under Title II of the federal Social Security Act is presumed to have withdrawn from the labor force and shall be ineligible for unemployment insurance benefits unless and until it is demonstrated to the assistant director's satisfaction that such individual has not voluntarily withdrawn from the labor force. In making such determination the assistant director shall consider, among other things, the circumstances under which the individual left his employment, subsequent reemployment or other evidence of bona fide labor force attachment. [Amended by 1955 c 655 §13; 1957 c.699 §4; 1963 c.468 §1; 1969 c.569 §2, 1973 c 380 §1, 1975 c.661 §1, 1977 c 294 §3, 1979 c 185 §1]

Note: Section 2, chapter 185, Oregon Laws 1979, provides:

Sec. 2. The amendment of ORS 657 205 by section 1 of this Act takes effect on April 6, 1980, if on or before March 31, 1980, the deduction of a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment based on the previous work of the individual is required as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act

**657.210 Disqualification in other jurisdictions.** An individual is disqualified for benefits for any week with respect to which or a part of which he has received, will receive or is claiming unemployment benefits under an unemployment insurance law of another state, the United States or any other governmental jurisdiction. However, if the appropriate agency of such other state, the United States or any other governmental jurisdiction finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply. [Amended by 1979 c 267 §3]

**657.213 Ineligibility for benefits upon conviction of fraud in obtaining benefits.** (1) Upon conviction of any person by a court of competent jurisdiction of wilfully making a false statement or misrepresentation, or wilfully failing to report a material fact, to obtain any benefits under this chapter, in addition to any penalties imposed by the court, such person shall:

(a) Be ineligible for benefits based upon wages paid to him in the calendar quarter in which he was convicted and in all prior calendar quarters; and

(b) Be ineligible for benefits after such conviction until he has reimbursed the fund for the full amount he received as a result of the false statement or misrepresentations or of the failure to report a material fact.

(2) The provisions of this section are in addition and supplemental to the provisions of ORS 657.215 and 657.310. [1955 c.655 §12; 1973 c 300 §6]

**657.215 Disqualification for misrepresentation.** An individual is disqualified for benefits for a period not to exceed 26 weeks whenever the assistant director finds that he has wilfully made a false statement or misrepresentation, or wilfully failed to report a material fact to obtain any benefits under this chapter. The length of such period of disqualification and the time when such period begins shall be determined by the assistant director in his discretion, according to the circumstances in each case. During each week of disqualification so imposed, an individual must meet all the eligibility requirements of this chapter. Any disqualification imposed under this section may be applied to any week claimed but remaining unpaid on the date of the disqualifying decision under this section but not to exceed three years from the date of the decision. The assistant director may cancel such disqualification wholly or in part as he deems proper and equitable. [Amended by 1977 c.295 §5]

**657.220** [Repealed by 1955 c.655 §25]

**657.221 Ineligibility for benefits of certain educational institution personnel.** (1) Benefits based on services performed in other than an instructional, research or principal administrative capacity for an educational institution, other than an institution of higher education, shall be payable to an individual in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter except that benefits shall not be paid on the basis of such services for any week of unemployment which commences during a period between two successive academic years or terms if the individual performs such services in the first academic year or term and there is a reasonable assurance that the individual will perform any such services in the second academic year or term for any educational institution.

(2) With respect to the application of this section, the following shall apply:

(a) An employe who terminates an employe-employer relationship by electing not to accept an offer of work for a subsequent academic year or term, other than by reason of labor negotiations or a labor dispute in progress, shall be deemed to have voluntarily left work. The effective date of such leaving shall be the date the individual notifies the educational institution of his election not to accept the offer of work for the subsequent period except that if such individual continues to work under the terms of a previously existing contract or agreement, the effective date of leaving shall be the last day worked for the educational institution.

(b) In the event the educational institution does not extend to the individual an offer of work or provide a reasonable assurance the individual is expected to return to work for the educational institution following the period between the academic years or terms, the separation from work shall be considered an involuntary leaving or layoff.

(3) With respect to any services described in subsection (1) of this section compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(4) The provisions of subsections (1) and (3) of this section shall only apply to service performed for an educational institution operated by a nonprofit employing unit as defined in subsection (2) of ORS 657.072, or a political subdivision. [1973 c.715 §6; 1975 c.284 §2; 1977 c.241 §3]

657.225 [Repealed by 1955 c.655 §25]

657.230 [Repealed by 1955 c.655 §25]

657.235 [Repealed by 1955 c.655 §25]

657.240 [Repealed by 1955 c.655 §25]

657.245 [Repealed by 1955 c.655 §25]

657.250 [Repealed by 1957 c.699 §12]

**657.255 Method of payment of benefits; payment of benefits due deceased person.** (1) Benefits shall be payable from the fund and shall be paid through employment offices, in accordance with such regulations as the assistant director may prescribe.

(2) In the event of the death of any person to whom benefits are due under this chapter, but which benefits remain unpaid in whole or in part, such benefits may be paid to any person or persons designated by the assistant director in the following order:

(a) Surviving spouse.

(b) Surviving children, including adopted children.

(c) Mother or father of the deceased.

**657.260 Filing claims for benefits; employer to post statements concerning claim regulations.** (1) Claims for benefits shall be filed in accordance with such regulations as the assistant director may prescribe.

(2) Each employer shall post and maintain printed statements concerning such regulations or such other matters as the assistant director may by regulation prescribe in places readily accessible to individuals in his service and shall make available to each such individual copies of printed statements or materials relating to claims for benefits as the assistant director may by regulation prescribe. Such printed statements shall be supplied by the assistant director to each employer without cost to him.

(3) Every person making a claim shall certify that he has not, during the week with respect to which benefits are claimed, received or earned wages or compensation for any employment, whether subject to this chapter or not, otherwise than as specified in his claim. [Amended by 1973 c.300 §7]

**657.265 Initial determination of claim; request for a hearing.** (1) When either of the following is filed, an authorized representative designated by the assistant director shall promptly notify the claimant's last employer and, if necessary, his immediately preceding employers sufficient to establish four weeks of service for which remuneration is received equal to or in excess of his weekly benefit amount:

(a) A new claim establishing a benefit year.

(b) An additional claim reactivating an existing claim following a period of employment.

(2) An authorized representative shall promptly examine each new claim for benefits and, on the basis of information available, shall determine the total amount of wages paid to the claimant during his base year and

whether or not such amount is sufficient to qualify the claimant for benefits and, if so, the weekly benefit amount payable to the claimant, the maximum amount payable with respect to such benefit year and the maximum duration thereof. Notice of an initial or amended determination under this subsection shall promptly be given to the claimant and to all employing units that have paid wages to the claimant during his base year. Notice to an employing unit shall include notice of the potential charges to the employer's account pursuant to ORS 657.471. The initial determination under this subsection shall be applicable to all weeks of the benefit year respecting which the claim was filed; however, such determination may be amended with respect to any week or weeks of the benefit year.

(3) Unless the claimant or one of the employing units entitled to notice under subsection (2) of this section, within 20 days after delivery of such initial or amended determination, or, if mailed, within 20 days after the same was mailed to his last-known address, files with the assistant director a request for hearing upon the initial or amended determination, it shall be final and benefits shall be paid or denied in accordance therewith, unless otherwise provided in accordance with law. An initial or amended determination may be canceled by the claimant at any time even though final, providing no disqualification has been assessed, no appeal has been requested by the claimant nor benefits paid on such claim.

(4) In addition to and separate from the determination under subsection (2) of this section, an authorized representative shall promptly examine each claim for waiting week credit, for benefits or for compliance with subsection (5) of ORS 657.176 and, on the basis of the facts available, make a decision to allow or deny such claim. Notice of such decision need not be given to the claimant if the claim is allowed; but, if the claim is denied, written notice stating the reasons therefor shall be given to the claimant. Notice of a decision that was wholly or partially based on information filed with the assistant director in writing within 10 days subsequent to notice to employers as provided in subsection (1) of this section shall be given to any employing unit that has so filed such information.

(5) When any employer entitled to notice under subsection (2) of this section files information in writing with the assistant director within 10 days of its knowledge of an occur-

rence raising any new question not previously decided, an authorized representative shall promptly reexamine the subject claim for waiting week credit, for benefits or for eligibility in compliance with subsection (5) of ORS 657.176. On the basis of the facts available, the authorized representative shall promptly make a decision and give written notice thereof, stating the reasons therefor, to both the claimant and to any base year employer that has so filed such information.

(6) Unless the claimant or one of the employing units entitled to notice under subsection (4) or (5) of this section within 20 days after delivery of such notice or, if mailed, within 20 days after the same was mailed to his last-known address, files with the assistant director a request for hearing upon the decision, it shall be final and benefits shall be paid or denied in accordance therewith, unless otherwise provided in accordance with law. If the decision is to allow benefits, the assistant director shall pay such benefits regardless of any pending hearing on the claim. [Amended by 1961 c.252 §3; 1965 c.210 §1; 1967 c.435 §3; 1969 c.597 §177; 1971 c.77 §1; 1975 c.257 §6; 1977 c.295 §6]

**657.270 Hearing before referee; application for review.** (1) When a request for hearing upon the claim has been filed, as provided in ORS 657.265, the assistant director shall designate a referee to conduct such hearing.

(2) After the referee has afforded all parties reasonable opportunity for a fair hearing, he shall promptly affirm, modify or set aside the decision of the authorized representative with respect to the claim and promptly shall notify all parties entitled to notice of the decision of the authorized representative, as set forth in ORS 657.265, of his decision and reasons therefor.

(3) Unless the assistant director or any other party to the hearing, within 10 days after the delivery of such notification, or if mailed, within 10 days after the same was mailed to the last-known address, files with the Employment Appeals Board an application for review, such decision shall be final. [Amended by 1965 c.210 §2; 1969 c.597 §178; 1973 c.300 §8]

**657.275 Review by Employment Appeals Board.** (1) Whenever the assistant director or any interested party files with the Employment Appeals Board an application for review and the Employment Appeals Board requires additional evidence to reach its deci-

sion it may refer the matter to the assistant director who shall designate a referee to secure such additional evidence. If no additional evidence is required the Employment Appeals Board shall promptly and not later than 30 days from the receipt of the application for review, affirm, modify or set aside the findings of the referee and promptly notify the claimant and any other interested party of its decision.

(2) The decision of the Employment Appeals Board shall become final 10 days after the date of notification or mailing thereof.

[Amended by 1959 c.583 §18; 1965 c.210 §3]

**657.280 General procedure and records concerning disputed claims.** (1) The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from the employers and the conduct of hearings and appeals shall be in accordance with the regulations prescribed by the assistant director for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure.

(2) A full and complete record shall be kept of all proceedings in connection with the disputed claim. All testimony at any hearing upon a disputed claim shall be recorded but need not be transcribed unless the disputed claim is appealed further.

**657.282 Judicial review of decisions under ORS 657.275.** Judicial review of decisions under ORS 657.275 shall be as provided for review of orders in contested cases in ORS 183.310 to 183.500, except that the petition shall be filed within 20 days after the order is final. The assistant director may file petition for judicial review in accordance with this section from decisions of the Employment Appeals Board. [1971 c.734 §94]

**657.285** [Amended by 1959 c.583 §19; repealed by 1971 c.734 §21]

**657.290 Continuous jurisdiction of assistant director; reconsideration, by Employment Appeals Board, of its previous decisions.** (1) Upon his own motion or upon application of any party to a claim for benefits, the assistant director may in his discretion at any time after the same was made and irrespective of whether it has become final under this chapter, reconsider any previous decision as to clerical errors and errors of computation in the claim and may,

with respect to allowing or disallowing in whole or in part a claim for benefits, enter a new decision either upon any grounds or issues not previously ruled upon or in any case where new facts not previously known to the assistant director become available.

(2) Such reconsideration shall be accomplished by the assistant director or any employe he may designate for the purpose, in accordance with such regulations as the assistant director may prescribe, and may include the making of a new decision which, if made, shall award, deny, terminate, continue, increase or decrease benefits to the extent found necessary and appropriate for the correction of previous error respecting such benefits. However, any such new decision shall be subject to hearing, review and appeal in accordance with ORS 657.265 to 657.282.

(3) The Employment Appeals Board upon its own motion or upon application of any party in interest may in its discretion at any time after the same was made and irrespective of whether it has become final under this chapter, reconsider any previous decision of the Employment Appeals Board. Such reconsideration shall be accomplished by the Employment Appeals Board or special referee designated for the purpose, in accordance with regulations prescribed by the assistant director, and may include the making of a new decision to the extent necessary and appropriate for the correction of previous error. Such new decision shall be subject to judicial review in accordance with ORS 657.282.

[Amended by 1959 c.583 §20; 1961 c.252 §4; 1965 c.210 §4; 1975 c.257 §7]

**657.295 Witness fees; disputed claim expenses; counsel; fees.** (1) Witnesses other than parties subpoenaed pursuant to ORS 657.265 to 657.280 or 657.290 shall be allowed fees at a rate fixed by the assistant director. Such fees and all expenses of proceedings before the assistant director or the Employment Appeals Board involving disputed claims, excepting charge for services rendered by counsel or other agent representing the claimant, employer or other interested person, are deemed a part of the expense of administering this chapter, and no individual claiming benefits shall be charged fees of any kind in any proceedings under this chapter by the assistant director or his representatives.

(2) Notwithstanding any other law, a person in any proceeding before the assistant director or Employment Appeals Board, except

under ORS 657.683, may be represented by counsel or other agent authorized by such person. No such counsel or agent representing an individual who is claiming benefits shall charge or receive for such services more than an amount approved by the assistant director. As used in this subsection, "person" has the meaning defined in ORS 174.100 and also includes this state and all political subdivisions therein. [Amended by 1959 c.583 §21; 1969 c.161 §1]

**657.300 False statements by employer.** No employer shall intentionally and willfully make or cause to be made false or untrue statements regarding the claim of a claimant or regarding a claimant or claimant's eligibility for benefits under this chapter.

**657.305** [Amended by 1955 c.655 §16; repealed by 1971 c.743 §432]

**657.310 Recovery or deduction of benefits paid because of misrepresentation of recipient.** (1) Any person who makes, or causes to be made, a false statement or representation of, or fails to disclose, a material fact, and as a result thereof has received any amount as benefits under this chapter to which he was not entitled shall, irrespective of his knowledge or intent, if the existence of such nondisclosure or misrepresentation has been found in connection with a decision which was made and has become final pursuant to this chapter, be liable to repay such amount to the assistant director for the fund or to have such amount deducted from any future benefits payable to him under this chapter.

(2) No decision shall be construed to authorize the recovery of the amount of any benefits paid to a claimant unless such decision specifies that the claimant is liable to repay the same to the fund by reason of the nondisclosure or misrepresentation of a material fact, the nature of such nondisclosure or misrepresentation, and the week or weeks for which such benefits were paid, nor until such decision has become final.

(3) In any case in which a claimant is liable to repay to the assistant director any amount for the fund, such amount shall be collectible without interest by civil action brought in the name of the assistant director.

[Amended by 1963 c.14 §1]

**657.315 Recovery or deduction of benefits paid erroneously; credit for amounts considered in back pay settle-**

**ment.** (1) If it is determined by the assistant director that an individual has been paid benefits to which he was not entitled because:

(a) Of any error not due to the misrepresentation or nondisclosure of a material fact by him; or

(b) An initial decision to pay benefits is subsequently reversed by a decision finding the individual was not eligible for such benefits, and the decision establishing the erroneous payment of benefits has become final;

he shall be liable to have a like amount deducted from any benefits otherwise payable to him pursuant to this chapter during the benefit year within which the unauthorized or improper amount was paid. If the amount paid in error is not repaid or recovered within the individual's benefit year as specified above, the amount, or any balance thereof, may be deducted from benefits otherwise payable to the individual for any week or weeks within 52 weeks following the week in which the decision establishing the erroneous payment became final.

(2) Amounts paid to an individual in excess of the maximum benefits allowable pursuant to this chapter may be recovered in a civil action brought in the name of the assistant director for such purpose.

(3) If a settlement agreement or an award of back pay is made by or between a public employer and its employe or employes, which agreement takes into consideration unemployment insurance benefits paid to such persons, any amount deducted from sums determined due under such settlement or award on account of such benefits paid shall be reimbursed by the public employer to the Employment Division. The Employment Division shall then credit the account of the claimant's base year employer or employers or to the pool account whichever is appropriate and to the extent of any such reimbursement the Employment Division shall cancel any benefit overpayment charged to the claimant or claimants involved. [Amended by 1971 c.77 §2; 1975 c.284 §3; 1977 c.400 §6]

**657.320 Cancellation of unrecoverable benefits.** (1) If any amount paid to a person as benefits, for which he has been found liable under the provisions of ORS 657.310 to repay or to have deducted from benefits payable to him, has neither been repaid nor so deducted within a period of three years following the date the decision establishing the improper payment became final,

and is equal to or is less than the state maximum weekly benefit amount then in effect or determined by the assistant director to be uncollectible, the same together with the record thereof and the resulting shortage, shall be canceled, and such amount, excluding any amount chargeable to reimbursable employers, shall be permanently charged to the fund.

(2) If an amount paid to a person as benefits, for which he has been found liable under the provisions of subsection (1) of ORS 657.315 to have deducted from benefits payable to him, has neither been repaid nor so deducted from benefits otherwise payable to the individual for any week or weeks within 52 weeks following the week in which the decision establishing the improper payment became final, the same together with the record thereof and the resulting shortage, shall be canceled and such amount, excluding any amount chargeable to reimbursable employers, shall be permanently charged to the fund. [Amended by 1977 c.294 §5]

**657.321 Definitions for ORS 657.321 to 657.329.** As used in ORS 657.321 to 657.329 unless the context requires otherwise:

(1) "Extended benefit period" means a period which:

(a) Begins with the third week after the occurrence of one of the following:

(A) A week for which there is a national "on" indicator; or

(B) A week for which there is a state "on" indicator; and

(b) Ends with the latter occurrence of the following:

(A) The third week after the first week for which there is both a national "off" indicator and a state "off" indicator; or

(B) The 13th consecutive week of such period.

(2) Notwithstanding the provisions of subsection (1) of this section, no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state.

(3) There is a national "on" indicator for any week for which the United States Secretary of Labor determines that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unem-

ployment (seasonally adjusted) for all states equaled or exceeded four and one-half percent.

(4) There is a national "off" indicator for any week for which the United States Secretary of Labor determines that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (seasonally adjusted) for all states was less than four and one-half percent.

(5) There is a state "on" indicator for any week for which the assistant director determines in accordance with regulations of the United States Secretary of Labor that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted):

(a) Equaled or exceeded four percent and equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years; or

(b) Equaled or exceeded five percent.

(6) There is a state "off" indicator for any week for which the assistant director determines in accordance with regulations of the United States Secretary of Labor that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted):

(a) Was less than five percent and was less than 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years; or

(b) Was less than four percent.

(7) "Rate of insured unemployment," for the purpose of subsections (5) and (6) of this section, means the percentage derived by dividing:

(a) The average weekly number of continued weeks of unemployment claimed by individuals in this state with respect to the most recent 13-consecutive-week period, as determined by the assistant director on the basis of his reports to the United States Secretary of Labor, by

(b) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters before the end of such 13-week period.

(8) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to

ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(9) "Extended benefits" means benefits (including benefits payable to federal civilian employes and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this chapter for weeks of unemployment in his eligibility period.

(10) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(11) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(a) Has received prior to such week, all of the regular benefits that were available to him under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employes and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week (provided that an individual shall be deemed to have received all of the regular benefits that were available to him, although as a result of a pending appeal with respect to wages or employment that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits); or

(b) His benefit year having expired prior to such week, has no, or insufficient wages and employment to establish a new benefit year that would include such week; and

(c) Has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(d) Has not received and is not seeking, or the appropriate agency has finally determined that he is not entitled to receive, unemployment benefits under the unemployment compensation law of Canada.

(12) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code of 1954, as amended. [1971 c.2 §2; 1974 s.s. c.46 §1; 1977 c.228 §1; 1979 c.267 §4]

**657.323 ORS 657.321 to 657.329 supersede inconsistent provisions of chapter.** The provisions of this chapter relating to the payment of regular benefits shall apply to claims for and the payment of extended benefits, except when the result would be inconsistent with the provisions of ORS 657.321 to 657.329. [1971 c.2 §3]

**657.325 Eligibility for extended benefits.** (1) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the assistant director finds that with respect to such week:

(a) He is an "exhaustee"; and

(b) He has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(2) The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

(3) The maximum extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be 50 percent of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year. [1971 c.2 §4]

**657.327 Notice of effectiveness of extended benefits; employers not to be charged for extended benefits.** (1) Whenever an extended benefit period is to become effective in this state (or in all states) as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator or state and national "off" indicators, the assistant director shall make an appropriate public announcement.

(2) No employer's account shall be charged for extended benefits paid to an unemployed individual pursuant to the provisions of ORS 657.321 to 657.329. [1971 c.2 §5]

**657.329 Applicability of ORS 657.321 to 657.329.** ORS 657.321 to 657.329 shall apply to individuals meeting the requirements thereof for the week ending January 16, 1971, and any week thereafter. [1971 c.2 §6]

## COVERAGE OF VOCATIONAL TRAINEES

**657.330 Policy.** The people of the State of Oregon recognize the fact that a segment of the population of Oregon faces difficulty in gaining stable employment due to lack of skills to cope with the advancement in technological improvements and the effects of automation and relocation in the economy. It is the policy of the State of Oregon to alleviate this problem by facilitating vocational training and the acquiring of necessary basic educational skills as a prerequisite for such training. To further this policy unemployment insurance benefits shall not be denied to individuals qualified under the provisions of ORS 657.150 during a period of vocational training, or a program of instruction in basic educational skills as a prerequisite for such vocational training to enhance the opportunity of such individuals in the labor market, provided such program of instruction is approved by the assistant director. [1969 c.156 §2; 1971 c.82 §1]

**657.335 "Program of instruction," "vocational training" defined.** (1) As used in ORS 657.330 to 657.360, "program of instruction" means a program of instruction in vocational training or a program of instruction in basic educational skills as a prerequisite for such vocational training, or both, approved by the assistant director for the individual.

(2) "Vocational training" as used in ORS 657.330 to 657.360 means vocational or technical training or retraining in Oregon schools or classes (including but not limited to, field or laboratory work and remedial or academic and technical instruction incident thereto) and is conducted as a program designed to prepare individuals for gainful employment in recognized or new occupations. The term "vocational training" does not include programs of instruction for an individual (including transfer credit programs of instruction given at community colleges) which are primarily intended to lead toward a baccalaureate or higher degree or training that has for its purpose the preparation of individuals for employment in occupations which require a baccalaureate or higher degree from institutions of higher education. [1969 c.156 §3; 1971 c.82 §2]

**657.340 Eligibility of trainees to receive benefits.** (1) Notwithstanding provisions of this chapter relating to availability

for work, actively seeking work or refusal to accept suitable work, an unemployed individual otherwise eligible for unemployment insurance benefits shall not be ineligible for such benefits or waiting week credit because of his enrollment in and attendance in such program of instruction.

(2) (a) An individual shall not be eligible for unemployment insurance benefits under the provisions of ORS 657.330 to 657.360 for any week or part of any week with respect to which he is entitled to receive directly or indirectly any incentive payments, living allowances, subsistence, per diem, wage payments or other cash benefits on account of his participation in such programs of instruction whether such payment or benefit is payable from federal, state or private funds, or any combination thereof.

(b) Furnishing of or payment for books, instructional materials, tuition, reimbursement for travel expense or other expenses, or cost of such programs of instruction, or the furnishing in cash or in kind of a daily lunch allowance, does not constitute the direct or indirect receipt of a payment or benefit under this subsection. [1969 c.156 §§5, 6; 1971 c.82 §3]

**657.345 Approval of programs by assistant director.** In approving such program of instruction for an individual the assistant director shall consider, among other factors, the following:

(1) Whether such program of instruction relates to an occupation or skill for which there are, or expected to be, reasonable employment opportunities in this state in which the individual intends to seek work.

(2) Whether the individual has the qualifications and aptitudes to successfully complete such program of instruction.

(3) Whether employment opportunities for which the individual is fitted by training and experience do not exist or have substantially diminished in the labor market of this state to the extent that in the judgment of the assistant director the individual will experience an extended period of unemployment and dependence upon the unemployment insurance program. [1969 c.156 §7; 1971 c.82 §4]

**657.350 Rules for administering trainee benefit program.** The assistant director shall promulgate rules as necessary for the administration of ORS 657.330 to 657.360, including but not limited to procedures for approval, undertaking periodic reviews for

continued approval, or for disapproval of such program of instruction for an individual. [1969 c.156 §8; 1971 c.82 §5]

**657.355 Denial of benefits to trainees subject to review.** Notice, hearing, and review of a decision to approve or disapprove an application of an individual or to deny continued approval of an individual's participation under ORS 657.330 to 657.360 shall be subject to the provisions of ORS 657.265 to 657.282. [1969 c.156 §9; 1975 c.257 §8]

**657.360 Employer not charged for benefits paid to trainees.** No employer's account shall be charged for benefits paid to an unemployed individual during the period such individual is enrolled in and attending such program of instruction. [1969 c.156 §4; 1971 c.82 §6]

#### CONTRIBUTIONS BY EMPLOYERS; COVERAGE; RATE

**657.405 Definitions for ORS 657.430 to 657.457 and 657.471 to 657.485.** As used in ORS 657.430 to 657.462 and 657.471 to 657.485, "computation date" means the June 30 preceding the calendar year for which tax rates are to be effective. [Amended by 1955 c.655 §17; 1957 c.699 §5; 1961 c.252 §2; 1973 c.300 §9; 1975 c.257 §9]

**657.410 Minimum wage for employee without fixed wage.** For the purpose of determining the contribution of an employer, if a workman is not employed at a fixed wage, after a fair hearing, the assistant director may establish a minimum wage at which such workman shall be carried on the payroll of the employer.

**657.415 When employer ceases to be subject to this chapter.** No employer subject to this chapter shall cease to be subject to it except upon a written application by him and after a finding by the assistant director that he was not, during and since the preceding calendar year, an employer as defined in ORS 657.025. [Amended by 1955 c.655 §18]

**657.420 Election of coverage by employers not otherwise subject.** (1) An employing unit, not otherwise subject to this chapter, which files with the assistant director its written election to become an employer subject to this chapter for not less than two calendar years, shall, with the written approv-

al of such election by the assistant director, become an employer subject to this chapter to the same extent as all other employers; as of the date stated in such approval.

(2) Such employing unit shall cease to be subject to this chapter as of January 1 of any calendar year subsequent to such two calendar years, only if at least 30 days prior to such January 1 it has filed with the assistant director a written notice of its intention to cancel such election.

(3) The election of any employing unit to become an employer subject to this chapter, as provided in this section, may be canceled by the assistant director at any time while such employing unit is in default in payment of contributions.

**657.425 Election of coverage for services that do not constitute employment as defined in this chapter.** (1) Any employing unit, for which services that do not constitute employment as defined in this chapter are performed, may file with the assistant director a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years, or if services performed for an employing unit do not constitute employment as defined by this chapter but such services are subject to the Federal Unemployment Tax Act, such employing unit may file with the assistant director a written election that such services shall be deemed to constitute employment for all the purposes of this chapter for not less than two calendar years.

(2) Upon the written approval of such election by the assistant director, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval.

(3) Such services shall cease to be deemed employment subject to this chapter as of January 1 of any calendar year subsequent to such two calendar years, only if at least 30 days prior to such January 1, such employing unit has filed with the assistant director a written notice of its intention to cancel such election. [Amended by 1971 c.463 §14; 1973 c.715 §3]

**657.430 Tax rates based on experience.** The assistant director shall, for each calendar year determine the tax rate applicable to each employer on the basis of his actual

experience with respect to benefits paid to unemployed individuals on account of wages for services performed in the employ of such employer during the base years of such unemployed individuals subject to the conditions and exceptions contained in this chapter.

[Amended by 1973 c.300 §10]

**657.435 Base rate for first year.** (1) For each calendar year beginning after December 31, 1977, an employer's tax rate shall be that rate assigned in this section to the applicable schedule I through VIII of Table A, ORS 657.462 in effect for such calendar year unless and until there have been 12 consecutive months immediately preceding the computation date, except as otherwise provided, throughout which his account has been chargeable with benefits.

Schedule of Table A, ORS 657.462	Tax Rate Assigned
I	2.7%
II	2.8%
III	3.0%
IV	3.1%
V	3.2%
VI	3.3%
VII	3.4%
VIII	3.5%

(2) Notwithstanding subsection (1) of this section, for calendar years beginning before January 1, 1980, an employer becoming subject to ORS chapter 657 as provided in subsections (1) and (7) of ORS 657.045 shall have a tax rate of three percent. [Amended by 1955 c.655 §5; 1973 c.300 §11; 1977 c.538 §1a]

**657.440** [Repealed by 1957 c.699 §12]

**657.445** [Repealed by 1957 c.699 §12]

**657.450** [Repealed by 1957 c.699 §12]

**657.451** [1955 c.655 §20; 1957 c.699 §6; 1959 c.606 §2; repealed by 1967 c.434 §2]

**657.455** [Amended by 1955 c.655 §21; 1959 c.606 §3; repealed by 1963 c.302 §4]

**657.457 Rate where employer fails to file contribution reports and pay contributions when due.** (1) Notwithstanding the provisions of this chapter, no employer's tax rate for any rating period after December 31, 1977, shall be less than the rate assigned an employer in accordance with ORS 657.435 if he has failed prior to September 1 to:

(a) File all tax reports as required by the assistant director; or

(b) Pay all taxes due.

(2) If prior to November 10 immediately following the computation date the employer establishes to the satisfaction of the assistant director good cause for his failure, the assistant director may waive the requirement of subsection (1) of this section and compute the employer's tax rate as otherwise provided in this chapter. [1957 c.699 §8(1), (2); 1967 c.435 §4; 1977 c.538 §2]

**657.458 Definitions for employer tax rate computations.** As used in this chapter unless the context requires otherwise:

(1) "High benefit cost period" means the 12 consecutive month period in the last 10 completed calendar years in which the benefit cost rate was the highest. The benefit cost rate is determined by dividing the amount of benefits paid, including the Oregon share of extended benefits attributable to employers subject to the tax, during any 12 consecutive months within the 10-year period by total wages, as defined in ORS 657.105, reported by all employers subject to the tax for the four consecutive calendar quarters which includes the quarter in which the 12 consecutive month period ended.

(2) "Average monthly employment" means the total number of persons employed in each month for 12 consecutive months, as reported by employers subject to the tax under this chapter, divided by 12.

(3) "Average weekly check amount" means the gross amount of benefit payments, excluding extended benefits, made during a 12 consecutive month period, divided by the number of such weekly payments made to all individuals receiving benefits under this chapter during that period.

(4) "Adjusted average weekly check amount" means the average weekly check amount in a calendar year plus one-half of the increase in the maximum weekly benefit amount plus one-half of the increase in the minimum weekly benefit amount from the week including July 4 immediately preceding such calendar year to the week including July 4 immediately following such calendar year.

[1969 c.157 §2 (657.458 and 657.459 enacted in lieu of 657.461); 1971 c.463 §15; 1977 c.538 §3]

**657.459 Computation of Fund Adequacy Percentage Ratio.** (1) For the purpose of computing employer tax rates for calendar

year 1978 and each year thereafter the assistant director, or his authorized representative, shall compute a "Fund Adequacy Percentage Ratio." This computation shall be made in September of each year and shall be the ratio of the amount in the Unemployment Compensation Trust Fund, as of August 31 preceding the computation, to a calculated amount of benefits which would be paid during the following calendar year if high unemployment were to occur. The calculated amount of benefits shall be determined as follows:

(a) Average monthly employment in the calendar year preceding the calculation shall be divided by the average monthly employment in the high benefit cost period with the resulting quotient carried to the fourth decimal point.

(b) The adjusted average weekly check amount for the calendar year preceding the calculation shall be divided by the average weekly check amount in the high benefit cost period with the resulting quotient carried to the fourth decimal point.

(c) The amount of benefits paid during the high benefit cost period and attributable to employers subject to the tax, including the state share of extended benefits, shall be multiplied by the quotient determined in paragraph (a) of this subsection. The resulting product shall be multiplied by the quotient determined in paragraph (b) of this subsection.

(2) The amount in the Unemployment Compensation Trust Fund, as of August 31 preceding the computation, shall be divided by the final product determined in paragraph (c) of subsection (1) of this section. The quotient obtained shall be expressed as a percentage and is the "Fund Adequacy Percentage Ratio" used to determine the applicable schedule of Table A of ORS 657.462 to be in effect for the succeeding calendar year.

(3) Notwithstanding the provisions of subsection (2) of this section, if the product obtained by multiplying 3.3 times the average monthly employment in the calendar year preceding the calculation times the adjusted average weekly check amount for the calendar year preceding the computation exceeds the amount determined in paragraph (c) of subsection (1) of this section, such product shall be used in lieu of the amount determined in paragraph (c) of subsection (1) of this section in the Trust Fund Adequacy Ratio calculation in subsection (2) of this section.

(4) Products obtained in subsections (1) and (3) of this section shall be rounded to the nearest dollar. [1969 c.157 §3 (657.458 and 657.459 enacted in lieu of 657.461); 1971 c.463 §16; 1975 c.354 §2; 1977 c.538 §4]

**657.460** [Repealed by 1959 c.606 §4]

**657.461** [1967 c.434 §5 (enacted in lieu of 657.464) repealed by 1969 c.157 §1 (657.458 and 657.459 enacted in lieu of 657.461)]

**657.462 Computation of benefit ratio; grouping employers within cumulative taxable payroll percentage limits; assignment of rates.** (1) Notwithstanding the provisions of ORS 657.430, the assistant director or his authorized representative shall, for each calendar year, compute a benefit ratio for each employer who meets the requirements of this section. For an employer whose record has been chargeable with benefits throughout the 12 preceding calendar quarters ending on the computation date, the benefit ratio shall be a quotient obtained by dividing the total benefit charges to his record in such 12 calendar quarters by the total of his taxable payrolls for the same 12 calendar quarters. For an employer whose record has been chargeable with benefits for at least four or more consecutive calendar quarters but less than 12 consecutive calendar quarters and ending on the computation date, the benefit ratio shall be the quotient obtained by dividing the total benefits charged to his record for such consecutive calendar quarters by the total of his taxable payrolls for the same period. Benefit ratios shall be carried out to the sixth decimal place.

(2) A listing shall be prepared of all employers meeting the requirements of this section and whose account is open according to Employment Division records as of August 31 following the computation date. This listing shall start with the employer having the lowest benefit ratio and progress through the employer having the highest benefit ratio. The listing shall show for each employer (a) the benefit ratio, (b) his taxable payroll for the four calendar quarters immediately preceding the computation date, and (c) a cumulative total consisting of the sum of such employer's taxable payroll and the taxable payroll of all other employers preceding him on the list.

(3) The division shall group all employers in accordance with the cumulative taxable payroll percentage limits for the schedule in effect under Table A. All employers who fall

within the same group will be assigned the tax rate for that group. However, if this grouping results in the taxable payroll of an employer falling in two groups, such employer and any other employer with the same benefit ratio shall be assigned the lower of the two

applicable rates. Fractions of a cent will be dropped in computing taxable payroll limits used in Table A. The schedule in effect shall be in accordance with the Fund Adequacy Percentage Ratios set forth in Table A.

TABLE A

(Taxable Payroll referred to is the total for all the eligible firms for the four calendar quarters preceding and ending on the computation date.)

Fund Adequacy Percentage Ratio	I	II	III	IV	V	VI	VII	VIII
	200% and over	190% but less than 200%	170% but less than 190%	145% but less than 170%	125% but less than 145%	110% but less than 125%	100% but less than 110%	Under 100%
	Cumulative Taxable Payroll Limits							
Tax Rate	(% of Total Taxable Payroll)							
1 2	0% but less than 10%							
1 3	10% but less than 15%							
1 4	15% but less than 20%							
1 5	20% but less than 25%	0% but less than 10%						
1 6	25% but less than 30%	10% but less than 15%						
1 7	30% but less than 35%	15% but less than 20%	0% but less than 10%					
1 8	35% but less than 40%	20% but less than 25%	10% but less than 15%					
1 9	40% but less than 45%	25% but less than 30%	15% but less than 20%	0% but less than 10%				
2 0	45% but less than 50%	30% but less than 35%	20% but less than 25%	10% but less than 15%	0% but less than 10%			
2 1	50% but less than 58%	35% but less than 40%	25% but less than 30%	15% but less than 20%	10% but less than 15%			
2 2	58% but less than 66%	40% but less than 45%	30% but less than 35%	20% but less than 25%	15% but less than 20%	0% but less than 10%		
2 3	66% but less than 74%	45% but less than 50%	35% but less than 40%	25% but less than 30%	20% but less than 25%	10% but less than 15%		
2 4	74% but less than 82%	50% but less than 58%	40% but less than 45%	30% but less than 35%	25% but less than 30%	15% but less than 20%	0% but less than 10%	
2 5	82% but less than 88%	58% but less than 66%	45% but less than 50%	35% but less than 40%	30% but less than 35%	20% but less than 25%	10% but less than 15%	
2 6	88% but less than 94%	66% but less than 74%	50% but less than 58%	40% but less than 45%	35% but less than 40%	25% but less than 30%	15% but less than 20%	0% but less than 10%
2 7	94% to 100%	74% but less than 82%	58% but less than 66%	45% but less than 50%	40% but less than 45%	30% but less than 35%	20% but less than 25%	10% but less than 15%
2 8		82% but less than 91%	66% but less than 74%	50% but less than 58%	45% but less than 50%	35% but less than 40%	25% but less than 30%	15% but less than 20%
2 9		91% to 100%	74% but less than 82%	58% but less than 66%	50% but less than 58%	40% but less than 45%	30% but less than 35%	20% but less than 25%
3 0			82% but less than 91%	66% but less than 74%	58% but less than 66%	45% but less than 50%	35% but less than 40%	25% but less than 30%
3 1			91% to 100%	74% but less than 82%	66% but less than 74%	50% but less than 58%	40% but less than 45%	30% but less than 35%
3 2				82% but less than 91%	74% but less than 82%	58% but less than 66%	45% but less than 50%	35% but less than 40%
3 3				91% to 100%	82% but less than 91%	66% but less than 74%	50% but less than 58%	40% but less than 45%
3 4					91% to 100%	74% but less than 82%	58% but less than 66%	45% but less than 50%
3 5						82% but less than 91%	66% but less than 74%	50% but less than 58%
3 6						91% to 100%	74% but less than 82%	58% but less than 66%
3 7							82% but less than 91%	66% but less than 74%
3 8							91% to 100%	74% but less than 82%
3 9								82% but less than 91%
4 0								91% to 100%

[1963 c.302 §2; 1967 c.434 §3; 1973 c.810 §2; 1975 c.354 §3]

**657.464** [1963 c.302 §3; repealed by 1967 c.434 §4 (657.461 enacted in lieu of 657.464)]

**657.465** [Repealed by 1955 c.655 §22 (657.466 enacted in lieu of 657.465)]

**657.466** [1955 c.655 §23 (enacted in lieu of 657.465); 1957 c.699 §9; renumbered 657.471]

**657.467 Amounts included in fund adequacy percentage ratio computations.** Notwithstanding the payment of regular and extended unemployment insurance benefits to employes of employing units which reimburse the fund in lieu of taxes from moneys in the Unemployment Compensation Trust Fund, such moneys shall be included with the balance in the Unemployment Compensation Trust Fund in any computation of a fund adequacy percentage ratio under this chapter as though said moneys had been reimbursed to the fund as provided in ORS 657.505. Should advance payments made by reimbursing employers exceed the amount of benefit payments, the excess amount shall be excluded from the fund balance. [1965 c.359 §3; subsection (2) enacted as 1967 c.435 §12; 1971 c.463 §17; 1977 c.538 §5]

**657.468** [1971 c.56 §2; repealed by 1975 c.354 §4]

**657.470** [Repealed by 1963 c.302 §4]

**657.471 Manner of charging benefits to employer.** (1) Subject to the provisions of subsections (2) to (7) of this section, benefits paid to an eligible individual shall be charged to each of his employers during the base year in the same proportion that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that year.

(2) With the exception of a political subdivision electing to pay taxes pursuant to ORS 657.509, an employer's account shall not be charged with benefits paid an unemployed individual in excess of one-third of the base year wages paid that individual while in the employ of such employer.

(3) Benefits paid to an individual for unemployment immediately after the expiration of a period of disqualification for having left work of an employer voluntarily without good cause shall not be charged to that employer.

(4) Benefits paid to an individual for unemployment immediately after the expiration of a period of disqualification for having been

discharged by an employer for misconduct shall not be charged to that employer.

(5) Benefits paid without any disqualification to an individual who has left work of an employer voluntarily for good cause not attributable to the employer shall not be charged to that employer for the immediate period of unemployment.

(6) If it is determined under the provisions of subsection (3), (4) or (5) of this section that benefits paid to an individual shall not be charged to an employer, such employer's account shall not be charged for any benefits paid for any subsequent period or periods of unemployment during that individual's affected benefit year or during any benefit year beginning within 52 weeks subsequent to the affected benefit year.

(7) If a base-year employer, not otherwise eligible for relief of charges for benefits under this section, receives notification of an initial valid determination of a claim filed by an individual who:

(a) Left work of such employer voluntarily and not attributable to the employer, such employer may request relief of charges within 20 days after the mailing of such notice thereof to his last address as shown by the records of the assistant director. The request must advise the assistant director in writing the date of such leaving and that such leaving was voluntary and not attributable to the employer and the reason therefor. Upon receipt of such notice from the employer the assistant director shall investigate the separation and if the resulting determination, which shall be made by the assistant director, establishes that the leaving was voluntary and not attributable to the employer, that employer's account shall not be charged with benefits during that individual's benefit year. If the individual was reemployed by such employer prior to the filing of his initial valid claim, the employer shall not receive relief of his account under this subsection; or

(b) Was disqualified for his most recent separation from such employer by an assistant director's decision which found he has been discharged for misconduct connected with the work, that employer may request relief of charges within 20 days after the mailing of such notice thereof to his last address as shown by the records of the assistant director. Upon receipt of such request from the employer, the assistant director shall examine division records and if the requirements of this

subsection have been met shall grant the relief of charges to that employer for benefits paid to the individual during his benefit year.

(8) The determination of the assistant director under paragraph (a) of subsection (7) of this section shall be final in all cases unless an application for hearing is filed within 20 days after delivery of such decision, or, if mailed, within 20 days after the same was mailed to the employer's last-known address. When a request for hearing has been timely filed, the assistant director shall designate a referee to conduct a hearing. After the referee has afforded all parties an opportunity for a fair hearing, he shall affirm or reverse the decision and promptly notify all parties entitled to notice of the decision and his reasons therefor. Decisions of the referee under this subsection become final and may be judicially reviewed as provided in ORS 657.684 to the extent applicable.

(9) If the assistant director finds that an employer or any employe, officer or agent of an employer, in submitting facts pursuant to subsection (7) or (8) of this section wilfully makes a false statement or representation or wilfully fails to report a material fact concerning the termination of an individual's employment, the assistant director shall make a determination thereon charging the employer's reserve account not less than two nor more than 10 times the weekly benefit amount of the claimant or claimants, as the case may be. The assistant director shall give notice to the employer of his determination under this subsection and such decision of the assistant director shall become final unless an application for hearing is filed in accordance with subsection (8) of this section. [Formerly 657.466; 1967 c.435 §5; 1973 c.300 §12; 1975 c.257 §10; 1977 c.294 §6]

657.472 [1957 c.699 §8(3); repealed by 1963 c.354 §1 (657.552, 657.652, 657.679, 657.681 and 657.683 enacted in lieu of 657.472, 657.512, 657.550 and 657.672)]

**657.473 Statement of benefits charged to employer's account.** Employers subject to this chapter may be furnished, upon written request, a statement of benefits charged to their accounts at such times and in such form as may be determined by the assistant director. Nothing in this section shall in any way be construed as to relieve an employer's account from benefit charges nor to grant any appeal therefrom. [1967 c.435 §2]

**657.475 Where a number of the same workers are normally employed by several employers; records; contributions; charging benefits.** (1) Where a number of workers are normally employed in employment in the course of a year by several employers, such employers, with the approval of the assistant director, may appoint an agent who shall maintain such records and prepare and file such returns and reports as are required under this chapter in respect to such workers, including returns and reports of wages paid and payable to such workers, and may pay the employers' contributions levied under this chapter in respect to wages paid and payable to such workers and shall perform such other acts on behalf of such employers as the assistant director may authorize, all in the same manner as though such agent were the employer of such workers.

(2) The assistant director may, by regulation, provide for the manner of crediting to each such employer the employment experience of such group of employers who have appointed such agent with respect to such workers, for the purpose of any classification of employers made pursuant to this chapter for the determination of future rates of employers' contributions.

(3) Any of such employers who operate or do business in more than one place may, with the approval of the assistant director, appoint a separate agent in each such place.

(4) This section shall not be construed to make such agent the employer of such workers, or relieve any employer of his obligations to comply with the terms of this chapter, except to the extent that such obligations are discharged by such agent.

**657.477 Related corporations as common paymaster; treatment of compensation for services.** For purposes of this chapter, if two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual, and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations. [1979 c.255 §2]

**657.480 Effect of transfer of employing unit.** If the organization, trade or business, including the entire employing enter-

prise and all its incidents for all purposes of this chapter, of any employer is by purchase or otherwise transferred to an employing unit, whether or not such acquiring employing unit was an employing unit within the meaning of ORS 657.020 prior to such acquisition, the employing unit to which the transfer is made shall assume the position of such employer with respect to such employer's experience, payrolls and otherwise the same as if there had been no change in ownership and shall be required to assume and continue the experience of such employer pursuant to ORS 657.430 to 657.475 and 657.480 to 657.487. However, no employing unit to which the organization, trade or business of an employer has been transferred is entitled to a tax rate of less than the rate assigned an employer in accordance with ORS 657.435 unless and until such employing unit, based upon its experience and the experience of the organization, trade or business transferred, has throughout the 12 consecutive months preceding the computation date had its account chargeable with benefits. [Amended by 1977 c.538 §6]

**657.485 Notice of rate; procedure for redetermination.** (1) An employer, when notified that he has been determined an employer subject to this chapter, shall also be notified of his tax rate as determined pursuant to this chapter. Such tax rate shall become conclusive and binding upon the employer unless within 20 days after the mailing of the notice to his last-known address as shown on the records of the assistant director, or in the absence of mailing, within 20 days after the delivery of such notice, the employer files a request for hearing with the assistant director, setting forth his reason therefor.

(2) An employer whose rate has been determined in accordance with the provisions of ORS 657.462, shall be notified of his tax rate not later than November 15 of the year preceding the calendar year for which the rate is applicable. An employer whose account is open according to the Employment Division records as of November 15 but whose tax rate was not determined under ORS 657.462 shall be notified of his tax rate for the following calendar year by November 15 or as soon as possible thereafter. Such tax rate shall become conclusive and binding upon the employer unless, within 20 days after the mailing of the notice to his last-known address as shown by the records of the assistant director or, in the absence of mailing, within 20 days after the delivery of such notice, the employer files

a written application for review and redetermination with the assistant director, setting forth his reasons therefor.

(3) If a valid application is filed within the time provided in subsection (2) of this section, an authorized representative of the assistant director shall review the determination and notify the employer in writing thereof. If the review results in a change in either the employer's tax rate or information included on the original tax rate notice, an amended notice shall be provided the employer.

(4) The decision of the authorized representative reflecting the result of the review provided for in subsection (3) of this section shall become final and conclusive and binding upon the employer unless the employer, within 20 days after delivery of the notice, or if mailed, within 20 days after the same was mailed to his last-known address, files a request for hearing with the assistant director. The request shall be in writing and shall state that the decision of the authorized representative is incorrect and the reasons therefor.

(5) When a valid request for hearing has been filed, as provided in subsections (1) and (4) of this section, a referee designated by the assistant director shall grant a hearing unless a hearing has previously been afforded the employer on the same grounds as set forth in the request. The referee shall give notice of the time and place of hearing to the assistant director or his authorized representative and shall also give notice to the employer by mail directed to the last-known address of record with the assistant director. Hearings under this subsection shall be conducted in accordance with this chapter and the rules of the assistant director. The filing of a request for hearing with respect to a disputed tax rate shall not affect the right of the assistant director or his authorized representative to perfect any liens provided by this chapter.

(6) After hearing, the referee shall enter his findings of fact and decision either affirming or modifying the tax rate notice. The employer and the assistant director shall be promptly notified of the decision of the referee. All testimony at any hearing held before a referee under this section shall be recorded but need not be transcribed unless a petition for judicial review from the decision of the referee is filed in the manner and within the time prescribed in ORS 657.487.

(7) A decision of the referee shall become final on the date of notification or the mailing

thereof to the assistant director and to the employer at his last-known address of record with the assistant director, and shall become conclusive and binding upon the employer and the assistant director unless a petition for judicial review is filed in the manner and within the time prescribed in ORS 657.487.

(8) No employer shall have any standing, in any proceeding involving his tax rate or tax liability, to contest the chargeability to his account of any benefits paid in accordance with a determination, redetermination or decision pursuant to ORS 657.265 to 657.290, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him or for a predecessor employer and only in the event that he or the predecessor was not a party to such determination, redetermination or decision or to any other proceeding under this chapter in which the character of such service was determined. At any hearing under this section the tax rate determined by the assistant director or his authorized representative shall be prima facie correct and the burden shall be upon the protesting employer to prove it is incorrect. [Amended by 1959 c.583 §22; 1965 c.210 §5; 1971 c.734 §95; 1977 c.538 §7]

**657.487 Judicial review of decisions or orders under ORS 657.485.** Judicial review of decisions or orders under ORS 657.485 shall be as provided for review of orders in contested cases in ORS 183.310 to 183.500, except that the petition shall be filed within 20 days after the order is final. The assistant director may file petition for judicial review in accordance with this section from decisions of the referee. [1971 c.734 §97; 1977 c.538 §8]

**657.490 Employer or his employe has no prior right to employer's contributions.** This chapter shall not be construed to grant any employer or any individual in his service prior claims or rights to the amount paid by the employer into the fund.

**657.495 Fraud in lowering contributions.** No person shall wilfully make a false statement or misrepresentation to lower contributions paid to the fund.

## COLLECTION OF TAXES

**657.504 Applicability of certain non-charging provisions.** The noncharging provisions of this chapter, including but not limited to ORS 657.327, 657.360, 657.471 and 657.770, do not apply to employers making reimbursement payments or payments in lieu of taxes in accordance with ORS 657.505. [1973 c.118 §4]

**657.505 Payment of and liability for taxes.** (1) On and after January 1, 1936, taxes shall be payable by each employer then subject to this chapter. Taxes shall become payable by any other employer on and after the date on which he becomes subject to this chapter.

(2) An employer shall be liable for taxes on all wages paid for services performed on or after the first day of a calendar quarter.

(3) Taxes of an employer shall not become payable until this chapter has been approved by the Secretary of Labor, and notice of such approval has been given to the Governor as provided in section 3304 of the Federal Unemployment Tax Act.

(4) All taxes shall be paid to and collected by the assistant director at such times and in such manner as the assistant director may prescribe and upon collection, shall be deposited in the Unemployment Compensation Trust Fund.

(5) In lieu of taxes required of all other employers subject to this chapter, the state shall pay into the fund an amount equivalent to the amounts of regular benefits and one-half of extended benefits paid out to claimants who during the applicable base year were paid wages by the state. Payments required under this section shall be payable from the General Fund of the state except that if a claimant was paid wages by the state during the base year from a special or administrative fund provided for by law, the payment into the fund shall be made from such special or administrative fund with the approval of the Executive Department.

(6) Any political subdivision subject to this chapter shall in lieu of taxes required of other employers subject to this chapter, pay into the fund an amount equivalent to the amount of regular benefits and one-half of extended benefits paid out to claimants who during the applicable base year were paid wages by the political subdivision.

(7) Notwithstanding the provisions of subsections (5) and (6) of this section for weeks of unemployment beginning on or after January 1, 1979, the state and political subdivisions shall pay into the fund an amount equivalent to the amount of regular benefits and all extended benefits paid to claimants who during the applicable base year were paid wages by the state or a political subdivision.

(8) (a) Any nonprofit employing unit as defined in subsection (2) of ORS 657.072, subject to or electing coverage under this chapter shall pay taxes under the provisions of ORS 657.475 and 657.480. However, such nonprofit employing unit may elect to make reimbursement payments into the Unemployment Compensation Trust Fund in an amount equivalent to the amount of regular benefits and one-half of extended benefits paid out to claimants who during the applicable base period were paid wages by such nonprofit employing unit. Such reimbursement payments shall be deemed to be taxes for all purposes of this chapter.

(b) A nonprofit employing unit may elect to make reimbursement payments by filing with the assistant director a written notice to this effect within the 30-day period following the close of the calendar quarter in which the employing unit became an employer. A nonprofit employing unit failing to submit a timely notice of election of reimbursement shall be liable for taxes on any wages paid for services performed for such employing unit for two calendar years. Such employing unit will remain liable for taxes for any calendar year thereafter unless a written notice of election of reimbursement is filed with the assistant director by January 31 of such calendar year. The assistant director shall for good cause extend the period within which a notice of election of reimbursement must be filed for an additional 30 days.

(c) Elections of reimbursement shall continue until canceled but shall be for a period of not less than two calendar years. Any nonprofit employing unit may cancel such election, and pay taxes as any other employer, by filing with the assistant director a written notice of its intention to cancel such election by January 31 of the year in which the cancellation is to be effective. The assistant director may for good cause extend the period within which a notice of cancellation may be filed for an additional 30 days. Once a cancellation is effective the nonprofit employing unit must pay taxes for two calendar years before it is

again eligible for election of reimbursement. An employer whose election of reimbursement has been canceled shall thereafter be liable for taxes at the rate assigned an employer in accordance with ORS 657.435 until such employer is eligible for a rate based on his experience in accordance with the provisions of ORS 657.475 and 657.480.

(d) Each nonprofit employing unit that elects to reimburse the fund shall, within 30 days after the effective date of its election, either execute and file with the assistant director a surety bond or deposit with the assistant director money or other security as approved by the assistant director. The amount of the bond or deposit shall be determined as a percentage of the employing unit's total wages paid for employment covered by this chapter for the four calendar quarters immediately preceding the effective date of the election. The following schedule shall apply in determining the amount of bond or deposit:

Four Quarter Payroll	Percent
Under \$100,000	2.0
\$ 100,000 to \$499,999	1.5
500,000 to 999,999	1.0
1,000,000 and over	0.5

If the nonprofit employing unit did not pay wages in each of such four calendar quarters, the amount of the bond or deposit shall be as determined by the assistant director. The amount of the bond or deposit as determined by the schedule in this subsection shall not exceed the amount of taxes the employing unit would have been assessed at the maximum tax rate for the same period had not the employing unit elected to make reimbursement payments. However, no surety bond or deposit shall be required of an institution of higher education, unless in the discretion of the assistant director he determines that a surety bond or deposit shall be required of such an institution.

(A) Any bond deposited under this paragraph shall be in force for a period of not less than two calendar years and shall be renewed with the approval of the assistant director, at such times as the assistant director may prescribe, but not less frequently than at two year intervals as long as the employing unit continues to be liable for reimbursement

payments. The assistant director shall require adjustments to be made in a previously filed bond as he deems appropriate. If the bond is to be increased, the bond shall be filed by the employing unit within 30 days of the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any employing unit covered by such bond to pay the full amount of reimbursements when due, together with any applicable interest and penalties, shall render the surety liable on said bond to the extent of the amount thereof including interest and penalties assessed pursuant to this chapter.

(B) Any deposit of money or security in accordance with this paragraph shall be retained by the assistant director. Money shall be deposited in the Employment Tax Guarantee Fund. When liability under the election is terminated the deposit shall be returned to the employing unit, less any deductions as hereinafter provided. The assistant director may transfer moneys from the Employment Tax Guarantee Fund or sell securities deposited as necessary to satisfy any due and unpaid reimbursements and any applicable interest and penalties. The assistant director shall require the employing unit within 30 days following transfer of a money deposit or sale of securities to deposit sufficient additional money or securities to restore the original deposit in full. The assistant director may, at any time, review the adequacy of the deposit made by any employing unit. If, as a result of such review, he determines that an adjustment is necessary, he shall require the employing unit to make an additional deposit within 30 days of written notice of his determination or shall return to it such portion of the deposit as he no longer considers necessary, whichever action is appropriate.

(C) If any nonprofit employing unit fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided in this section, the assistant director may terminate such employing unit's election to make reimbursement payments. The assistant director may extend for good cause the applicable filing, deposit or adjustment period by not more than 30 days. An employing unit having its election terminated under this section shall pay taxes for a period of two calendar years before it is again eligible for election to reimburse.

(9) (a) At the end of each calendar quarter, or at the end of any other period as prescribed

by the assistant director, the assistant director shall determine the amount of payments in lieu of taxes or reimbursement payments required, under subsections (5), (6), (7) and (8) of this section, and shall bill each employer for such amount. If a claimant during a base year was employed by an employer liable for payments in lieu of taxes or reimbursement payments and other employers subject to the tax rate provisions of this chapter, the amount to be paid into the fund by employers liable for payments in lieu of taxes or reimbursement payments shall be an amount which is in the same proportion that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that year.

(b) In determining the amount of payments in lieu of taxes or reimbursement payments, benefits paid for any reason shall be included if such benefits or any portion thereof were paid as a result of wages earned in the employ of an employer required to make reimbursing payments or payments in lieu of taxes. Such benefits paid includes but is not limited to payments made as a result of a determination or payments erroneously or incorrectly paid or paid as a result of a determination of eligibility which is subsequently reversed. Any benefit payments described in this paragraph that are subsequently recovered by the division will be credited on a pro rata basis to the account of the employer that reimbursed the fund for such benefits.

(c) Payment of any bill rendered under paragraph (a) of this subsection shall be made not later than the last day of the month immediately following the month in which such bill was mailed to the last-known address of the employer or was otherwise delivered to it. The assistant director may assess a nonprofit employing unit for past due taxes and such assessment shall be subject to the same interest, penalties, enforcement, appeal and any other provisions of this chapter that apply to taxes assessed pursuant to ORS 657.681.

(d) If a nonprofit employing unit is delinquent in making reimbursement payments as required under this section, the assistant director may terminate such employing unit's election and such employing unit must pay taxes for two calendar years before it is again eligible for election of reimbursement. Any employer whose election is terminated under provisions of this section shall remain liable for reimbursement payments for any benefits

paid based on wages received prior to the effective date of termination of the election.

(10) Notwithstanding the provisions of subsections (5), (6), (7), (8) and (9) of this section, each employing unit that is required to make payments in lieu of taxes or has elected to make reimbursement payments may request permission to make advance or budget payments in accordance with rules adopted by the assistant director.

(11) Two or more employers that have become liable for payments in lieu of taxes or reimbursement payments, in accordance with the provisions of subsections (5), (6), (7) and (8) of this section, may file a joint application to the assistant director for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this subsection. Upon his approval of the application, the assistant director shall establish a group account for such employers effective as of the beginning of the calendar quarter in which he receives the application and shall notify the group's agent of the effective date of the account. Such account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the assistant director or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group. The assistant director shall prescribe such regulations as he deems necessary with respect to application for establishment, maintenance and termination of group accounts. This subsection shall not be construed to make such agent the employer of such workers, or relieve any employer of his obligations to comply with the terms of this chapter, except to the extent that such obligations are discharged by such agent as provided thereunder. [Amended by 1957 c.682 §6; 1971 c.463 §18; 1973 c.118 §2; 1977 c.446 §7]

**657.506 When leader of musicians' group responsible for taxes.** If services are performed by a musician as a member of a group which has a written contract between the leader of the group and a person or organization by whom the group is engaged, the

terms of which provide that the leader of the group shall be deemed the responsible party of the members of the group, then such contract shall be conclusive evidence that the leader is the responsible party and is responsible for the filing of reports and the payment of all employment taxes based upon the wages or earnings of the musicians performing services under the contract. [1965 c.392 §2; 1977 c.538 §9]

**657.507 Employer's deposit or bond as security for payment of contributions.**

(1) If upon satisfactory evidence the assistant director finds it necessary for the protection of the Unemployment Compensation Trust Fund, he may require any employer subject to this chapter, except the state, including every state officer, board, commission, department, institution, branch, agency or political subdivision, to deposit and keep on deposit, with the assistant director, a sum equal to the contributions due the assistant director upon the employer's payroll or estimated payroll covering a period of three calendar quarters.

(2) The assistant director may, in his discretion and in lieu of such deposit, accept a bond in a form acceptable to the assistant director to secure payment of contributions to become due the fund. The deposit or posting of the bond shall not relieve the employer from making contributions to the fund based on his payroll as provided by this chapter. The assistant director may, in his discretion, at any time apply such deposit or bond or part thereof to the delinquencies or indebtedness of the employer arising under any provision of this chapter.

(3) Any deposit or bond shall be deemed for all purposes to become the sole property of the assistant director and shall be deposited in the Employment Tax Guarantee Fund and held for the sole benefit of the Unemployment Compensation Trust Fund and the Employment Division Special Administrative Fund, subject only to subsection (4) of this section. The deposit or bond shall be prior to all other liens, claims or encumbrances and shall be exempt from any process, attachment, garnishment or execution whatsoever and shall be for the sole benefit of the Unemployment Compensation Trust Fund and the Employment Division Special Administrative Fund except as provided in subsection (4) of this section.

(4) If an employer ceases to be an employer subject to this chapter, the assistant director shall, upon receipt of all payments due the

fund based on the employer's payroll, refund to the employer all deposits remaining to the employer's credit and shall cancel any bond given under this section. Such sums as are on deposit in the Employment Tax Guarantee Fund or bonds held for the benefit of the Unemployment Compensation Trust Fund shall first be applied to any indebtedness or deficiencies due from the employer to the Unemployment Compensation Trust Fund and the Employment Division Special Administrative Fund under any provisions of this chapter before any return is made to the employer. The employer shall have no interest in such deposit or bond prior to full compliance with this section and all provisions of this chapter. [1959 c.598 §7; 1967 c.435 §6]

**657.508 Failure to comply with ORS 657.507.** (1) If an employer fails to comply with ORS 657.507, the circuit court of the county in which the employer resides or in which he engages in business shall, upon the commencement of a suit by the assistant director for that purpose, enjoin the employer from further employing individuals in this state or continuing in business therein until the employer has complied with ORS 657.507.

(2) Upon filing of a suit for such purpose by the assistant director, the court shall set a day for hearing and shall cause notice thereof to be served upon the employer. The hearing shall be not less than five nor more than 15 days from the service of the notice. [1959 c.598 §8; 1967 c.435 §7]

**657.509 Taxes from political subdivisions and people's utility districts; election; effect of canceling election; applicability of noncharging provisions.** (1) Instead of the amount to be paid into the fund under provisions of subsections (6) and (7) of ORS 657.505, a political subdivision may elect to pay taxes in accordance with the provisions of ORS 657.430 and 657.480. The election shall be on forms prescribed by the assistant director and must be filed within the 30-day period following the close of the calendar quarter in which the political subdivision became an employer. An employer failing to submit a timely notice of election under this section shall be liable under provisions of subsections (6) and (7) of ORS 657.505 for a minimum of two calendar years. Thereafter such employer may file a written election to pay taxes. Such election must be filed by January 31 of the calendar year for which the election is to be effective. The assistant direc-

tor may for good cause extend the period within which an election must be filed for an additional 30 days.

(2) An election shall continue until canceled but shall be for a period of not less than two calendar years. An employer may cancel such election by filing with the assistant director a written notice of its intention to cancel by January 31 of the year in which the cancellation is to be effective. The assistant director may for good cause extend the period within which a notice of cancellation may be filed for an additional 30 days. Once a cancellation is effective, the political subdivision must pay amounts in accordance with subsections (6) and (7) of ORS 657.505 for two calendar years before it is again eligible to elect payment under this section.

(3) All noncharging provisions of this chapter shall apply to political subdivisions electing to pay taxes under this section, except that with respect to ORS 657.327, one-half of extended benefits applicable to a political subdivision paying taxes under this section shall be charged to the political subdivision.

(4) Notwithstanding the provisions of subsections (1) and (2) of this section, any political subdivision may elect to pay taxes or cancel a tax election effective January 1, 1978, if such election or notice of cancellation is filed by January 31, 1978. The assistant director may for good cause extend the period for filing an election for an additional 30 days. [1973 c.715 §5; 1975 c.156 §3; 1977 c.446 §8]

**657.510 Refunds.** If not later than three years after the date on which any contributions, interest, fines or penalties were paid pursuant to this 1965 Act, an employer who has paid such contributions, interest, fines or penalties makes application for an adjustment thereof in connection with subsequent contributions, interest, fine or penalty payments, or for a refund thereof because such adjustment cannot be made, and the assistant director determines that such contributions, interest, fines or penalties, or any portion thereof were collected erroneously, the assistant director shall allow such employer to make an adjustment of the amount erroneously paid, without interest, in connection with subsequent contributions, interest, fine or penalty payments by him or, if such adjustment cannot be made, the assistant director shall refund said amount, without interest, from the Unemployment Compensation Trust Fund or from the Employment Division Special Administrative

Fund, as applicable; provided that the assistant director shall not allow any adjustment in connection with subsequent contributions for amounts of interest, fines or penalty payments collected or received subsequent to July 1, 1965, nor shall he refund any such payment from the fund except that he may refund any such payment from the interest, fine and penalty collected after such date which are temporarily in the fund for clearance pending transfer to the Employment Division Special Administrative Fund. For like cause and within the same period, adjustment or refund from the Unemployment Compensation Trust Fund and the Employment Division Special Administrative Fund, as appropriate, may be so made on the assistant director's own initiative. Refunds of contributions pursuant to subsection (1) of ORS 657.065 shall be refunded by the assistant director from the fund without application. When refunds of contributions are made pursuant to subsection (1) of ORS 657.065, refunds of fines, penalties and interest, if any, shall be made from the Employment Division Special Administrative Fund without application. [Amended by 1965 c.359 §4]

**Note:** The Legislative Counsel has not, pursuant to 173.160, substituted ORS numbers for the words "this 1965 Act" in 657.510. 1965 c.359 enacted 293.707, 657.467(1) and 657.822, and amended 657.510, 657.515, 657.540, 657.805 and 657.830

**657.511** [1973 c.810 §5; repealed by 1977 c.538 §14]

**657.512** [1959 c.598 §4; repealed by 1963 c.354 §1 (657.552, 657.652, 657.679, 657.681 and 657.683 enacted in lieu of 657.472, 657.512, 657.550 and 657.672)]

**657.513 Political subdivision contribution payments from Local Government Employer Benefit Trust Fund.** (1) A political subdivision required to make payments into the Unemployment Compensation Trust Fund under ORS 657.505 may request the State Treasurer, with his approval, to pay on behalf of the political subdivision such amounts as the political subdivision is required to pay into the fund. The request shall be in writing, filed with the assistant director no later than January 31, 1978, and be effective July 1, 1978. A political subdivision which is not an employer under this chapter during the quarter ending December 31, 1977, must file a request within the 30-day period following the close of the calendar quarter in which the political subdivision becomes an employer. Thereafter, the employer may request the State Treasurer to pay on its behalf such amounts as the political subdivision is

required to pay into the fund. This request must be filed with the assistant director by January 31 of any year in order to be effective July 1 of that year.

(2) A request shall continue until canceled but shall be for a period of not less than two years. A political subdivision may cancel its request by filing a written notice of its intention to cancel with the assistant director by January 31 of the year in which the cancellation is to be effective. A cancellation shall be effective only on June 30 of a year. The political subdivision shall be responsible for paying into the Unemployment Compensation Trust Fund any amounts paid out to claimants after the effective date of a cancellation and attributable to base period wages paid by the political subdivision during a period it was subject to the provisions of ORS 293.701, 294.725 to 294.755, 657.505 or this section.

(3) The assistant director may for good cause extend the period within which a request or cancellation of a request must be filed for an additional 30 days.

(4) The State Treasurer shall pay into the Unemployment Compensation Trust Fund from the Local Government Employer Benefit Trust Fund such amounts of benefits that are paid to claimants during the period the political subdivision is a participant in the Local Government Employer Benefit Trust Fund created by ORS 294.730. Benefits paid to claimants during a period when the political subdivision is not a participant shall be reimbursed directly to the Unemployment Compensation Trust Fund by the political subdivision. [1977 c.491 §2]

**657.515 Delinquent taxes; interest; civil penalties; collection by civil action; settlement.** (1) If an employer defaults with respect to any payment required to be made by him to the Unemployment Compensation Trust Fund, the taxes at any time due, together with interest thereon and penalties, shall be collected by the assistant director in a civil action against such employer brought in the name of the assistant director and judgment rendered thereon shall bear interest at the rate provided in subsection (2) of this section. Such employer's compliance with this chapter, requiring payments to be made to the Unemployment Compensation Trust Fund, shall date from the time said money was collected. The amount of taxes collected shall be paid into the Unemployment Compensation Trust Fund. The amount of interest, penalties and

finer collected pursuant to this subsection shall be paid to the Employment Division Special Administrative Fund in accordance with the provisions of subsection (3) of ORS 657.830.

(2) Interest upon the amount due from an employer shall be paid and shall be collected, at the same time payment of taxes is required to be made by such employer to the Unemployment Compensation Trust Fund at the rate of one percent per month from the date prescribed for the payment to the Unemployment Compensation Trust Fund. In computing such interest, a fraction of a month shall be counted as a full month.

(3) If any employer fails to make payment of taxes required by this chapter at the time prescribed by the assistant director for the payment thereof, such employer shall be in default.

(4) If any employer who is in default with respect to payment of any taxes fails to make payment thereof within 10 days after written demand therefor has been made by the assistant director, such employer shall be subject, in the discretion of the assistant director, to a penalty of 10 percent of the amount of such taxes. A demand for payment shall be deemed to have been made when deposited in the mail addressed to such employer at his last-known address as shown by the records of the assistant director.

(5) If any part of any deficiency is due to fraud with intent to avoid payment of taxes to the Unemployment Compensation Trust Fund, then 50 percent of the total amount of the deficiency, in addition to such deficiency, shall be assessed, collected and paid in the same manner as if it were a deficiency and shall be paid into the Employment Division Special Administrative Fund pursuant to this section and ORS 657.822.

(6) Civil actions brought in the name of the assistant director under this section to collect taxes, interest or penalties from an employer, shall be entitled to preference upon the calendar over all civil cases which involve only private parties.

(7) Notwithstanding the provisions of this section, if the assistant director finds that the total interest collectible on any delinquent account is in excess of 25 percent of the principal and that an employer or former employer, who no longer conducts an active business, has insufficient net assets to pay the full amount of all taxes, interest or penalties that

may be due and where such employer or former employer can pay some but not all of such amount, the assistant director may agree to accept any amount he finds reasonable under the circumstances, as consideration for the settlement of the full amount of taxes, interest or penalties due. Whenever such an agreement is made a written record signed by the assistant director shall be maintained in the files of the assistant director. Such records shall set forth:

(a) The name of the taxpayer against whom the liability was assessed;

(b) The amount of the assessed liability;

(c) The amount of the liability paid;

(d) The amount of the liability canceled or waived;

(e) A sworn statement of the taxpayer or his personal representative setting forth the complete financial responsibility of the taxpayer or his estate, and containing a full disclosure of all matters bearing upon the ability of the taxpayer or his estate to pay the full amount of the liability assessed; and

(f) The written recommendation of an assistant to the Attorney General assigned to the assistant director that the liability be reduced in the amount shown by the record.

(8) A full and true copy of the record of each such agreement and settlement as provided in subsection (7) of this section shall be filed by the assistant director with the Secretary of State as a public record.

(9) The amount of any settlement reached pursuant to this section shall be first credited to the taxes due from such employer until the principal amount of taxes due has been satisfied and shall be deposited in the Unemployment Compensation Trust Fund. [Amended by 1959 c.598 §1; 1963 c.390 §1; 1965 c.359 §5; 1977 c.538 §10]

**657.517 Authority of assistant director to compromise or adjust debts or overpayments.** The assistant director may waive, reduce or compromise any tax or interest balance of \$1 or less or retain any overpayment of \$1 or less when in the judgment of the assistant director the best interests of the Employment Division is served thereby. [1969 c.57 §2]

**657.520 Claims for contribution are preferred.** All contributions, interest charges, penalties or amounts due the Unemployment Compensation Trust Fund from any employer

under this chapter and all judgments recovered by the assistant director against any employer under this chapter shall be given the same priority as taxes and shall be deemed preferred to all general claims in all bankruptcy proceedings, trustee proceedings, proceedings for the administration of estates, receiverships and assignments for the benefits of creditors involving the employer liable therefor or the property of such employer.

**657.525 Lien on subjects and products of labor for which contributions are due.** A lien is created in favor of the assistant director upon all real property within this state and any structure or improvement thereon and upon any mine, lode, deposit, mining claim, road, tramway, trail, flume, ditch, pipeline, building or other structure or equipment on or pertaining thereto, and upon all lumber, sawlogs, spars, piles, ties or other timber, and upon all other manufactured articles of whatsoever kind or nature upon which labor is performed by the workmen of any employer subject to this chapter, in a sum equal to the amount at any time due from such employer to the assistant director on account of labor performed thereon by the workmen of such employer, together with interest and penalties.

**657.530 Lien on property used in connection with employment on which contributions are due.** The assistant director also shall have a lien upon all real or personal property of the employer used in connection with the employment on which contributions are due, in a sum equal to the amount at any time due from any employer subject to this chapter on account of labor performed by the workmen of such employer, together with interest and penalty.

**657.535 Liens under ORS 657.525 or 657.530; priority; filing statement of lien; foreclosure.** (1) The liens created by ORS 657.525 and 657.530 shall be prior to all other liens and encumbrances, except labor liens and taxes, and they shall have equal priority with other tax liens.

(2) In order to avail himself of such liens, the assistant director shall, within 60 days after the employer is in default, as provided in subsection (3) of ORS 657.515, file with the county clerk of the county within which such property is then situated, a statement in writing describing the property upon which a lien is claimed and stating the amount of the lien

claimed by the assistant director. If a lien is claimed on real property not then owned by the employer, such statement must be filed within 60 days from the completion of the work.

(3) When a lien is claimed on real property, the assistant director shall, within one year from the filing of the statement, commence a suit to cause such lien to be foreclosed in the manner provided by law for the foreclosure of other liens on real or personal property. If the lien is claimed on personal property, the assistant director may, within one year from the filing of the statement, commence foreclosure proceedings as provided in ORS 87.110 and 87.115.

**657.540 Lien on all property of defaulting employer; recording; priority; foreclosure.** (1) If an employer liable for the payment of contributions to the Unemployment Compensation Trust Fund is in default, as provided in subsection (3) of ORS 657.515, the amount of contributions, interest and penalties due shall be a lien in favor of the assistant director upon all property, whether real or personal, belonging to such employer and shall attach upon the filing of a notice of claim of lien with the county clerk of the county in which the property is located.

(2) The notice of lien claim shall contain a true statement of the demand, after deducting all just credits and offsets, and the default of such employer. The county clerk shall record said claim of lien in a book kept for that purpose, which record shall be indexed as deeds and other instruments.

(3) The lien created by this section is prior to all liens and encumbrances recorded subsequent to the filing of notice of claim of lien, except taxes and labor liens.

(4) The lien created by this section may be foreclosed by a suit in the circuit court in the manner provided by law for the foreclosure of other liens on real or personal property.

[Amended by 1965 c.359 §6]

**657.542 Filing liens with Secretary of State.** (1) Any lien filed as provided in ORS 657.535 and 657.540 may also be filed in the office of the Secretary of State. Filing in the office of the Secretary of State shall be of no effect, however, until the lien or copy thereof shall have been filed with the county clerk in the county where the property is situated at the time of the execution of the lien.

(2) When a lien is filed in compliance herewith and with the Secretary of State, such filing shall have the same effect as if the lien had been duly filed for record with the county clerk in each county of this state.

(3) A lien so filed with the Secretary of State shall be filed and indexed by the Secretary of State in the same manner as is provided in ORS 79.4010 for the filing and indexing of financing statements. [1959 c.598 §9; 1961 c.726 §425]

**657.545 Release of lien of ORS 657.540 by bond.** (1) The employer against whose property a lien has been filed under ORS 657.540 may cause his property to be released by filing with the county clerk of the county wherein such lien is recorded a bond in a sum double the amount claimed in said lien, executed by a surety company licensed to do business in Oregon or by two freeholders of this state, having the qualifications of bail upon arrest, to be approved by the circuit judge of the district in which said lien is filed, or, in the event of his absence from the county in which said lien is filed, then by the county judge of said county, running to the assistant director and conditioned for the payment of all damages, costs, charges and disbursements that may be recovered by the assistant director against such employer or that may be found to be a lien upon or against the property of such employer.

(2) The clerk shall issue to such employer a certificate stating that the bond is substituted in lieu of the property of said employer and that the lien on said property is forever released and discharged. A marginal entry of said release and bond shall be made in the lien docket containing the original record of statement of claim.

(3) If the assistant director establishes the validity of his lien by a suit to foreclose the same, he is entitled to judgment or decree against the sureties upon said bond.

**657.550** [Amended by 1959 c.598 §2; repealed by 1963 c.354 §1 (657.552, 657.652, 657.679, 657.681 and 657.683 enacted in lieu of 657.472, 657.512, 657.550 and 657.672)]

**657.552 Limitations on notices of assessment and on actions to collect contributions, interest and penalties.** (1) Except in the case of failure without good cause to file a return, fraud or intent to evade any provision of this chapter or authorized regulations, every notice of assessment shall be given within four years after the last day of

the month following the close of the calendar quarter during which the contribution liability included in the assessment accrued. An employer may waive this limitation period or may consent to its extension.

(2) In case of failure without good cause to file a return, every notice of assessment shall be given within eight years after the last day of the month following the close of the calendar quarter during which the contribution liability included in the assessment accrued. An employer may waive this limitation period or may consent to its extension.

(3) No action or suit shall be commenced to collect any amount of contributions, interest or penalties due under assessment unless such action or suit is commenced within three years from the date of the assessment, except in the case of fraud or intent to evade any provision of this chapter or authorized regulations, an action or suit may be commenced at any time.

(4) If the cause of action or suit accrues or has accrued against any employer who is out of the state or concealed therein, such action or suit may be commenced within three years after the return of such employer into the state, or the time of his concealment has ended; provided, however, actions to collect contributions, interest or penalties thereon which became due and payable prior to July 5, 1947, and suits to foreclose any lien therefor which is in existence on July 5, 1947, shall be commenced within three years after July 1, 1947. [1963 c.354 §5 (657.552, 657.652, 657.679, 657.681 and 657.683 enacted in lieu of 657.472, 657.512, 657.550 and 657.672)]

**657.555 Authority to release, compromise or satisfy liens.** Any lien provided for in ORS 657.525 to 657.540 may be released, compromised or satisfied by the assistant director, and the property against which a lien is claimed shall be released therefrom by filing a notice of such release or satisfaction with the county clerk of the county in which the notice of lien claim was filed.

**657.557 Remedies for collection of contributions not exclusive.** Remedies given to the assistant director under this chapter for the collection of contributions, interest and penalties shall be cumulative and no action taken by the assistant director or his duly authorized representative, the Attorney General, or any other officer, shall be construed to be an election on the part of the

state or any of its officers to pursue any remedy to the exclusion of any other. [1959 c.598 §5]

**657.560 Joining assistant director in actions involving title of property subject to assistant director's lien.** The assistant director may be made a party to any suit or action involving the title to real or personal property against which the assistant director has or may claim a lien under this chapter.

**657.565 Unlawful practices of employer.** (1) No employer or agent of any employer shall wilfully refuse or fail to pay a contribution to the fund or to furnish any report, audit or information duly required by the assistant director under this chapter.

(2) No employer shall make a deduction from the wages or salary of any employe to pay any portion of the contribution which the employer is required to make.

### EMPLOYMENT DIVISION; ADMINISTRATION GENERALLY

**657.601 Employment Division.** There is established an Employment Division. The division consists of an assistant director and such other personnel as may be necessary for the efficient performance of the functions of the division. [1969 c.597 §176]

**657.605** [Repealed by 1959 c.583 §24]

**657.606** [1959 c.583 §2; repealed by 1969 c.597 §281]

**657.608 Assistant Director for Employment.** (1) The Employment Division shall be under the supervision and control of an assistant director who shall be appointed as provided in ORS 176.620.

(2) The Assistant Director for Employment shall administer the provisions of this chapter and exercise all the powers, duties and functions exercised before July 1, 1959, by the State Unemployment Compensation Commission.

(3) The assistant director shall receive such salary as may be provided by law which shall be paid out of the Unemployment Compensation Administration Fund. [1959 c.583 §3; 1969 c.597 §179; 1969 c.695 §13]

**657.610 Powers and duties generally; rules and regulations.** (1) The assistant director shall determine all questions of general policy and promulgate rules and regula-

tions and be responsible for the administration of this chapter.

(2) The assistant director in his name may sue and be sued, and shall have a seal which shall bear the name of the Employment Division.

(3) The assistant director may adopt proper rules to govern his proceedings and to regulate the mode and manner of all investigations and hearings before referees appointed by him or the Employment Appeals Board.

(4) The assistant director may prescribe the time, place and manner of making claims for benefits under this chapter, the kind and character of notices required thereunder and the procedure for investigation, hearing and deciding claims. [Amended by 1959 c.583 §23; 1969 c.597 §180]

**657.615 Investigations and recommendations to the legislature.** The assistant director may:

(1) Carry on investigations of the operation of unemployment insurance in Oregon, including related subjects and publish the results thereof.

(2) Investigate the operations of the fund, the relation of contribution rates to the risks of unemployment, the adequacy of contribution rates.

(3) Recommend to the legislature from time to time any advisable changes in the contribution rates or benefits and any other changes in the state laws relating to unemployment insurance.

**657.620 Determination of adequate fund reserve; modification of benefits and eligibility regulations in case of emergency.** (1) The assistant director shall, from time to time, after investigation, reasonable public notice, and a public hearing at which any interested party is afforded an opportunity to be heard, determine or redetermine what amount of reserve reasonably is needed in the fund to assure the payment of benefits under this chapter.

(2) In the event of general and extended unemployment, such that the reserve of the fund is reduced below the amount of reserve so determined, the assistant director may declare an emergency and announce a modified scale of benefits, an increased waiting period or other changes in the rules and regulations regarding eligibility for a receipt of

benefits which he considers necessary to maintain the reserves of the fund.

**657.625 Publication of rules; special reports.** (1) The assistant director shall cause to be printed in proper form for distribution his classification, rates, rules, regulations and rules of procedure and furnish the same to any person upon application therefor. The fact that such classifications, rates, rules, regulations and rules of procedure are printed ready for distribution to all who apply for the same, shall be a sufficient publication of the same as required by this chapter.

(2) The assistant director may also publish from time to time any special reports of the results of any investigation which he may have conducted.

(3) The assistant director shall publish in suitable form information concerning the rights of employes under this chapter and such other information concerning this chapter and the regulations pursuant thereto as he considers suitable and proper, and require every employer to post such publications at his place of employment. [Amended by 1975 c.605 §31]

**657.630 Quasi-judicial powers in administrative hearings.** The assistant director may act in his own behalf or by any of his duly authorized agents or assistants in the following:

(1) To hold sessions at any place within the state.

(2) To administer oaths.

(3) To issue and serve by the assistant director's representative, or by any sheriff, subpoenas for the attendance of witnesses and the production of papers, contracts, books, accounts, documents and testimony. The assistant director may require the attendance and testimony of employers, their officers and representatives before any hearing of the assistant director and the production by employers of books, records, papers and documents without payment or tender of witness fees on account of that attendance.

(4) Generally to provide for the taking of testimony and for the recording of proceedings held in accordance with this chapter. [Amended by 1957 c.699 §10]

**657.635 Circuit court to enforce obedience to subpoenas.** The circuit court for any county or the judge thereof, on application of the assistant director or any of his assistants,

shall compel obedience to subpoenas issued and served pursuant to ORS 657.630 and punish disobedience of any such subpoena or any refusal to testify at any session authorized in this chapter, or to answer any lawful inquiry of said assistant director or any of his assistants, in the same manner as a refusal to testify in the circuit court or the disobedience of the requirements of a subpoena issued from said court is punished.

**657.640 Attorney General to represent assistant director.** Upon request of the assistant director, the Attorney General or, under his direction, the district attorney of any county, shall institute or prosecute actions or proceedings for the enforcement of this chapter, when such actions or proceedings are within the county in which such district attorney was elected, and shall defend in like manner all suits, actions and proceedings brought against the assistant director in his official capacity. [Amended by 1971 c.418 §19]

**657.642 Supplementary remedies for collection of taxes, interest and penalties; use of warrants; execution by sheriff.** (1) In any case in which the assistant director may bring a civil action for the collection of taxes, interest and penalties under this chapter, he may instead:

(a) Assess a collection charge of \$5 if the sum of the tax, penalty and interest then due exceeds \$10.

(b) Issue a warrant under his hand and official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the employer found within his county, for the payment of the amount of the tax with the added penalties, interest, collection charge and the sheriff's cost of executing the warrant, and to return such warrant to the assistant director and pay to him the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant.

(2) The sheriff shall, within five days after the receipt of the warrant, file with the clerk of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket in the column for judgment debtors, the name of the employer mentioned in the warrant, and in appropriate columns the amount of the tax, interest, penalties and collection charge for which the warrant is issued and the date when such copy is filed. Thereupon the amount of the warrant so

docketed shall become a lien upon the title to and interest in property of the employer against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk. The sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon the judgment of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be added to and collected as a part of the warrant liability.

(3) In the discretion of the assistant director a warrant of like terms, force and effect may be issued and directed to any agent authorized by the assistant director to collect taxes and in the execution thereof the agent shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(4) If a warrant is returned not satisfied in full, the assistant director shall have the same remedies to enforce the claim for taxes, interest and penalties against the employer as if the assistant director had recovered judgment against the employer for the amount of the taxes, interest and penalties.

(5) Interest upon the taxes due as set forth in the warrant shall be paid and collected at the rate prescribed in subsection (2) of ORS 657.515. [1971 c.128 §2]

657.645 [Repealed by 1959 c.583 §24]

**657.650 Appointment of officers and employes.** (1) The assistant director may appoint such officers and employes as are required for the administration of this chapter, selection to be on a merit basis, determine their salaries and duties and, in his discretion, require a bond of any of his employes engaged in carrying out this chapter. The assistant director shall not employ any person who is serving as an officer or committee member of any political party.

(2) The assistant director is authorized to employ an attorney to represent him in making collection of delinquent contributions to the Unemployment Compensation Trust Fund and the interest and penalties accruing, and to conduct on behalf of the assistant director any and all suits, actions and proceedings whatsoever for such purpose. Such attorney or the assistant director may call upon the district attorney of any county in which such proceedings are instituted or pending for any service

or assistance in connection therewith. The assistant director shall fix the compensation of such attorney, which shall be paid from the Unemployment Compensation Administration Fund as the salaries of other employes of the assistant director are paid.

**657.652 Certificate as evidence in proceeding.** In any action, suit or proceeding brought by or against the assistant director a certificate attested to by the assistant director or his authorized representative showing the amount of contributions, interest and penalties due from an employing unit shall be prima facie evidence of the payment by the employing unit of the amount of wages for employment set forth therein, of the levy of assessment, of the delinquency, and of the compliance by the assistant director or his authorized representative with all the provisions of this chapter relating to the computation and assessment of the contributions, interest and penalties specified in the certificate. [1963 c.354 §6 (657.552, 657.652, 657.679, 657.681 and 657.683 enacted in lieu of 657.472, 657.512, 657.550 and 657.672)]

**657.655 Certified copies of records as evidence.** If the original of any record, file, order, proceeding, decision, award or other document on file with the division is competent and admissible in evidence, a certified copy thereof furnished by the assistant director under the seal of the division shall be received in evidence before the Employment Appeals Board or any deputy or officer thereof and in all courts. [Amended by 1959 c.583 §16; 1969 c.597 §184]

**657.657 Acquisition of land and offices.** (1) Subject to the approval of the Director of the Department of General Services, the assistant director may acquire by purchase office buildings, make alterations, modifications or additions thereto, and purchase land and construct thereon office buildings suitable for use as local offices of the assistant director. The assistant director, with the approval of the Department of General Services, may acquire by purchase office space for the central offices of the Employment Division and may expend such funds as may be necessary for the administration of such offices.

(2) Any agreement made for the purchase of property pursuant to this section shall be further subject to the approval of the Governor and shall not subject the state to liability for payment of the purchase price or any part

or portion thereof except from moneys allocated to the state by the United States Department of Labor for the administration of this chapter.

(3) If the premises are purchased pursuant to this section, the assistant director shall be housed therein, or if it is desirable to move a local employment service office so housed, other substantially similar space will be furnished by the state to the assistant director without further payment therefor by the United States. [1957 c.609 §5; 1959 c.597 §1; 1961 c.490 §5; 1969 c.597 §185]

**657.660 Records and reports of employing units.** (1) Every employing unit shall keep true and accurate records of all persons employed by it and such records of hours worked, wages paid and other statistics as prescribed by the assistant director for the administration of this chapter.

(2) Such records shall be open to inspection by the assistant director or his authorized representative at any reasonable time. No person shall refuse to allow the assistant director or his authorized representative to inspect his payroll or other records or documents relative to the enforcement of this chapter.

(3) The assistant director may require from any employing unit such reports on the wages, hours, employment, unemployment and related matters concerning its employes as the assistant director deems necessary to the effective administration of this chapter.

(4) Every employing unit shall fully, correctly and promptly furnish the assistant director all information required by him to carry out the purposes and provisions of this chapter.

**657.662 Penalty for employer's failure to file statement of wages and report of weeks of work; demand for statement and report.** Any employer who, without good cause, fails to file within 10 days after service of a written demand therefor, a written statement of the wages paid together with a report of the weeks of work for each of his workers required by this chapter or regulation of the assistant director, may be required, in the discretion of the assistant director, to pay in addition to any other amounts due from such employer, an additional penalty equal to \$1 multiplied by the number of employes on the payroll of such employer during each calendar quarter for which no wage or weeks-of-work

reports have been filed. Such additional penalty with respect to any calendar quarter shall be no less than \$5 nor more than \$250. The demand required by this section may be served by personal delivery or by mailing to the last-known address of such employer as shown by the records of the assistant director. Service is complete at the time of deposit in the United States mail. [1959 c.598 §6; 1961 c.252 §5; 1967 c.435 §8]

**657.665 Confidentiality of information from employing unit records.** (1) Information secured from employing units, employes or other individuals pursuant to this chapter:

(a) Shall be confidential and for the exclusive use and information of the assistant director in the discharge of his duties and shall not be open to the public (other than to public employes in the performance of their public duties under state or federal laws for the payment of unemployment insurance benefits and to public employes in the performance of their public duties under the recognized insurance and retirement, relief or welfare laws of this state), except to the extent necessary for the presentation of a claim and except as required by the regulations of the United States Secretary of Health, Education and Welfare pursuant to section 3304(a) of the Federal Unemployment Tax Act, as amended.

(b) Shall not be used in any court in any action or proceeding pending therein unless the assistant director or the state is a party to such action or proceedings.

(2) However, any claimant or his legal representative, at a hearing before a referee or the assistant director, shall be supplied with information from such records to the extent necessary for the proper presentation of his claim.

(3) Notwithstanding subsection (1) of this section, information secured from employing units pursuant to this chapter may be released to agencies of this state, and political subdivisions acting alone or in concert in city, county, metropolitan, regional or state planning to the extent necessary to properly carry out governmental planning functions performed under applicable law. Information provided such agencies shall be confidential and shall not be released by such agencies in any manner that would be identifiable as to individuals, claimants, employes or employing units. Costs of furnishing information pursuant to this sub-

section not prepared for the use of the Employment Division shall be borne by the parties requesting the information.

(4) Nothing in this section shall prevent the Employment Division from providing names and addresses of employing units to the Oregon Bureau of Labor and Industries for the purpose of disseminating information to employing units. The names and addresses provided shall be confidential and shall not be used for any other purposes. Costs of furnishing information pursuant to this subsection not prepared for the use of the Employment Division shall be borne by the Bureau of Labor and Industries.

(5) Nothing in this section shall prevent the Employment Division from providing to the Commissioner of the Bureau of Labor and Industries, for the purpose of performing duties under ORS 279.348 to 279.356, the names, addresses and industrial codes of employer units, the number of employes each unit employs during a given time period and the firm number assigned to employer units by the Employment Division. Information so provided shall be confidential and shall not be released by the Commissioner of the Bureau of Labor and Industries in any manner that would identify such employing units except to the extent necessary to carry out the purposes of this subsection and as provided in paragraph (b) of subsection (1) of this section. Costs of furnishing information pursuant to this subsection not prepared for the use of the Employment Division shall be borne by the Bureau of Labor and Industries.

(6) Nothing in this section shall prevent the Employment Division from providing information required under subsections (3) and (4) of ORS 657.660 to the Public Employees' Retirement System for the purpose of determining the eligibility of members of the retirement system for disability retirement allowances under ORS 237.171 to 237.195 and 237.630. The information provided shall be confidential and shall not be used for any other purposes. Costs of furnishing information pursuant to this subsection shall be borne by the Public Employees' Retirement System.

(7) Any officer or employe of the assistant director, who, except with authority of the assistant director or pursuant to his regulations, or as otherwise required by law, shall disclose confidential information under this section, thereafter is disqualified from holding any appointment or employment by the assistant director. [Amended by 1969 c 450 §1; 1977 c.162

§1, 1977 c.797 §9, 1979 c.145 §1; 1979 c.267 §5a]

**657.670 Disclosure of information to federal agencies permitted.** Notwithstanding ORS 657.665, the assistant director shall:

(1) Upon request, submit such reports, in such form and containing such information as the Secretary of Labor may, from time to time, require, and shall comply with such provisions as the Secretary of Labor may, from time to time, find necessary to assure the correctness and verification of such reports.

(2) Make available, upon request, to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment insurance benefits and a statement of such recipient's right to further compensation under this chapter.

**657.672** [1959 c.405 §6; 1961 c.252 §6; repealed by 1963 c.354 §1 (657.552, 657.652, 657.679, 657.681 and 657.683 enacted in lieu of 657.472, 657.512, 657.550 and 657.672)]

**657.675** [Amended by 1959 c.376 §1; renumbered 657.695]

**657.676 Reconsideration of determinations at request of employer; conditions; hearing and review.** (1) Upon his own motion or upon application of an interested employer, the assistant director may reconsider a determination of employer subjectivity, tax rate or tax assessment irrespective of whether it has become final. Such reconsideration shall be restricted to determinations resulting from clerical errors or errors of computation and may include a new decision upon any grounds or issues not previously ruled upon or new facts not previously known to the assistant director.

(2) Such reconsideration shall be accomplished by the assistant director or any employe he may designate for the purpose, in accordance with rules adopted by the assistant director. A new determination may be made to correct any error with respect to the previous determination. Such new determination shall be subject to hearing, review and appeal in accordance with ORS 657.485 and 657.679 to 657.684. [1977 c.538 §13]

**657.678** [1959 c 376 §3; renumbered 657.700]

**657.679 Determination that employing unit or employment is subject to chapter; notice; application for hearing.** A de-

termination of the assistant director or his authorized representative:

(1) As to whether an employing unit is an employer subject to this chapter, or

(2) That services performed by an individual for an employer liable for reimbursement payments in lieu of taxes is employment subject to this chapter,

shall become final 20 days after written notice of the determination is mailed to the last-known address of the employing unit of record with the assistant director unless within such time the employing unit files an application with the assistant director for a hearing with respect thereto as provided in ORS 657.683.

[1963 c.354 §2 (657.552, 657.652, 657.679, 657.681 and 657.683 enacted in lieu of 657.472, 657.512, 657.550 and 657.672); 1975 c.156 §4; 1977 c.538 §11]

**657.680** [Repealed by 1959 c.376 §4]

**657.681 Computation and assessment of employer contributions and interest; jeopardy assessments; application for hearing.** (1) If an employer files a report for the purpose of determining the amount of contributions due under this chapter but fails to pay contributions or interest, the assistant director or his authorized representative may assess the amount of contributions or interest due on the basis of the information submitted and shall give written notice of the assessment to the employer mailed to his last-known address of record with the assistant director. In the event that such report is subsequently found to be incorrect additional assessments may be made, subsection (5) of this section to the contrary notwithstanding.

(2) If an employer fails to file a report when required by the assistant director for the purpose of determining the amount of his contribution due under this chapter, the assistant director or his authorized representative may make an estimate based upon any information in his possession of the amount of wages paid for employment in the period or periods for which no report was filed and upon the basis of such estimate shall compute and assess the amount of employer contributions payable by the employer. Written notice of the assessment shall be mailed to the last-known address of the employer of record with the assistant director.

(3) If the assistant director or his authorized representative is not satisfied with a report made by an employer for the purpose of determining the amount of contribution due

under this chapter, he may compute the amount required to be paid upon the basis of facts contained in the report or upon the basis of any information he may be able to obtain and make an assessment of the amount of the deficiency. Written notice of such deficiency assessment shall be mailed to the last-known address of the employer of record with the assistant director.

(4) If the assistant director or his authorized representative has reason to believe that an employer is insolvent, or that the collection of any contributions will be jeopardized by delaying collection, he may thereupon make an immediate assessment of the estimated amount of accrued contributions, noting upon the assessment that it is a jeopardy assessment levied under this subsection, and may proceed to enforce collection immediately, but interest shall not begin to accrue upon such contributions until the due date nor shall court costs be taxed against such employer on any action to enforce collection commenced prior to the due date. The assistant director or his authorized representative may, in levying the assessment, demand a bond or deposit of such security as he deems necessary to insure collection of the amount of such assessment. Written notice of the assessment shall be mailed to the last-known address of the employer of record with the assistant director.

(5) All assessments provided for in this section shall finally fix the amount of contributions due and payable unless the employer shall within 20 days after the mailing of the notice of assessment by certified or registered mail apply to the assistant director for a hearing, or unless the assistant director or his authorized representative on his own motion reviews the same prior to a decision of the referee thereon pursuant to hearing. An employer who fails to apply for a hearing upon an assessment within the time provided or, having applied, fails to appear and be heard after due notice of such hearing, shall be precluded from raising any defense to any action, suit or proceeding brought by the assistant director for the recovery of contributions based upon such assessment which could have been raised in the hearing. The amount of contributions so assessed under this section shall be subject to the penalties and interest provided by ORS 657.515 and 657.662. [1963 c.354 §3 (657.552, 657.652, 657.679, 657.681 and 657.683 enacted in lieu of 657.472, 657.512, 657.550 and 657.672)]

**657.683 Hearings on actions under ORS 657.679 and 657.681; decision of referee; amendment of decision.** (1) An application for hearing under ORS 657.679 and 657.681 shall be in writing and shall state that such determination or assessment of the assistant director or his authorized representative is unjust or incorrect and that the employing unit requests a hearing thereon. The application shall set forth the objections of the employing unit to the determination or assessment and the amount of contributions, if any, which the applicant admits to be due to the Employment Division. An application for a hearing to review an assessment made under subsection (4) of ORS 657.681 which was accompanied by a demand for a bond or deposit shall not be valid unless such bond or deposit is filed with the application in a form acceptable to the assistant director or his authorized representative.

(2) If a valid application for hearing is filed within the time provided by ORS 657.679 and 657.681, a referee designated by the assistant director shall review the determination or assessment and if requested by the employing unit shall grant a hearing unless a hearing has previously been afforded the employing unit on the same grounds as set forth in the application. The referee shall give notice of the time and place of the hearing to the assistant director or his authorized representative and shall also give notice to the employing unit by mail directed to the last-known address of the employing unit of record with the assistant director.

(3) Hearings under ORS 657.679 and 657.681 shall be conducted in accordance with this chapter and the rules and regulations of the assistant director. The filing of an application for hearing with respect to a disputed assessment shall not affect the right of the assistant director or his authorized representative to perfect any liens provided by this chapter.

(4) All testimony at any hearing held under ORS 657.679 and 657.681 shall be recorded but need not be transcribed unless a petition for judicial review from the decision of the referee is filed in the manner and within the time prescribed. At any hearing held as provided in ORS 657.679 and 657.681 the determination or assessment of the assistant director or his authorized representative shall be prima facie correct and the burden shall be upon the protesting employing unit to prove that it is incorrect. Thereafter the referee

shall enter his findings of fact and decision, either affirming, modifying, or setting aside the determination or assessment of the assistant director or his authorized representative and in the case of an assessment, the referee may increase or decrease the amount of the assessment. The employing unit and the assistant director shall be promptly notified of the decision of the referee.

(5) A decision of the referee shall become final on the date of notification or the mailing thereof to the assistant director and to the employing unit at his last-known address of record with the assistant director unless within the time specified in subsection (2) of ORS 183.480 the referee upon his own motion reviews the same and issues an amended decision in which case the amended decision becomes the final decision. [1963 c.354 §4 (657.552, 657.652, 657.679, 657.681 and 657.683 enacted in lieu of 657.472, 657.512, 647.550 and 567.672); 1967 c.435 §9; 1971 c.734 §98]

**657.684 Judicial review of decisions under ORS 657.683.** Judicial review of decisions under ORS 657.683 shall be as provided for review of orders in contested cases in ORS 183.310 to 183.500, except that the petition shall be filed within 20 days after the order is final. The assistant director may file petition for judicial review in accordance with this section from decision of the referee. When judicial review is upon an assessment or assessments made pursuant to ORS 657.681 and the court determines the assessment or assessments are valid, judgment shall be given in favor of the assistant director for the amount due as determined by the court. [1971 c.734 §100]

**657.685 Employment Appeals Board; confirmation of members' appointments.** (1) The Employment Appeals Board hereby is created.

(2) The Employment Appeals Board consists of three members who shall be appointed by and serve at the pleasure of the Governor. Appointments of members are subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570. In the selection of the members of the Employment Appeals Board, the Governor shall give due consideration to the interests of labor, industry and the public. Not more than two of the members of said board shall belong to the same political party. The Governor shall designate one of the members of the Employment Appeals Board to serve as its chairman.

(3) A majority of the Employment Appeals Board constitutes a quorum for the transaction of business.

(4) The members of the Employment Appeals Board shall be paid on a per diem basis an amount equal to four percent of the gross monthly salary of a regular judge of a circuit court for each day during which they are actually engaged in the performance of their official duties, including necessary travel time. In addition, subject to any other applicable law regulating travel and other expenses of state officers, they shall receive their actual and necessary travel and other expenses incurred in the performance of their official duties.

(5) The Employment Appeals Board shall meet at such times and places as specified by the chairman.

(6) The Employment Appeals Board may, subject to budgetary limitations, employ a review officer, stenographers and clerical aides necessary to the discharge of the duties of the Employment Appeals Board. All such employes shall be in the classified service and any promotion or increase in compensation is subject to the approval of the Personnel Division of the Executive Department. The board shall prepare and submit a budget covering the necessary administrative costs of the board, and such budget shall be included in the budget of the assistant director for the administration of the Employment Division. [1959 c.583 §12; 1969 c.597 §186; 1973 c.792 §30; 1975 c.426 §1]

**657.690 Quasi-judicial powers of Employment Appeals Board.** The Employment Appeals Board may act in its own behalf or by any of its designated agents, referees or assistants in the following:

(1) To hold sessions any place within the state.

(2) To administer oaths.

(3) To issue and serve, or by any sheriff, subpoenas for the attendance of employers or claimants and the production of papers, contracts, books, accounts, documents and testimony. The Employment Appeals Board may require the attendance and testimony of claimants or employers, their officers and representatives before any hearing or review before the Employment Appeals Board without payment or tender or witness fees on account of such attendance. [1959 c.583 §13]

**657.695 State Advisory Council; members; compensation and expenses.** (1) To assist the assistant director in the effective development of policies and programs with respect to unemployment insurance and employment service and in securing to this state the benefits of the Wagner-Peyser Act, and particularly with respect to carrying out ORS 657.615, there hereby is created an advisory council within the Employment Division to be known as the State Advisory Council on Unemployment Compensation.

(2) The members of the State Advisory Council on Unemployment Compensation shall be appointed by the Governor and shall be composed of men and women representing employers and employes in equal numbers, and representatives of the public who shall elect their chairman. The Assistant Director for Employment shall serve as an ex officio member of the State Advisory Council.

(3) The members of the State Advisory Council shall be appointed for a term of two years and are entitled to compensation and expenses as provided in ORS 292.495. Members of the State Advisory Council or other committees appointed pursuant to this section and ORS 657.700 shall be reimbursed from the Unemployment Compensation Administration Fund. [Formerly 657.675; 1969 c.314 §70; 1969 c.597 §188]

**657.700 Special councils for program development.** The assistant director may also appoint committees, and industrial or other special councils, to perform appropriate services in connection with the development of unemployment insurance and employment service programs who shall serve without compensation. [Formerly 657.678]

## OREGON STATE EMPLOYMENT SERVICE

**657.705 Oregon State Employment Service.** There is created under the assistant director a subdivision, to be known as the Oregon State Employment Service, which shall be affiliated with the United States Employment Service. Such subdivision shall be administered by a person well qualified by technical training and experience in the functions to be performed. Such a person shall be appointed by the assistant director subject to the provisions of ORS 657.650. [Amended by 1959 c.583 §17; 1969 c.597 §189]

**657.710 Free public employment offices.** The assistant director shall establish and maintain such free public employment offices, subject to any contract, agreements or obligations entered into or assumed under chapter 135, Oregon Laws 1935, including such branch offices as may be necessary for the proper administration of this chapter. The assistant director shall maintain a subdivision for this purpose. All moneys made available by or received by the state for the Oregon State Employment Service shall be paid to and expended from the Unemployment Compensation Administration Fund. [Amended by 1969 c.597 §190]

**657.715 Wagner-Peyser Act accepted.** The State of Oregon hereby accepts the provisions of the Act of Congress approved June 6, 1933, entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes."

**657.720 Cooperation with federal agencies, political subdivisions or private organizations in maintaining public employment service.** (1) The assistant director is designated and constituted the agency of this state for the purpose of the Wagner-Peyser Act. The assistant director shall cooperate with all authorities of the United States having powers and duties under the Wagner-Peyser Act and do and perform all things necessary to secure to this state the benefits of the Wagner-Peyser Act in the promotion and maintenance of a system of public employment offices.

(2) The assistant director may cooperate with or enter into agreements with the Railroad Retirement Board with respect to the establishment, maintenance and use of free public employment service facilities. For the purpose of establishing and maintaining free public employment service the assistant director may enter into agreements with the Railroad Retirement Board or any other agency of the United States charged with the administration of an unemployment insurance law, with any political subdivision of this state, or with any private nonprofit organization, and as a part of any such agreement may accept moneys, services or quarters as a contribution to the Unemployment Compensation Administration Fund.

**657.725 Employment districts.** The assistant director may divide the state into such number of employment districts as he finds necessary and maintain a district office in each of said districts.

### RECIPROCAL AND COOPERATION AGREEMENTS

**657.755 Cooperation with federal agencies administering unemployment insurance laws.** The assistant director shall:

(1) Cooperate in all necessary respects with the appropriate agencies and departments of the Federal Government in the administration of this chapter and of free public employment offices.

(2) Make the state's records relating to the administration of this chapter available to the Railroad Retirement Board and furnish to the Railroad Retirement Board, at the expense of such board, copies thereof as that board deems necessary for its purposes.

(3) Afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law and make all reports thereon requested by any directly interested federal agency or department.

(4) Accept any sums allotted or apportioned to the state for such administration and comply with all reasonable federal regulations governing the expenditures of such sums.

**657.757 Cooperation with federal agencies administering training or retraining programs and other assistance.**

(1) The Employment Division is authorized to cooperate with or enter into agreements with appropriate agencies of the Federal Government whereby:

(a) The assistant director may act as agent of the Federal Government, in the payment of subsistence or other cash allowances provided in programs adopted by the Federal Government, including training and retraining programs or other assistance to individuals in this state.

(b) In performing services incidental to such programs the assistant director may make such reports, surveys and analyses as may be required and comply with all reasonable rules and regulations in connection with such programs.

(c) The assistant director may accept any sums allotted or apportioned to the state for administrative purposes and maintain separate accounting of all subsistence or cash allowances deposited with the state for payment to qualified individuals.

(2) Nothing in this section shall in any way affect the validity of any agreements entered into with any federal agency prior to July 1, 1963. [1963 c.216 §2]

**657.760 Reciprocal agreements on coverage and collection of contributions.** The assistant director may enter into agreements with the appropriate agencies of other states or the Federal Government whereby:

(1) Potential rights to benefits accumulated under the unemployment insurance laws of the several states or under such a law of the Federal Government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the assistant director finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(2) Individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in subsection (2) of ORS 657.035 or under similar provisions in the unemployment insurance laws of such other states, shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment insurance laws of one or more states or under such a law of the Federal Government, or both, may constitute the basis for the payment of benefits.

(3) The collection and payment of contributions by employers with respect to employment not localized within this state is adjusted.

**657.765 Reciprocal agreements concerning payroll taxes for out-of-state work.** Whenever the unemployment insurance laws of other states provide for inclusion of out-of-state payment of wages in computing wages paid in like manner as provided in subsection (2) of ORS 657.095, the assistant director may enter into agreements with those empowered to administer the unemployment insurance laws of such other states for the purpose of:

(1) Waiving the further collection of payroll taxes in all the states when the aggregate amount of said wages is in excess of "payroll" as defined in subsection (1) of ORS 657.095; and

(2) Securing uniformity for payroll reporting on such out-of-state work. [Amended by 1955 c.655 §24; 1973 c.300 §13; 1973 c.810 §3]

**657.770 Reciprocal agreements concerning wages used as basis for benefits.**

(1) The assistant director may enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the Federal Government, or both, whereby wages, upon the basis of which an individual may become entitled to benefits under an employment security law of another state or of the Federal Government, shall be deemed to be wages for insured work for the purpose of determining his benefits under this chapter; and wages for insured work, on the basis of which an individual may become entitled to benefits under this chapter shall be deemed to be wages on the basis of which unemployment insurance is payable under such law of another state or of the Federal Government.

(2) No such arrangement shall be entered into unless it contains provision for reimbursement to the fund for such of the benefits paid under this chapter on the basis of such wages and provision for reimbursement from the fund for such benefits paid under such other law on the basis of wages for insured work, as the assistant director finds will be fair and reasonable to all affected interests.

(3) Reimbursements paid from the fund pursuant to this section are deemed to be benefits for the purposes of this chapter; except that no charge shall be made to an employer's account under ORS 657.471 in excess of the maximum benefits payable under ORS 657.150 or when no benefits would have been payable to an individual but for this section, because of the lack of wages for insured work necessary to qualify for benefits.

(4) Notwithstanding the provisions of subsections (1) and (2) of this section, the assistant director shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this chapter with his wages and employment covered under the unemployment insurance laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment insurance

agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for:

(a) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment insurance laws, and

(b) Avoiding the duplicate use of wages and employment by reason of such combining.  
[Amended by 1957 c.699 §11; 1971 c.463 §19]

**657.775 Cooperation with other states on reciprocal basis for collection of contributions.** (1) The courts of the State of Oregon shall recognize and enforce the liability for unemployment insurance contributions imposed by other states which extend a like comity to this state, and officials of such other states may initiate civil proceedings in the courts of this state to enforce the collection of such contributions. The certificate of the Secretary of State of such other states that such officials have the authority to collect the contributions is conclusive evidence of such authority.

(2) The Attorney General is empowered to initiate and prosecute civil proceedings in the courts of other states by and in the name of the assistant director to enforce the liability for unemployment insurance contributions imposed by the State of Oregon, and he may also initiate and prosecute civil proceedings in this state as agent for and on behalf of any other state to enforce liability for unemployment insurance contributions due such state if the state extends a like comity to the State of Oregon. The compensation for the services of the Attorney General rendered on behalf of other states under this section shall be paid from moneys appropriated to the Employment Division for administrative expenditures. The compensation for similar officers of other states for services rendered on behalf of this state under this section shall be paid by such other state. However, all other expenses of civil proceedings under this section shall be paid by the state, officer or agency thereof at whose request such proceedings were initiated.

(3) The Attorney General, with the approval of the assistant director, may employ a special assistant under subsection (2) of ORS 180.230 to initiate and prosecute civil proceedings in other states to enforce liability for unemployment contributions imposed by the

State of Oregon and nothing in this section shall be deemed to prevent the officials of other states from employing any member of the Oregon State Bar to initiate and prosecute civil proceedings in this state to enforce liability for unemployment insurance imposed by such other states.

(4) As used in this section, "contributions" includes interest and penalties imposed pursuant to an unemployment insurance statute.  
[1963 c.453 §2]

## FUNDS

**657.805 Unemployment Compensation Trust Fund.** There hereby is created the Unemployment Compensation Trust Fund. Such fund shall consist of:

(1) All contributions received and collected under this chapter.

(2) Interest earned upon any moneys in the fund.

(3) Any property or securities acquired through the use of moneys belonging to the fund and all earnings of such property or securities.

(4) All other moneys received for the fund from any other source.

(5) All moneys credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended. [Amended by 1957 c.609 §1; 1965 c.359 §7]

**657.807 Advances, under title XII of Social Security Act, to Unemployment Compensation Trust Fund.** (1) The Governor of the State of Oregon is hereby authorized in his discretion to make necessary application to the Secretary of Labor of the United States to obtain an advance or advances pursuant to title XII of the Social Security Act, as amended.

(2) The assistant director shall notify the Governor whenever he determines that the conditions specified in section 1201 of the Social Security Act, as amended, or under any other Act of Congress extending such authority, have been met.

(3) Any amount transferred to the Unemployment Compensation Trust Fund by the Secretary of the Treasury of the United States under the terms of any agreement entered into in accordance with the authority extended in this section, shall be repaid from the Unemployment Compensation Trust Fund

and as further provided in section 1202 of the Social Security Act, as amended. [1959 c.373 §§1, 2, 3]

**657.810 Deposit and use of fund.** (1) All moneys received for the Unemployment Compensation Trust Fund under ORS 657.805 shall be deposited with the State Treasurer subject to ORS 657.830.

(2) All moneys in the fund shall be mingled and undivided and shall be administered by the assistant director for the purpose of this chapter.

**657.812 Use of moneys credited to Unemployment Trust Fund by the Secretary of the Treasury pursuant to section 903 of Social Security Act.** (1) Money credited to the account of this state in the Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which the money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during any 12-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (A) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same 12-month period and the 24 preceding 12-month periods, exceeds (B) the aggregate of the amounts obligated pursuant to this section and paid out for benefits, and charged against the amounts credited to the account of this state during such 25 12-month periods. For the purposes of this section, amounts obligated during any such 12-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such 12-month period may be charged against any amount credited during

such a 12-month period earlier than the 24th preceding such period.

(2) Money appropriated as provided in this section for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred upon such appropriation, and upon requisition shall be deposited in the Unemployment Compensation Administration Fund from which such payments shall be made. Money so deposited shall, until expended, remain a part of the Unemployment Compensation Trust Fund and, if not expended, shall be returned promptly to the account of this state in the Unemployment Trust Fund.

(3) Notwithstanding any other provision of this chapter, money credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, and which has been or will be appropriated for administrative expenses of the Employment Division shall, for the purposes of the computation of fund adequacy percentage ratio, be deemed a part of the Unemployment Compensation Trust Fund. [1957 c.609 §7; 1959 c.604 §1; 1969 c.703 §1; 1973 c.24 §1]

**657.815 Unemployment Compensation Benefit Fund.** (1) There hereby is created the Unemployment Compensation Benefit Fund. Such fund shall consist of all amounts withdrawn from the Federal Unemployment Trust Fund, upon requisition of the assistant director, except as provided in ORS 657.812.

(2) This fund shall be used solely in the payment of benefits under this chapter, exclusive of administration, and in the payment of unemployment insurance under any agreement with another governmental agency whereby the latter will reimburse the fund for such expenditure; provided that such use shall be consistent with the Federal Unemployment Tax Act.

(3) The Unemployment Compensation Benefit Fund shall be the sole and exclusive source for the payment of benefits payable under this chapter. Such benefits shall be deemed to be due and payable only to the extent that contributions, with increments thereon, actually collected and credited to the fund are available therefor. [Amended by 1957 c.609 §2; 1959 c.604 §2]

**657.820 Unemployment Compensation Administration Fund.** (1) There hereby is created the Unemployment Compensation Administration Fund, to consist of all moneys

received by the state or the assistant director for the expenses of administration of this chapter, including such proportion of total expenses of maintaining public employment offices incurred for the purposes of this chapter.

(2) Such fund shall be handled by the State Treasurer as other state moneys are handled, but it shall be expended solely for the purposes specified in this section, and its balances shall not lapse at any time but shall remain continuously available to the assistant director for expenditures consistent with this section.

(3) All federal moneys allotted or apportioned to the state by the Secretary of Labor, the Railroad Retirement Board or other federal agency, for the administration of this chapter shall be paid into such fund.

(4) All moneys made available by or received by this state under the Wagner-Peyser Act entitled "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," approved June 6, 1933, (48 Statutes 113; United States Code, title 29, sec. 49 (c) as amended) shall be paid into the Unemployment Compensation Administration Fund and said moneys hereby are appropriated and made available to the assistant director to be expended as provided by this chapter and by the Wagner-Peyser Act.

(5) All moneys received from the Railroad Retirement Board as compensation for services or facilities supplied to said board shall be paid into the Unemployment Compensation Administration Fund.

(6) Notwithstanding any provisions of this section, all moneys requisitioned and deposited in this fund pursuant to the provisions of ORS 657.657 and 657.805 to 657.820 shall remain part of the Federal Unemployment Trust Fund and shall be used only in accordance with conditions specified in ORS 657.657 and 657.805 to 657.820. [Amended by 1957 c.609 §3; 1959 c.604 §3]

**657.822 Employment Division Special Administrative Fund.** (1) There hereby is created the Employment Division Special Administrative Fund. Such fund shall consist of moneys collected or received by the Employment Division subsequent to July 1, 1965, as follows:

(a) All interest collected under ORS 657.515.

(b) All fines and penalties collected pursuant to this chapter.

(c) All gifts to or interest on or profits earned by the said Special Administrative Fund.

(2) The moneys in the Employment Division Special Administrative Fund are continuously appropriated to the Employment Division to pay the expenses of the Secretary of State incurred in performing the audit of the Employment Division pursuant to ORS 297.220 and such other expenses as may be included in the biennial budget of the Employment Division and approved by the Legislative Assembly for payment from the Employment Division Special Administrative Fund. The moneys in this fund shall be deposited as provided in ORS 657.830.

(3) The moneys in the fund, in amounts determined by the Assistant Director for Employment, shall be invested as provided in ORS 293.701 to 293.776. [1965 c.359 §2; 1967 c.335 §58; 1969 c.597 §191]

**657.823 Employment Tax Guarantee Fund.** There hereby is created the Employment Tax Guarantee Fund. Such fund shall consist of:

(1) Cash deposits received pursuant to ORS 657.507; and

(2) Proceeds of bonds posted pursuant to ORS 657.507. [1967 c.435 §14]

**657.825 Expenditure of federal funds; restitution of moneys lost or improperly expended.** (1) All moneys in the Unemployment Compensation Administration Fund which are received from the Federal Government or any agency thereof or which are appropriated by this state for the purposes described in ORS 657.820 shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of this chapter.

(2) If any moneys received for the Unemployment Compensation Administration Fund under title III of the Social Security Act or the Wagner-Peyser Act are found by the Secretary of Labor, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of this

chapter, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the General Fund of this state to the Unemployment Compensation Administration Fund for expenditure as provided in ORS 657.820. Upon receipt of notice of such a finding by the Secretary of Labor, the assistant director promptly shall report the amount required for such replacement to the Governor. The Governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This section shall not be construed to relieve this state of its obligations with respect to funds received prior to July 1, 1941, pursuant to title III of the Social Security Act.

[Amended by 1969 c.703 §2]

**657.830 State Treasurer as custodian of funds.** (1) The State Treasurer shall be the custodian of the Unemployment Compensation Trust Fund, the Unemployment Compensation Benefit Fund, the Unemployment Compensation Administration Fund, the Employment Division Special Administrative Fund and the Employment Tax Guarantee Fund and shall carry those funds in separate deposit accounts with the active depository of state funds. The security required by law to protect the moneys in the active depository account shall be of sufficient market value to protect also the separate deposit accounts, and shall be available for said purpose in like manner as for the active account.

(2) After clearance thereof the State Treasurer immediately shall deposit all moneys specified in ORS 657.805 which are received from all sources as an accretion to the Unemployment Compensation Trust Fund, with the Secretary of the Treasury of the United States as custodian of the trust fund created by the Federal Social Security Act.

(3) All moneys specified in ORS 657.822 shall be deposited in the Unemployment Compensation Trust Fund only for purposes of clearance. After clearance thereof the State Treasurer immediately shall deposit all such moneys, less refunds made pursuant to the provisions of ORS 657.510, in the Employment Division Special Administrative Fund.

(4) Refunds payable pursuant to ORS 657.510 may be paid upon warrants issued by the State Treasurer under direction of the administrator from the Unemployment Compensation Trust Fund or the Employment Division Special Administrative Fund, as

appropriate. [Amended by 1965 c.359 §8; 1967 c.435 §10]

## MISCELLANEOUS PROVISIONS

**657.855 Assignment of benefits; exemption; waiver of rights.** Benefits due under this chapter shall not be assigned, pledged, encumbered, released or commuted and shall, except as otherwise provided, be exempt from all claims of creditors and from levy, execution and attachment or remedy for recovery or collection of a debt, which exemption may not be waived. No agreement by an individual to waive his rights under this chapter is valid.

**657.860 Agreement of employe to pay contributions void.** No agreement by an employe to pay any portion of the contribution required of his employer by this chapter is valid and no employers shall make a deduction for such purpose from the wages or salary of an employe.

**657.865 No vested rights.** All the rights, privileges or immunities conferred by this chapter or by acts deemed pursuant thereto shall exist subject to the powers of the legislature to amend or repeal this chapter at any time, and there shall be no vested private right of any kind against such amendment or repeal.

**657.870 When operation of chapter ceases.** (1) If title IX of the federal Social Security Act becomes inoperative by Act of Congress or by decision of the United States Supreme Court, payments of contributions and payment of benefits provided in this chapter shall cease.

(2) If the provisions of the Act of October 20, 1976, P.L. 94-566 (26 USC 3306) requiring benefit coverage for service performed in agricultural labor as provided in paragraphs (a) and (b) of subsection (1) and subsection (7) of ORS 657.045 and subsection (2) of ORS 657.105 become inoperative by Act of Congress or by decision of the United States Supreme Court, payments of contributions and payment of benefits pursuant to the statutes cited in this subsection shall cease. [Amended by 1977 c.446 §9]

**657.875 Extending period for appeal in certain claim and contribution matters.** The period within which an interested party may request a hearing or file with the Em-

ployment Appeals Board an application for review as provided in ORS 657.265, 657.270, 657.471, 657.485, 657.679 and 657.681 may be extended, upon a showing of good cause therefor, a reasonable time under the circumstances of each particular case. [1973 c.300 §14; 1975 c.257 §11]

Note: 657.875 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 657 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

### PENALTIES

**657.990 Penalties.** (1) Violation of ORS 657.295 is punishable for each offense, upon conviction, by a fine of not less than \$50 nor more than \$500, or by imprisonment for not more than six months, or both.

(2) Violation of ORS 657.300 is a misdemeanor.

(3) In addition to any penalties otherwise prescribed in this chapter, violation of ORS 657.495, 657.565, subsection (2) of 657.660 or any other provision of this chapter is a misdemeanor and, upon conviction, is punishable by a fine of not less than \$100 nor more than

\$500, or by imprisonment for not more than 90 days, or both. If an offending employer or the employer of an offending agent is a corporation, the president, secretary and the treasurer, or officers exercising corresponding functions, shall be subject to the penalties in this subsection in respect to any duties, of which they respectively had or, in the proper exercise of their duties, ought to have had knowledge.

(4) Wilful violation of this chapter or of any order, rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under this chapter, and for which a penalty neither is prescribed in this section nor provided by any other applicable statute, is punishable, upon conviction, by a fine of not less than \$20 nor more than \$200, or by imprisonment for not more than 60 days, or both. Each day such violation continues is considered a separate offense.

(5) Circuit courts, justice courts and district courts have concurrent jurisdiction of any offense under this section. [Amended by 1971 c.743 §405]

### 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