

BEFORE THE COMMISSIONER
OF THE
BUREAU OF LABOR AND INDUSTRIES

839-020-0012

Wage Statements to Be Provided to Employees

(1) Except for employees who are otherwise specifically exempt under ORS 653.020, employers must furnish each employee, each time the employee receives a compensation payment from the employer, a written itemized statement of earnings. The written itemized statement must include:

- (a) The total gross payment being made;
- (b) The amount and a brief description of each and every deduction from the gross payment;
- (c) The total number of hours worked during the time covered by the gross payment;
- (d) The rate of pay;
- (e) If multiple rates of pay are paid, the total number of hours worked at each rate of pay;
- (f) If the worker is paid on a piece rate, the number of pieces done and the rate of pay per piece done;
- (g) The net amount paid after any deductions;
- (h) The employer's name, address and telephone number;
- (i) The pay period for which the payment is made.

(2) When a compensation payment is a draw or advance against future earnings, and no deductions are being made from the payment, the written itemized statement must include the information required in section (1)(a), (h) and (i) of this rule. The employee must be provided with a statement containing all of the information required by section (1) of this rule at the employee's next regular payday, even if the employee is not entitled to payment of any further wages at that time.

(3) Pursuant to the Uniform Electronic Transactions Act (Chapter 535, Oregon Laws 2001) ORS 84.001 to 84.061, the itemized statement may be provided in an electronic format if:

- (a) The employee agrees; and
- (b) The employee has the ability to print or store the electronic itemized statement at the time of receipt.

839-020-0015

Fixed Minimum Hourly Wage Rates Lower than the Minimum Wage Rate

(1) Pursuant to ORS 653.025 and 653.030 the commissioner will consider the employment of specific types of persons or of individual persons themselves at a fixed minimum hourly wage rate lower than the rate required by ORS 653.025, when the commissioner has determined that the application of these requirements would substantially curtail employment opportunities for the specific types of persons or individuals involved. The types of persons for whom a lower rate may be set upon a showing of good cause as set out below include, but are not limited to, individuals with mental or physical disabilities who cannot perform all of the bona fide job requirements

within a reasonable period of time expected of those at the entry level and student learners as defined in ORS 653.070.

(2) Rules for the employment of specific named individuals at less than the minimum wage:

(a) An employer must submit an application for the payment of a fixed minimum hourly wage rate lower than the rate required by ORS 653.025 on a form provided by the commissioner stating each and every reason why the employer believes a lower rate should be established. Forms may be obtained at any office of the Bureau of Labor and Industries;

(b) The application form must be signed by the employer, the prospective employee and legal guardian, or person legally empowered to act for such employee to whom the lower wage rate is proposed to be paid;

(c) The commissioner may require additional information from the employer or prospective employee to verify the conditions or reasons specified in the application including, but not limited to, medical reports;

(d) In considering the application, the Civil Rights Division of the Oregon Bureau of Labor and Industries, or other appropriate governmental agencies may be consulted for technical assistance to reasonably assure that no approval will be granted that will conflict with the rights of workers under other laws;

(e) The commissioner will grant the application only when the commissioner has determined that the application of ORS 653.025 would substantially curtail opportunities for employment of the prospective employee named in the application. The application may be granted under such terms and conditions as the commissioner deems appropriate;

(f) The commissioner will consider each application on an individual basis and will not grant blanket authorization in advance for a specific type or group of persons unless the conditions set out in section (3) of this rule are met.

(3) Rules for general authorization for an employer to employ unnamed individuals with mental or physical disabilities at less than the minimum wage:

(a) Under certain circumstances, the commissioner may grant blanket approval for an employer to employ persons with mental or physical disabilities or others when good cause is shown at a fixed minimum hourly wage rate lower than the rate required by ORS 653.025.

(b) An employer desiring blanket authority to employ individuals with mental or physical disabilities at less than the minimum wage must apply to the commissioner for such authority;

(c) The application should include:

(A) The name of the organization;

(B) The purpose for which it was created;

(C) A detailed statement of the organization and its activities;

(D) The method and procedure by which the applicant obtains its employees;

(E) A detailed statement of the duties the employees will perform and a description of the end product produced from the performance of such duties;

(F) The hours the employees will work;

(G) How many individuals it intends to employ under authorization, if granted, and for how long;

(H) The rate of pay it will pay such individuals if authorization is granted.

- (d) The applicant will be required to submit such other information as the commissioner deems necessary;
- (e) The commissioner will grant the application only when it has determined that the application of ORS 653.025 would substantially curtail opportunities for employment;
- (f) If the commissioner grants the application the commissioner may do so under such terms and conditions as the commissioner deems appropriate;
- (g) Employers operating nonprofit rehabilitation programs or organizations which are organized and conducted for the education and training of individuals with mental or physical disabilities, who desire blanket authorization to pay less than the minimum wage required by ORS 653.025, must apply for such authorization to the U.S. Department of Labor, Wage and Hour Division, Federal Office Building, 1111 Third Avenue, Suite 605, Seattle, WA 98101-3212, utilizing the application procedures set out in Title 29, CFR, Part 525. Pursuant to an agreement with the U.S. Department of Labor, the commissioner may review the application material submitted to the U.S. Department of Labor. A certificate issued by the U.S. Department of Labor authorizing the payment of special minimum wage rates under the Fair Labor Standards Act will be deemed by the commissioner to satisfy the requirements of this rule.

[Publications: Publications referenced are available from the agency.]

839-020-0050

Meal and Rest Periods

- (1) Except as otherwise provided, every employer shall provide to each employee an appropriate meal period and an appropriate rest period.
 - (a) "Appropriate meal period" means:
 - (A) A period of not less than 30 minutes during which the employee is relieved of all duties for each work period of not less than six or more than eight hours. If the work period is seven hours or less, the meal period is to be taken between the second and fifth hour worked. If the work period is more than seven hours, the meal period is to be taken between the third and sixth hour worked; or
 - (B) A period in which to eat (for each work period of not less than six or more than eight hours) while continuing to perform duties or remain on call, which is not deducted from the employee's hours worked. This is permitted only in those cases where the employer can show that the nature or circumstances of the work prevent the employee from being relieved from all duty.
 - (C) Where the employer can show that industry practice or custom has established a paid meal period of less than 30 minutes (but no less than 20 minutes) during which employees are relieved of all duty, such industry practice or custom will satisfy the meal period provisions of section (1) of this rule.
 - (b) "Appropriate rest period" means: A period of rest of not less than ten minutes for every segment of four hours or major part thereof worked in one work period without deduction from the employee's pay. The period of rest must be in addition to and taken separately from the time allowed for the usual meal period. Insofar as feasible, considering the nature and circumstances of the work, such period of rest is to be taken by an employee approximately in the middle of each four hour (or major part thereof)

segment. The rest period is not to be added to the usual meal period or deducted from the beginning or end of the work period to reduce the overall length of the total work period.

(A) The provisions of section (1) of this rule regarding appropriate rest periods do not apply when all of the following conditions are met:

- (a) The employee is 18 years of age or older; and
- (b) The employee works less than five hours in any period of 16 continuous hours; and
- (c) The employee is working alone; and
- (d) The employee is employed in a retail or service establishment, i.e., a place where goods and services are sold to the general public, not for resale; and
- (e) The employee is allowed to leave the employee's assigned station when the employee must use the restroom facilities.

(2) In the absence of regularly scheduled meal periods and rest periods, it will be sufficient compliance with section (1) of this rule when the employer can show that the employee has, in fact, received the time specified. This is permitted only in those cases where the employer can show that the ordinary nature and circumstances of the work prevent the employer from establishing and maintaining a regularly scheduled meal period and rest period.

(3) For the purposes of 839-020-0050, factors to be considered in determining the nature or circumstances of work which prevent an employee being relieved of all duties or the scheduling of regular meal and rest periods may include, but are not limited to, the following: The safety and health of employees, patients, clients, and the public; availability of other employees to provide relief; qualifications (or lack thereof) of those available to provide relief; costs involved in the shutdown/startup of machinery in continuous-operation industrial processes; intermittent and unpredictable work flow not in the control of the employer/employee; unforeseeable equipment failures, emergencies, acts of nature.

(4) As used in this rule, "work period" means the period between the time the employee begins work and the time the employee ends work, and includes rest periods, and any period of one hour or less (not designated as a meal period) during which the employee is relieved of all duties. Meal periods are not included as part of the work period unless the employee continues to perform duties during the meal period.

(5) The provisions of this section regarding appropriate meal periods and rest periods may be modified by the terms of a collective bargaining agreement if the provisions of the collective bargaining agreement entered into by the employees specifically prescribe rules concerning meal periods and rest periods.

(6) Pursuant to the provisions of ORS 653.261(5), if an employer agrees, an employee may waive a meal period if all of the following conditions are met:

- (a) The employee is employed to serve food or beverages, receives tips, and reports the tips to the employee's employer;
- (b) The employee is at least 18 years of age;
- (c) The employee voluntarily requests to waive the employee's meal periods no less than seven calendar days after beginning employment;
- (d) The employee's request to waive the employee's meal periods is in writing and is signed and dated by both the employee and employer;
- (e) The employer retains and keeps available to the commissioner a copy of the employee's request to waive the employee's meal period during the duration of the

employee's employment and for no less than six months after the termination date of the employee;

(f) The employee is provided with a reasonable opportunity to consume food during any workshift of six hours or more while continuing to work;

(g) The employee is paid for any and all meal periods in which the employee is not completely relieved of all duty;

(h) The employee is not required to work longer than eight hours without receiving a 30-minute meal period in which the employee is relieved of all duty;

(i) The employer makes and keeps available to the commissioner accurate records of hours worked by each employee which clearly indicate whether or not the employee has received a meal period; and

(j) The employer posts a notice provided by the commissioner regarding rest and meal periods in a conspicuous and accessible place where all employees can view it. Notices that comply with this rule are available upon request from the Bureau of Labor and Industries.

(7) The written request to waive the employee's meal periods referred to in subsection (6)(d) of this rule must be made using a form provided by the commissioner in the language used by the employer to communicate with the employee. Written request forms that comply with this rule are available upon request from the Bureau of Labor and Industries.

(8) Either the employer or employee may revoke the agreement for the employee to waive the employee's meal periods by providing at least seven (7) calendar days written notice to the other.

(9) Notwithstanding the provisions of section (8), an employee who has requested to waive meal periods pursuant to sections (6) and (7) of this rule may request to take a meal period without revoking the agreement to waive such periods. Such requests must be submitted in writing to the employee's employer no less than 24 hours prior to the meal period(s) requested.

(10) An employer may not coerce an employee into waiving a meal period.

(11) An employer will be considered to have coerced an employee into waiving the employee's meal period under the following circumstances:

(a) The employer requests or requires an employee to sign a request to waive meal periods;

(b) An employee is required to waive meal periods as a condition of employment at the time of hire or at any time while employed;

(c) The employer requests or requires any person, including another employee, to request or require an employee to waive meal periods; or

(d) The employee signs a form requesting to waive meal periods prior to being employed for seven calendar days;

(12) Minors under the age of 18 are not subject to this rule. Rest and meal period requirements for minors under 18 years of age are provided in OAR 839-021-0072.

839-020-0080

General Requirements

(1) Every employer regulated under ORS 653.010 to 653.261 must maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the law applies:

- (a) Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;
- (b) Home address, including zip code;
- (c) Date of birth, if under 19;
- (d) Occupation in which employed;
- (e) Time of day and day of week on which the employee's workweek begins. If the employee is part of a work force or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole work force or establishment will suffice;
- (f) Regular hourly rate of pay for any workweek in which overtime compensation is due, and an explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, and the amount and nature of each payment which, pursuant to ORS 653.261(1) is excluded from the "regular rate of pay". (These records may be in the form of vouchers or other payment data.);
- (g) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" is any fixed period of 24 consecutive hours and a "workweek" is any fixed and regularly recurring period of seven consecutive workdays);
- (h) Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;
- (i) Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under subsection (h) of this section;
- (j) Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions;
- (k) Total wages paid each pay period;
- (l) Date of payment and the pay period covered by payment.

(2) Every employer who makes retroactive payment of wages or compensation under the supervision of the U.S. Department of Labor or the Oregon Bureau of Labor and Industries must record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

(3) With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required by this rule, the schedule of daily and weekly hours the employee normally works, provided:

- (a) In weeks in which an employee adheres to this schedule, indicates by check mark, statement or other method that such hours were in fact actually worked by the employee; and
- (b) In week in which more or less than the scheduled hours are worked, shows that exact number of hours worked each day and each week.

(4) With respect to each employee in a bona fide executive, administrative, or professional capacity (including employees employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools), or in outside sales, as defined in ORS 653.010(8), employers must maintain and preserve records containing all the information and data required by subsections (1)(a) through (e) of this rule and, in addition, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and perquisites.

(5) With respect to each employee of hospitals and institutions primarily engaged in the care of persons who are sick or aged or have mental illness or mental retardation and who reside on the premises compensated for overtime work on the basis of a work period of 14 consecutive days pursuant to an agreement or understanding under OAR 839-020-0125(2)(d), employers must maintain and preserve:

(a) The records required by section (1) of this rule except subsections (1)(e) and (g) through (i) of this rule, and in addition:

(A) Time of day and day of week on which the employee's 14-day work period begins;

(B) Hours worked each workday and total hours worked each 14-day work period;

(C) Total straight-time wages paid for hours worked during the 14-day work period;

(D) Total overtime excess compensation paid for hours worked in excess of eight in a workday and 80 in the work period.

(b) A copy of the agreement or understanding with respect to using the 14-day period for overtime pay computations or, if such agreement or understanding is not in writing, a memorandum summarizing its terms and showing the date it was entered into and how long it remains in effect.

(6) With respect to each tipped employee, the employer must maintain and preserve payroll or other records containing all the information and data required in section (1) of this rule and, in addition, a symbol, letter or other notation placed on the pay records identifying each employee.

839-020-0260

Ambulance and Rescue Service Employees

(1) Ambulance and rescue service employees of a public agency other than a fire protection or law enforcement agency may be treated as employees engaged in fire protection or law enforcement activities of the type contemplated by ORS 653.269(3) if their services are substantially related to firefighting or law enforcement activities in that:

(a) The ambulance and rescue service employees have received training in the rescue of fire, crime, and accident victims or firefighters or law enforcement personnel injured in the performance of their respective duties; and

(b) The ambulance and rescue service employees are regularly dispatched to fires, crime scenes, riots, natural disasters and accidents.

(2) Where employees perform both fire protection and law enforcement activities, the applicable standard is the one which applies to the activity in which the employee spends the majority of work time during the work period.

(3) Ambulance and rescue service employees are not exempt under ORS 653.269(3) when they are employees of public agencies engaged in the operation of a hospital or an

institution primarily engaged in the care of persons who are sick or aged or have mental illness or mental retardation and who reside on the premises of such institutions.

(4) Ambulance and rescue service employees of private organizations are not exempt from the provisions of ORS 653.269(3) even if their activities are substantially related to the fire protection and law enforcement activities performed by a public agency or their employer is under contract with a public agency to provide such services.

839-020-1010

Violations for Which a Civil Penalty May Be Assessed

(1) The commissioner may assess a civil penalty for any of the following willful violations:

(a) Failure to pay the applicable minimum wage for all hours worked in violation of ORS 653.025 and OAR 839-020-0010.

(b) Failure to pay overtime for all hours worked over forty (40) in a week in violation of OAR 839-020-0030.

(c) Payment to persons with mental or physical disabilities less than a fixed minimum hourly wage rate which has been approved by the commissioner in violation of ORS 653.030 and OAR 839-020-0015;

(d) Payment to student-learners less than a fixed minimum hourly wage rate which has been approved by the commissioner in violation of ORS 653.030 and OAR 839-020-0015;

(e) Failure to make required payroll and other records in violation of ORS 653.045, OAR 839-020-0050, OAR 839-020-0080, and OAR 839-020-0082;

(f) Failure to keep available required payroll and other records in violation of ORS 653.045, OAR 839-020-0050, OAR 839-020-0080, OAR 839-020-0082, and OAR 839-020-0083;

(g) Failure to supply each of the employer's employees with itemized statements of amounts and purposes of deductions in the manner provided in ORS 652.610 in violation of 653.045, OAR 839-020-0012 and 839-020-0080;

(h) Failure to keep summaries of ORS 653.010 to 653.261 and rules promulgated thereto by the commissioner and the Wage and Hour Commission posted in a conspicuous and accessible place in or about the premises where such employees are employed in violation of ORS 653.050;

(i) Discharging or discriminating in any other manner against any employee in violation of ORS 653.060:

(A) Because the employee has made complaint that the employee has not been paid wages in accordance with ORS 653.010 to 653.261;

(B) Because the employee has caused to be instituted or is about to cause to be instituted any proceedings under or relating to ORS 653.010 to 653.261; or

(C) Because the employee has testified or is about to testify in any such proceedings.

(j) Failure to provide to each employee appropriate meal periods in violation of OAR 839-020-0050;

(k) Coercing an employee into waiving a meal period in violation of ORS 653.261(5)(b);

(l) Failure to provide to each employee appropriate rest periods in violation of OAR 839-020-0050;

- (m) Intentional failure to provide a reasonable rest period to accommodate an employee who needs to express breast milk in violation of ORS 653.077 and OAR 839-020-0051;
 - (n) Requiring any employee to lift excessive weights in violation of OAR 839-020-0060;
or
 - (o) Employing any employee to work under any conditions in violation of OAR 839-020-0065.
- (2) Except as provided in ORS 653.261(5)(c), the civil penalty for any one violation will not exceed \$1000. The actual amount of the civil penalty will depend on all the facts and circumstances referred to in OAR 839-020-1020.
- (3) The civil penalties set out in this rule will be in addition to any other penalty assessed or imposed by law or rule.

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