

**BEFORE THE COMMISSIONER
OF THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON**

In the Matter of:

**ENTRADA LODGE, INC., dba BEST
WESTERN ENTRADA LODGE,**

Respondent.

Case No. **25-00**

FINDINGS OF FACT
ULTIMATE FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
AMENDED ORDER ON REMAND

SYNOPSIS

Respondent failed to restore Complainant to her former housekeeping position after she took OFLA leave and attempted to return to work, and the forum awarded Complainant \$262.50 in lost wages and \$15,000 damages for mental suffering that Complainant experienced as a result of Respondent's unlawful employment practice. The forum found that Complainant had not been constructively discharged when she quit Respondent's employ to go to work for another inn that offered more hours. *Former* ORS 659.470¹ *et. seq.*, *former* OAR 839-009-0270.²

The above-entitled case came on regularly for hearing before Alan McCullough, designated as Administrative Law Judge ("ALJ") by Jack Roberts, Commissioner of the

¹ Effective January 1, 2002, ORS Chapter 659 was reorganized into two separate chapters, ORS Chapters 659 and 659A. All references to "*former*" Oregon Revised Statutes in this Final Order cite to the statute that was in effect in 1998.

² BOLI amended its OFLA administrative rules effective February 1, 2000, and again effective May 17, 2002. All references to "*former*" Oregon Administrative Rules in this Final Order cite to the rule that was in effect in 1998.

1 Bureau of Labor and Industries for the State of Oregon. The hearing was held on
2 February 8 and 9, 2000, at the Bureau of Labor and Industries office located at 1250
3 N.E. 3rd, #B-105, Bend, Oregon.

4 The Bureau of Labor and Industries (“BOLI” or “the Agency”) was represented by
5 Linda Lohr, an employee of the Agency. Complainant Cheryl Donovan³ was present
6 throughout the hearing, and was not represented by counsel. Respondent was
7 represented by Gregory P. Lynch, trial attorney, and co-counsel Stanley D. Austin, of
8 the law firm Hurley, Lynch & Re, P.C. Douglas F. Ritchie was present throughout the
9 hearing as Respondent’s representative.

10 The Agency called as witnesses, in addition to Complainant: Douglas Ritchie,
11 Respondent’s general manager; Christina (Crain) Delong and Kimberly Ford, formerly
12 employed as housekeepers for Respondent; Richard Buxton, Complainant’s husband;
13 Jeffrey Carlson, accounting coordinator for BOLI; and Jane MacNeill, Civil Rights
14 Division senior investigator.

15 Respondent called Ritchie and Complainant as witnesses.

16 The forum received into evidence:

17 a) Administrative exhibits X-1 through X-19 (submitted prior to hearing), X-20
18 (submitted at hearing), and X-21 through X-30 (issued or submitted after hearing);

19 b) Agency exhibits A-1 through A-7 (submitted prior to hearing with the
20 Agency’s case summary), and A-8 through A-14 (submitted at hearing);

21 c) Respondent’s exhibits R-1 (submitted prior to hearing with Respondent’s
22 case summary), R-2 through R-9, R-13 and the first four pages of R-14 (submitted at
23 hearing).

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³ At the time of hearing, Complainant’s last name was Buxton and it has since been changed to Donovan.

1 On August 2, 2000, the Commissioner issued an Amended Final Order
2 concluding that Respondent had violated *former* ORS 659.484(1) and *former* ORS
3 659.492(1), and ordering Respondent to pay \$262.50 in lost wages and \$15,000 in
4 mental suffering damages to Complainant Donovan. Respondent appealed the
5 Amended Final Order to the Oregon Court of Appeals. On October 16, 2002, the
6 Oregon Court of Appeals issued an opinion in which it reversed and remanded the
7 Amended Final Order for reconsideration under the correct legal standard.

8 Having fully reconsidered the entire record in this matter, I, Dan Gardner,
9 Commissioner of the Bureau of Labor and Industries, hereby make the following
10 Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions
11 of Law, Opinion, and Order.

12 **FINDINGS OF FACT – PROCEDURAL**

13 1) On October 28, 1998, Complainant filed a verified complaint with Agency's
14 Civil Rights Division ("CRD") alleging that she was the victim of the unlawful
15 employment practices of Respondent in that Respondent failed to return her to her
16 former housekeeper position upon returning to work from parental leave. On July 16,
17 1999, BOLI amended Complainant's complaint to correct Respondent's name and
18 added the name of Respondent's registered agent. After investigation and review, the
19 CRD issued an Administrative Determination finding substantial evidence supporting the
20 allegation that Respondent did not return Complainant to her former job following her
21 medical leave. (Exhibits X-2, A-1, A-2, A-3)

22 2) On November 8, 1999, the Agency submitted to the forum Specific
23 Charges alleging that Respondent discriminated against Complainant by: (a) failing to
24 restore her to the position she held at the time she commenced family leave after she
25 was ready to return to work; and (b) constructively discharging her by reducing her

1 hours so that it was necessary for her to find other employment, both in violation of ORS
2 659.492. The Agency also requested a hearing. (Exhibits X-1, X-2a)

3 3) On November 18, 1999, the forum served on Respondent the Specific
4 Charges, accompanied by the following: a) a Notice of Hearing setting forth February 8,
5 1999, in Bend, Oregon, as the time and place of the hearing in this matter; b) a
6 Summary of Contested Case Rights and Procedures containing the information required
7 by ORS 183.413; c) a complete copy of the Agency's administrative rules regarding the
8 contested case process; and d) a separate copy of the specific administrative rule
9 regarding responsive pleadings. (Exhibits X-2, X-3, X-4)

10 4) On December 6, 1999, Respondent, through Gregory P. Lynch, filed an
11 answer to the Specific Charges. (Exhibit X-5)

12 5) On January 6, 2000, the forum ordered the Agency and Respondent each
13 to submit a case summary including: a list of all persons to be called as witnesses;
14 identification and copies of all documents to be offered into evidence; a statement of
15 any agreed or stipulated facts; a brief statement of the elements of the claim and any
16 damage calculations (for the Agency only); and a brief statement of any defenses to the
17 claim (for Respondent only). The forum ordered the participants to submit case
18 summaries by January 28, 2000, and notified them of the possible sanctions for failure
19 to comply with the case summary order. (Exhibit X-6)

20 6) On January 20, 2000, Respondent filed a motion for a postponement in
21 which it alleged that the Agency would not cooperate in arranging discovery depositions
22 that Respondent needed to conduct "to ensure that respondent has a full and fair
23 opportunity to present its case at the contested hearing." (Exhibit X-7)

24 7) On January 20, 2000, Respondent also filed a motion for a discovery
25 order to be allowed to take the deposition of Complainant. (Exhibit X-8)

1 8) On January 25, 2000, the Agency filed objections to Respondent's motion
2 to postpone, arguing that the Agency had not impeded Respondent's efforts to seek a
3 deposition or obtain discovery of documents and that Respondent's failure to make
4 adequate efforts to complete discovery before the scheduled hearing date did not
5 constitute good cause for granting a postponement. (Exhibit X-10)

6 9) On January 25, 2000, the Agency filed objections to Respondent's request
7 to take Complainant's deposition, arguing that Respondent's request was untimely and
8 failed to demonstrate why a deposition rather than informal or other means of discovery
9 was necessary. (Exhibit X-11)

10 10) On January 25, 2000, the forum issued an interim order denying
11 Respondent's motion to take Complainant's deposition on the basis that Respondent
12 had failed to seek discovery through an informal exchange of information before
13 requesting a discovery order to take Complainant's deposition. The forum noted that an
14 informal attempt to arrange for a deposition did not constitute an attempt to seek
15 discovery through an informal exchange of information. In the same order, the forum
16 denied Respondent's motion for a postponement on the basis that Respondent's
17 inability to make an informal arrangement to take Complainant's deposition did not meet
18 the good cause requirement of OAR 839-050-0020(10). (Exhibit X-12)

19 11) On January 28, 2000, Respondent filed a motion for reconsideration of the
20 forum's rulings on its motions for postponement and to take Complainant's deposition.
21 (Exhibit X-13)

22 12) On January 28, 2000, the Agency and Respondent timely filed their case
23 summaries. (Exhibits X-15, X-16)

1 13) On January 28, 2000, the forum denied Respondent's motion for
2 reconsideration of the forum's rulings on Respondent's motions to postpone and to take
3 Complainant's deposition. (Exhibit X-17)

4 14) At the commencement of the hearing, the ALJ verbally advised the
5 Agency and Respondent of the issues to be addressed, the matters to be proved, and
6 the procedures governing the conduct of the hearing. (Statement of ALJ)

7 15) Prior to opening statements, Respondent objected to the ALJ's receipt of
8 the Agency's case summary, marked as Exhibit X-15, into evidence on the basis that
9 Respondent had just received it at 3 p.m. on February 7, the previous day. Respondent
10 alleged that it was prejudiced by the Agency's failure to provide Respondent with the
11 case summary in a timely manner. At the ALJ's request, Respondent provided the
12 forum with the manila envelope that the Agency's case summary was mailed in, bearing
13 the postmark of "Jan 28'00," and it was marked and received as Exhibit X-20. The ALJ
14 admitted Exhibit X-15 because: (1) Exhibit X-20 demonstrated it was timely filed
15 pursuant to the requirements of OAR 839-050-0040(1); and (2) testimony by Jeffrey
16 Carlson, BOLI's accounting coordinator who is responsible for internal controls
17 regarding BOLI's mailroom procedures, established that Exhibit X-20 was in fact
18 postmarked and placed in a U. S. Postal Service receptacle on January 28, 2000, in the
19 normal course of business. (Testimony of Carlson; Statement of ALJ; Exhibit X-20)

20 16) On May 4, 2000, the ALJ issued a proposed order that notified the
21 participants they were entitled to file exceptions to the proposed order within ten days of
22 its issuance. The forum received no exceptions, and a Final Order was issued on June
23 8, 2000. (Exhibits X-23, X-24)

24 17) On June 27, 2000, Respondent's attorney Respondent's attorney, Gregory
25 P. Lynch, notified the Agency's case presenter that neither the Proposed Order nor the

1 Final Order had been served on him. After confirming this fact, on July 10, 2000, the
2 Commissioner issued an order entitled "Order Withdrawing Final Order For Purpose of
3 Reconsideration." The Commissioner ordered that the ALJ reissue the Proposed Order
4 and serve it on Mr. Lynch so that Respondent would have the opportunity to file
5 exceptions pursuant to OAR 839-050-0380. On July 12, 2000, an amended⁴ Proposed
6 Order was reissued pursuant to that Order. (Exhibits X-25, X-26, X-27, X-28)

7 18) On July 20, 2000, Respondent filed exceptions to the Amended Proposed
8 Order. (Exhibit X-30)

9 **FINDINGS OF FACT – THE MERITS**

10 1) In 1998, Respondent was an Oregon corporation providing commercial
11 lodging in and around Bend, Oregon, under the assumed business names of Best
12 Western Entrada Lodge ("Entrada") and Best Western Inn & Suites. (Exhibit X-2a, X-5)

13 2) Respondent employed 25 or more persons in the State of Oregon for each
14 working day during each of 20 or more calendar workweeks in both 1997 and 1998.
15 (Exhibit X-2a, X-5)

16 3) Douglas Ritchie, Entrada's general manager, hired Complainant as a
17 housekeeper at Entrada on January 16, 1998. Complainant's first day of work was
18 January 17, 1998. When Complainant was hired, her last name was Schulze.
19 (Testimony of Complainant; Exhibit A-5)

20 4) When Complainant was hired, Ritchie did not promise Complainant a
21 specific schedule or number of hours she would work per week. It was Ritchie's policy
22 not to guarantee any housekeeper any particular hours. (Testimony of Complainant,
23 Ritchie)

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⁴ There were no substantive changes in the Amended Proposed Order.

1 5) Complainant was paid the state minimum hourly wage throughout her
2 employment with Entrada. In 1998, the state minimum wage was \$6.00 per hour.
3 (Testimony of Complainant; Official Notice)

4 6) Complainant's husband, Richard Buxton, interviewed with Ritchie on the
5 same day as Complainant and was hired as Entrada's maintenance person. He began
6 work at the same time as Complainant. Complainant and Buxton were married on April
7 7, 1998. (Testimony of R. Buxton)

8 7) Buxton's wages were garnished for child support payments throughout the
9 time he worked for Entrada. His bi-monthly net earnings while employed by Entrada
10 were \$300 after taxes and the child support garnishment. (Testimony of R. Buxton)

11 8) Complainant had five children at the time she married Buxton. (Testimony
12 of Complainant, R. Buxton)

13 9) Respondent's business is dependent on the tourist industry and
14 occupancy rates fluctuate considerably during the course of the year. Summer is
15 Respondent's busiest season. The hours worked by housekeepers vary considerably
16 depending on occupancy rates, ranging in 1998 from a low of 98.5 hours between
17 November 1-15, 1998, to a high of 647.5 hours between July 15-31, 1998.⁵ The hours
18 worked by housekeepers are directly proportionate to Respondent's occupancy rates.
19 (Testimony of Ritchie; Exhibit A-7, R-1)

20 10) Ritchie was responsible for the scheduling of housekeeper's hours
21 throughout Complainant's employment with Respondent. (Testimony of Ritchie)

22 11) Complainant's housekeeping duties involved cleaning rooms. Specifically,
23 she made beds, vacuumed, washed bathrooms, cleaned up "stayovers," did some
24

25 ⁵ Ritchie testified, and Respondent's timecards reflect, that housekeeper hours were tracked on a semi-monthly basis for payroll purposes.

1 “deep cleaning,” and occasionally worked as a leadperson when she was the most
2 senior housekeeper scheduled to work, during which time she assigned rooms to other
3 housekeepers and did laundry. (Testimony of Complainant)

4 12) During Complainant’s employment, her supervisors filled out semi-monthly
5 time cards showing the hours she and other housekeepers worked. Complainant
6 maintained a contemporaneous record of her own hours on her calendar at home.
7 (Testimony of Complainant)

8 13) Complainant’s daughter made Complainant’s 1998 home calendar. On
9 that calendar, Complainant wrote down significant events as they occurred or were
10 scheduled,⁶ as well as her hours at work. Based on an inspection of the calendar and
11 Complainant’s testimony, the forum finds that Complainant’s handwritten entries on the
12 calendar are an accurate, contemporaneous account of events in Complainant’s life
13 during the time she worked for Entrada.⁷ Where Complainant’s testimony concerning
14 dates conflicted with those written on the calendar, the forum has relied on the calendar
15 to determine accurate dates. (Testimony of Complainant; Exhibit A-11)

16 14) Ritchie does very little documentation concerning Respondent’s
17 housekeepers because there is such a high turnover. Ritchie did not
18 contemporaneously document any of his conversations with Complainant. (Testimony
19 of Ritchie)

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23 ⁶ For example, February’s calendar contains numerous entries showing the specific dates and time
24 Complainant worked for Respondent, as well as other entries, such as a reference to a legal notice in
25 “The Bulletin,” a note to “pay Farmer’s Insurance \$66.46,” a note that Complainant “mailed off tax papers
& phone bill payment 83.83,” and a note that she had “side” and “back pain” on the 12th and 13th.

⁷ Another significant indicator of the calendar’s reliability is the fact that the total number of hours
recorded on it by Complainant as worked prior to July 27, 1998, is 630.25 hours, whereas the total
number of hours on her time cards for that period was 627.50 hours.

1 15) When Complainant was hired, Entrada already employed four other
2 housekeepers – Jennifer Bliss, Karla Henley, Laurie Knox and Nikke Standley.
3 (Exhibits A-5, A-7, R-1)

4 16) Complainant learned she was pregnant on January 17, 1998, her first day
5 of work for Entrada, and told Standley, the housekeeping supervisor, that she was
6 pregnant. (Testimony of Complainant)

7 17) Sometime in the spring of 1998, Ritchie learned Complainant was
8 pregnant. He assumed she would take 12 weeks of leave when her baby was born.
9 (Testimony of Ritchie)

10 18) From January 16-31, 1998, Entrada's five⁸ housekeepers worked the
11 following hours, for a total of 219.25⁹ hours:

12	Complainant:	51.75
13	L. Knox:	52.75
14	J. Bliss:	37.25
15	N. Standley:	49.75
16	K. Henley:	27.75

17 (Exhibits A-5, A-7, R-1, R-7)

18 19) Prior to February 1, 1998, Bliss, Henley, and Standley left Entrada's
19 employ. Knox replaced Standley as housekeeping supervisor. Between February 1
20 and February 15, 1998, Entrada employed two new housekeepers – Ramona Lopez

21 ⁸ In this and subsequent Findings of Fact, the forum has listed the number of housekeepers who
22 actually worked during the specified time period, based on the time cards in Exhibits A-5, A-7, and R-1.
23 In some instances, this total differs from Respondent's summary entitled "Number of Housekeeping
24 Employees Working Per Pay Period (1998)" (Exhibit R-9).

25 ⁹ In this and subsequent Findings of Fact, the total number of hours worked by housekeepers was
derived from adding together the specific hours listed after each housekeeper. In some instances, this
total differs from Respondent's summary of "Total Housekeeper Hours" (Exhibit R-7). The forum has
used this method of calculation instead of relying on the hours listed in Exhibit R-7 based on Ritchie's
testimony that the hours in Exhibit R-7 were derived from housekeeper's time records in Exhibits A-5, A-7,
and R-1.

1 and Angela Rodgers. In that time period, Entrada's four housekeepers worked the
2 following hours, for a total of 110.5 hours:

3 Complainant: 36.25
4 L. Knox: 46.75
5 A. Rodgers: 17
6 R. Lopez: 10.5

7 (Testimony of Ritchie; Exhibits A-5, A-7, R-1)

8 20) Between February 16 and February 28, 1998, Entrada employed three
9 new housekeepers - Lynn Cornell, Holly Luckins and Bobbie Mitchell. In that time
10 period, Entrada's seven housekeepers worked the following hours, for a total of 262
11 hours:

12 Complainant: 64.25
13 L. Knox: 56.25
14 A. Rodgers: 34.75
15 R. Lopez: 24
16 B. Mitchell: 37
17 L. Cornell: 14.5
18 H. Luckins: 31.25

19 (Testimony of Ritchie; Exhibits A-5, A-7, R-1)

20 21) Prior to March 1, 1998, Cornell and Lopez left Entrada's employ. Between
21 March 1 and March 15, 1998, Entrada employed three new housekeepers - Kimberly
22 Ford, Sammie Garrett, and Jennifer Rafford. In that time period, Entrada's eight
23 housekeepers worked the following hours, for a total of 201.5 hours:

24 Complainant: 56.75
25 L. Knox: 73.75
K. Ford: 18.25
A. Rodgers: 2.75
B. Mitchell: 16.5
H. Luckins: 5.5
S. Garrett: 15.25
J. Rafford: 12.75

(Testimony of Ritchie; Exhibits A-5, A-7, R-1)

1 22) Prior to March 16, 1998, Garrett, Luckins, Rafford, and Rodgers left
2 Entrada's employ. Between March 16 and March 31, 1998, Entrada employed six new
3 housekeepers - Tempie Davis, Wynona Grilley, Darcie Ingram, Tamara Keck, Alicia
4 Lopez and Anna Mort. In that time period, Entrada's 10 housekeepers worked the
5 following hours, for a total of 326.25 hours:

6	Complainant:	61.5
7	L. Knox:	52.5
	K. Ford:	60.25
8	B. Mitchell:	31.5
	T. Davis:	28.25
9	D. Ingram:	18.75
	A. Lopez:	11.75
10	W. Grilley:	49
	T. Keck:	3.5
11	A. Mort:	9.25

12 (Testimony of Ritchie; Exhibits A-5, A-7, R-1)

13 23) Prior to April 1, 1998, Keck, A. Lopez, Mitchell, and Mort left Entrada's
14 employ. Between April 1 and 15, 1998, Entrada re-employed one housekeeper –
15 Ramona Lopez. In that time period, Entrada's seven housekeepers worked the
16 following hours, for a total of 231.25 hours:

17	Complainant:	46.25
18	L. Knox:	61
	K. Ford:	50.75
19	T. Davis:	26.25
	D. Ingram:	25.25
20	R. Lopez:	12
21	W. Grilley:	9.75

22 (Testimony of Ritchie; Exhibits A-5, A-7, R-1)

23 24) Prior to April 16, 1998, Davis and Grilley left Entrada's employ. Between
24 April 16 and 30, 1998, Entrada's five housekeepers worked the following hours, for a
25 total of 192.75 hours:

1 Complainant: 46.75
L. Knox: 67.25
2 K. Ford: 53.5
D. Ingram: 19
3 R. Lopez: 6.25

4 (Testimony of Ritchie; Exhibits A-5, A-7, R-1)

5 25) Prior to May 1, 1998, R. Lopez left Entrada's employ. Between May 1 and
6 15, 1998, Entrada's four housekeepers worked the following hours, for a total of 176.25
7 hours:

8 Complainant: 48.5
9 L. Knox: 59.75
10 K. Ford: 52.25
D. Ingram: 15.75

11 (Testimony of Ritchie; Exhibits A-5, A-7, R-1)

12 26) Between May 16 and 31, 1998, Entrada employed one new housekeeper
13 - Christie Hammell. In that time period, Entrada's five housekeepers worked the
14 following hours, for a total of 228.75 hours:

15 Complainant: 54.25
16 L. Knox: 65
K. Ford: 75
17 D. Ingram: 17.75
18 C. Hammell: 16.75

19 (Testimony of Ritchie; Exhibits A-5, A-7, R-1)

20 27) Prior to June 1, 1998, Hammell and Ingram left Entrada's employ.
21 Between June 1 and 16, 1998, Entrada employed two new housekeepers - Josh Price
22 and Kevin Sibert. In that time period, Entrada's five housekeepers worked the following
23 hours, for a total of 207.75 hours:

24 Complainant: 48
25 L. Knox: 60.5
K. Ford: 67.25
K. Sibert: 26

1 J. Price: 6

2 (Testimony of Ritchie; Exhibits A-5, A-7, R-1)

3 28) On June 9, 1998, Complainant's doctor restricted her to light duty. On or
4 about the same day, Complainant presented her light duty note to Ritchie. For the rest
5 of June, Ritchie assigned lighter duty work to Complainant. Starting on June 13, Ritchie
6 assigned laundry duties to Complainant, which Complainant performed through July 26,
7 1998. The lighter duty and laundry work assigned to Complainant was an
8 accommodation of her light duty restrictions due to her pregnancy. (Testimony of
9 Complainant, Ritchie; Exhibit A-11)

10
11 29) Between June 16 and 30, 1998, Entrada employed four new
12 housekeepers – Reba Balcomb, Janelle Grant, Tara Hunter and Lance Robbins. In that
13 time period, Entrada's nine housekeepers worked the following hours, for a total of
14 416.50 hours:

15	Complainant:	53.25
16	L. Knox:	58.75
17	K. Ford:	61.75
18	K. Sibert:	53
19	J. Price:	63.25
20	R. Balcomb:	14
21	J. Grant:	20.5
22	T. Hunter:	46
23	L. Robbins:	46

24 (Testimony of Ritchie; Exhibits A-5, A-7, R-1)

25 30) Between July 1 and 15, 1998, Entrada employed two new housekeepers –
26 Michelle Miller and Brittney Richman. In that time period, Entrada's 11 housekeepers
27 worked the following hours, for a total of 526.5 hours:

28	Complainant:	40.75
29	L. Knox:	75

1 K. Ford: 62
K. Sibert: 73.75
2 J. Price: 54
R. Balcomb: 56.25
3 J. Grant: 50.75
T. Hunter: 48.75
4 L. Robbins: 58.25
B. Richman: 3.5
5 M. Miller: 3.5

6 (Testimony of Ritchie; Exhibits A-5, A-7, R-1)

7 31) Between July 15 and 31, 1998, Complainant worked 6.25 hours on July
8 18, 6.75 hours on July 19, and 7.25 hours on July 26. In the same time period,
9 Entrada's 11 housekeepers worked the following hours, for a total of 646.75 hours:

10 Complainant: 20.25
11 L. Knox: 94.75
12 K. Ford: 79.45
K. Sibert: 85.75
13 J. Price: 71.5
R. Balcomb: 64.5
14 J. Grant: 61.25
T. Hunter: 21
15 L. Robbins: 21
B. Richman: 68.5
16 M. Miller: 50.5

17 (Testimony of Ritchie; Exhibits A-7, R-1)

18 32) On July 27, 1998, Complainant stopped working due to her pregnancy,
19 based on the advice of her physician. Prior to July 27, Complainant told Ritchie that she
20 would be taking maternity leave until her six week checkup after her baby was born and
21 planned to return to work for Respondent at that time. When Complainant told Ritchie
22 she was beginning her leave, Ritchie told her to contact him when she was ready to
23 come back to work. (Testimony of Complainant; Exhibit A-5)

1 33) Between January 17, 1998 and July 26, 1998, Complainant worked an
2 average of 23 hours per week.¹⁰ (Exhibits A-5, A-7, R-1; Calculation of ALJ)

3 34) Ritchie considered Complainant to be a “fine” employee at the time her
4 leave commenced and planned to put her back to work when she returned from leave.
5 (Testimony of Ritchie)

6 35) At the time Complainant’s leave commenced, Complainant and her
7 husband were behind in paying their bills. (Testimony of R. Buxton)

8 36) During Complainant’s entire period of employment with Respondent,
9 Ritchie said nothing negative regarding Complainant’s pregnancy or her anticipated
10 maternity leave. Complainant and Ritchie had a good working relationship. (Testimony
11 of Complainant, Ritchie)

12 37) Prior to August 1, 1998, Hunter and Robbins left Entrada’s employ.
13 Between August 1 and 15, 1998, Entrada employed one new housekeeper – Robin
14 Rynniewicz. In the same time period, Entrada’s 10 housekeepers worked the following
15 hours, for a total of 555.5 hours:

16	L. Knox:	81.5
17	K. Ford:	76.75
	K. Sibert:	71.5
18	J. Price:	79
	R. Balcomb:	79.75
19	J. Grant:	38.25
	B. Richman:	58.25
20	M. Miller:	32.25
	J. Carroll:	21.5
21	R. Rynniewicz:	16.75

22 (Testimony of Ritchie; Exhibits A-7, R-1)
23 _____
24

25 ¹⁰ This figure was reached at by dividing 191 (the number of days in the period of time beginning January 17, 1998 and ending July 26, 1998) by 7 to determine the number of weeks worked by Complainant, then dividing 27.3 (the number of weeks worked by Complainant) into 627.5 (the total number of hours worked by Complainant).

1 38) Complainant's child was born on August 20, 1998. Complainant visited
2 Entrada several times to show off her baby. (Testimony of Complainant, Ritchie)

3 39) Prior to August 1, 1998, Carroll, Grant and Rynniewicz left Entrada's
4 employ. Between August 16 and 31, 1998, Entrada's seven housekeepers worked the
5 following hours, for a total of 414.75 hours:

6	L. Knox:	61.75
7	K. Ford:	85.25
8	K. Sibert:	73.75
9	J. Price:	75.25
	R. Balcomb:	40.5
	B. Richman:	52.25
	M. Miller:	26

10 (Testimony of Ritchie; Exhibits A-7, R-1)

11 40) Prior to September 1, 1998, Balcomb, Miller, and Richman left Entrada's
12 employ. Between September 1 and 15, 1998, Entrada employed one new housekeeper
13 – Korissa Garfield, whose first day of work was September 15, 1998. Garfield was hired
14 on an as-needed basis. In the same time period, Entrada's five housekeepers worked
15 the following hours, for a total of 239.75 hours:

17	L. Knox:	13.5
18	K. Ford:	62.25
19	K. Sibert:	92.75
	J. Price:	65
	K. Garfield:	6.25

20 (Testimony of Ritchie; Exhibits A-7, R-1)

21 41) Prior to September 16, 1998, Knox left Entrada's employ. Some time prior
22 to that, Sibert had replaced Knox as housekeeping supervisor. As housekeeping
23 supervisor, he was paid more than Entrada's housekeepers. Between September 16
24

1 and 30, 1998, Entrada employed one new housekeeper – Cristina Crain.¹¹ In the same
2 time period, Entrada’s five housekeepers worked the following hours, for a total of
3 245.25 hours:

4	K. Ford:	62.25
5	K. Sibert:	94.25
6	J. Price:	19
6	K. Garfield:	30.25
7	C. Crain:	59.5

8 (Testimony of Ritchie; Exhibits A-7, R-1)

9 42) Garfield’s last day of work was September 25, 1998. She worked
10 September 16, 17, 22, 23, 24, and 25, 1998. (Testimony of Ritchie; Exhibits A-7, R-1)

11 43) Crain started work on September 17, 1998. She was hired as an “on-call”
12 employee who telephoned Respondent each day to see if work was available. She
13 worked September 17-23 and September 25-30, 1998. From September 25 to
14 September 30, she worked the following hours: September 25 – 5 hours; September 26
15 – 5 hours, September 27 – 5.5 hours, September 28 – 3.5 hours, September 29 – 4
16 hours, September 30 – 4 hours, for a total of 27 hours. Complainant was available to
17 work these hours. (Testimony of Complainant, Ritchie, Crain; Exhibits A-7, A-11; R-1)

18 44) September 20, 1998, was Price’s last day of work. (Exhibit A-7)

19 45) Complainant received no income during the period of her leave, which
20 placed an additional financial stress on her family. (Testimony of Complainant, R.
21 Buxton)

22 46) On September 21, 1998, Complainant and her husband received a 72-
23 hour eviction notice from their landlord, based on their failure to pay rent, which was due
24 on September 1, 1998. In the same period of time, their electricity was almost shut off.

25 ¹¹ Crain has since married and identified herself as “Christina Marie Crain Delong” during the hearing. To avoid confusion, this Order refers to her by Crain, her name at the time of the alleged discrimination.

1 Complainant and her husband called several churches to inquire about financial
2 assistance and eventually got rent assistance from "AFS." There was no evidence
3 presented regarding the amount of rent paid by Complainant and her husband.
4 (Testimony of Complainant; Exhibit A-11)

5 47) On September 24, 1998, Complainant visited the office of Dr. Weeks, who
6 had cared for her during her pregnancy and delivery. Complainant was unable to see
7 Dr. Weeks, but told his nurse that she needed to go back to work. Dr. Weeks' nurse
8 told her it was all right for her to return to work. Complainant felt she needed to go back
9 to work at this time because of the financial needs of her family. (Testimony of
10 Complainant; Exhibit A-11)

11 48) Later in the day on September 24, 1998, Complainant called Ritchie and
12 told him she was ready to come back to work. Ritchie told her to report back to work on
13 September 26, a Saturday. Ritchie did not ask Complainant to provide a medical
14 release on this or any subsequent occasion. (Testimony of Complainant)

15 49) When Complainant told Ritchie that she was ready to come back to work,
16 she anticipated and expected that she would be given the same number of hours she
17 had averaged before going on leave, which she believed was 25 to 30 hours per week.
18 (Testimony of Complainant)

19 50) On September 24, Ritchie did not have specific work time commitments to
20 Respondent's other housekeepers. (Testimony of Ritchie)

21 51) On September 26, Ritchie phoned Complainant and told her not to come
22 to work because he had enough housekeepers for the day. (Testimony of Complainant,
23 R. Buxton; Exhibit A-11)

24 52) On September 29, Complainant called Ritchie again and asked about
25 work. He told her that business was slow, that he would use her on an as-needed

1 basis, and that he would not take hours away from Siebert and Ford. By this time,
2 Complainant was aware that another housekeeper besides Siebert and Ford was
3 working who had been hired after she went on leave. (Testimony of Complainant;
4 Exhibit A-13)

5 53) In September 1998, Ritchie knew that Complainant and her husband had
6 six children, that they needed money, and that any hours assigned to Complainant or
7 her husband would help them. (Testimony of Ritchie)

8 54) Complainant completed and filed an application for unemployment
9 benefits on October 5, 1998. (Testimony of Complainant; Exhibit A-6)

10 55) September 20, 1998, was Price's last day of work. On October 10, 1998,
11 Entrada began offering Complainant hours of housekeeping work. Between October 10
12 and 15, 1998, Complainant worked 4.5 hours on October 10 and 5.75 hours on October
13 11, for a total of 10.25 hours. In the same time period, Entrada's other three
14 housekeepers worked the following hours, for a total of 151.75 hours:

16	K. Ford:	44.75
17	K. Sibert:	80.0
17	C. Crain:	16.75

18 (Testimony of Ritchie; Exhibits A-7, R-1)

19 56) Crain's last day of work for Entrada was October 7, 1998. Between
20 October 1 and 7, 1998, Crain worked the following schedule: October 2 – 4.5 hours,
21 October 3 – 4.25 hours, October 4 – 3.75 hours, October 7 – 4.25 hours. Complainant
22 was available to work these hours. (Testimony of Complainant, Ritchie; Exhibits A-7, A-
23 11, R-1)

24 57) Between October 16 and 31, 1998, Complainant worked 5 hours on
25 October 17 and 2.75 hours on October 18, for a total of 7.75 hours. In the same time

1 period, Entrada's two other housekeepers worked the following hours, for a total of
2 123.5 hours:

3 K. Ford: 45
4 K. Sibert: 70.75

5 (Testimony of Ritchie; Exhibits A-5, A-7, R-1)

6 58) If Complainant had not taken leave, her hours would still have been
7 reduced at the point in time when she was restored to work for the reason that Sibert
8 and Ford were still employed by Respondent and they had been working more hours
9 than Complainant at the time Complainant commenced her parental leave. (Testimony
10 of Ritchie)

11 59) Had Complainant not taken family leave, Respondent would have offered
12 her at least some hours of work beginning September 25, 1998, and throughout the
13 period ending October 7, 1998.

14 60) Complainant would have worked an additional 43.75 hours if she had
15 been assigned the work that Crain performed on September 25-30, October 2-4, and
16 October 7, 1998. Complainant would have earned \$262.50 in gross wages for this
17 work. This would have enabled Complainant and her husband to pay some, but not all,
18 of their outstanding bills. (Testimony of Complainant; Exhibits A-5, A-7, R-1; Calculation
19 of ALJ)

20 61) Between September 24 and October 20, 1998, Complainant and her
21 family were under considerable financial stress. Complainant was very worried and
22 scared, and experienced considerable stress because of the lack of hours Ritchie
23 scheduled her to work at Entrada. During this time period, Complainant cried on a
24 number of nights because of her stress, worry and fear. Because of that stress and the
25 financial needs of her family, Complainant began looking for other work after she started

1 back to work for Entrada.¹² On October 20, 1998, Complainant was hired as a
2 housekeeper at the Inn of the Seventh Mountain, working 40 hours per week.
3 Complainant actually started work at the Inn of the Seventh Mountain on October 23,
4 1998. (Testimony of Complainant, R. Buxton; Exhibit A-11)

5 62) During her leave from Entrada, Complainant had reserved childcare for
6 her baby at the Growing Tree, a local child care facility. She lost her reservation
7 because she was unable to give the Growing Tree a definite date when she could bring
8 the baby in because of her uncertainty as to when she would be returning to work at
9 Entrada and inability to pay their fee. There was no evidence presented regarding the
10 amount of the fee. (Testimony of Complainant)

11 63) Between November 1 and 15, 1998, Ford and Sibert were Entrada's only
12 housekeepers. In that time period, they worked the following hours, for a total of 98.5
13 hours:

14 K. Ford:	44.75
15 K. Sibert:	53.75

16 (Testimony of Ritchie; Exhibits A-5, A-7, R-1)

17 64) Between November 16 and 31, 1998, Ford and Sibert were Entrada's only
18 housekeepers. In that time period, they worked the following hours, for a total of 132.75
19 hours:

20 K. Ford:	54
21 K. Sibert:	78.75

22 (Testimony of Ritchie; Exhibits A-5, A-7, R-1)

23
24 ¹² Complainant did not testify as to the specific date that she began actively seeking other employment.
25 However, Exhibit A-10, which is the "Work Search Record" Complainant completed for the Employment
Department after filing her claim for unemployment benefits, shows that she first began searching for
other employment on October 15, when she used the Employment Department's computer to look for

1 65) Respondent did not hire another housekeeper until December 9, 1998.
2 (Exhibit R-1)

3 66) No evidence was presented concerning the availability of work at
4 Respondent's other Bend facility at material times, except for the fact that housekeepers
5 employed at Entrada sometimes worked there. (Entire Record)

6 67) Respondent had no written policies regarding leaves of absence during
7 Complainant's employment with Respondent. Respondent's general practice was that
8 anyone who left was welcome to come back. (Testimony of Ritchie)

9 68) Jeffrey Carlson's testimony concerning the operation and procedures of
10 BOLI's mail room was credible in its entirety. (Testimony of Carlson)

11 69) Richard Buxton's testimony was not entirely credible. As Complainant's
12 husband, he had an inherent bias. He demonstrated a tendency to exaggerate by
13 testifying that Complainant had worked 37 to 38 hours per week before beginning her
14 leave, and that he and Complainant could have paid their bills, had she worked her
15 regular hours after September 24. In contrast, Respondent's time records, which the
16 forum has found reliable, established that Complainant had worked only 23 hours per
17 week before beginning her leave, and Complainant herself testified that all their bills
18 could not have been paid, even if Complainant had worked her former hours after
19 September 24. His memory was not totally accurate as to dates, as shown by his
20 testimony that Complainant returned to work for Entrada before she applied for
21 unemployment benefits and did not work for Entrada after she filed for unemployment
22
23
24

25 work and that she applied for two jobs, including a housekeeper position at the Inn of the Seventh Mountain, on October 16.

1 benefits. Consequently, the forum has relied on his testimony only where it is not
2 controverted by other credible evidence. (Testimony of R. Buxton)

3 70) Doug Ritchie's testimony was not entirely credible. He did not
4 contemporaneously document any of his conversations with Complainant. His
5 testimony that Complainant did not contact him to ask about returning to work before
6 October 3, and that he immediately offered Complainant work on October 4, which she
7 declined, is simply not believable. To begin with, his testimony on this point is contrary
8 to the credible testimony of Complainant and her husband. Secondly, it makes no
9 sense that he would offer Crain's October 4 hours to Complainant, but not Crain's
10 October 7 hours. Finally, in a letter to the Agency dated November 10, 1998, in which
11 Ritchie initially responded to Complainant's complaint, Ritchie made no mention of
12 scheduling her to work on October 4. Ritchie's claim that he had problems with
13 Complainant's job performance was likewise was not supported by any evidence other
14 than his own testimony, and was partially controverted by Ritchie's own testimony that
15 Complainant was a "fine employee" and his written statement in the same November
16 10, 1998 letter to the Agency that he would "love to put her back to work." In addition,
17 Ritchie testified that he had given Kim Ford a raise because she was one of
18 Respondent's better employees, but Ford testified credibly that she was never given a
19 raise. The forum has discredited Ritchie's testimony concerning his testimony that
20 Complainant never asked him to return to work before October 3 and that he scheduled
21 her to work on October 4. The forum has also discredited Ritchie's testimony
22 concerning Complainant's alleged performance problems. The forum has credited the
23 remainder of Ritchie's testimony except where it is controverted by other credible
24
25

1 evidence, such as Complainant's calendar. (Testimony of Ritchie; Observation of ALJ;
2 Entire Record)

3 71) Complainant's testimony was not entirely credible. Like her husband, she
4 showed a tendency to exaggerate. She testified that she sometimes showed up as
5 early as "6:30 to 7:30 a.m." to do laundry, contrary to her time cards and the
6 contemporaneous entries on her calendar. She testified she believed she was a
7 "supervisor" because she sometimes assigned rooms, did laundry, and trained new
8 employees when the housekeeping supervisor was absent, and told the Employment
9 Department in her application for unemployment benefits that she was an "assistant
10 supervisor." However, she also testified that no one ever told her she was a supervisor
11 and that she never got a raise indicating she had been promoted, and her husband
12 testified she was not a supervisor. Her estimate that she worked an average of 25 to 30
13 hours per week, with the average being closer to 30, was substantially more than the 23
14 hours per week she actually averaged. Her answers were non-responsive to a number
15 of questions asked on both direct and cross-examination, and she did not seem to
16 understand the substance of a number of questions put to her. On cross-examination,
17 she was defensive, argumentative, and had to be instructed by the ALJ to listen
18 carefully and respond directly to the questions asked of her. On the other hand, her
19 testimony regarding the dates that she contacted Ritchie asking to return to work after
20 her doctor's appointment on September 24 was supported by contemporaneous entries
21 on her calendar that the forum has found to be reliable. The forum has credited
22 Complainant's testimony except where it conflicts with her calendar entries and
23
24
25

1 Respondent's time cards, and has credited her calendar entries in full. (Testimony of
2 Complainant; Observation of ALJ; Entire Record)

3 **ULTIMATE FINDINGS OF FACT**

4 1) At all material times, Respondent was an Oregon employer that utilized
5 the personal services of 25 or more persons in the State of Oregon for each working
6 day during each of 20 or more calendar workweeks in both 1997 and 1998.

7 2) Complainant was employed by Respondent at the Best Western Entrada
8 Lodge from January 17, 1998, through October 19, 1998.

9 3) Complainant learned she was pregnant on January 17, 1998.

10 4) On July 27, 1998, Complainant left work due to her pregnancy, based on
11 the advice of her physician. Complainant did not work again for Respondent prior to the
12 birth of her child. More than 180 days elapsed between January 17, 1998, and July 27,
13 1998. Prior to July 27, Complainant worked an average of 23 hours per week for
14 Respondent.

15 5) Complainant's child was born on August 20, 1998. She did not
16 immediately return to work, but remained on leave.

17 6) During Complainant's absence, Respondent hired two housekeepers,
18 Korissa Garfield and Christina Crain, on an as-needed basis to perform work that
19 Complainant would have performed, had she not been off work on parental leave.¹³

20 7) On September 24, 1998, Complainant called Douglas Ritchie,
21 Respondent's general manager, and told him she was ready to come back to work.
22 Complainant's position as housekeeper still existed at that time.

23
24 _____
25 ¹³ The forum refers to Complainant's leave after the birth of her child on August 20, 1998 as "parental"
leave, noting that "parental" leave is a particular type of "family" leave. See *former* OAR 839-009-
0200(1).

1 year in which the leave is to be taken or in the year immediately preceding
2 the year in which the leave is to be taken.”

3 Respondent was a “covered employer.” *Former* ORS 659.470(1); *former* ORS
4 659.472(1).

5 2) The actions and motivations of Douglas Ritchie, Respondent’s general
6 manager, are properly imputed to Respondent.

7 3) *Former* ORS 659.474(1) provided in pertinent part:

8 “All employees of a covered employer are eligible to take leave for one of
9 the purposes specified in ORS 659.476(1)(b) to (d) except: * * * (b) An
10 employee who worked an average of fewer than 25 hours per week for the
11 covered employer during the 180 days immediately preceding the date on
12 which the family leave would commence.”

13 *Former* OAR 839-009-0210(2)(a) further explained that “Eligible employee” means:

14 “(a) For the purpose of parental leave, an employee who has worked for
15 a covered employer for at least 180 calendar days immediately preceding
16 the date on which family leave begins.

17 “(b) For all other leave purposes, an employee who has worked for a
18 covered employer for an average of at least 25 hours per week for the 180
19 calendar days immediately preceding the date on which family leave
20 begins.”

21 *Former* OAR 839-009-0200 provided in pertinent part:

22 “The 1995 Oregon Family Leave Act, hereinafter referred to as OFLA,
23 provides leave:

24 “(1) To care for an employee’s newborn * * * child. These rules refer to
25 this type of leave as parental leave.

“(2) For an employee’s own serious health condition or to care for a
family member with a serious health condition, including pregnancy
related conditions. These rules refer to this type of leave as serious health
condition leave.”

Complainant worked at least 180 calendar days immediately preceding July 27, 1998,
the date on which she stopped working because of her pregnancy-related serious
health condition leave began on July 27, 1998, but did not work an average of at least
25 hours per week for Respondent immediately prior to that date and was therefore not
eligible for serious health condition leave. Complainant did work for Respondent at

1 least 180 calendar days immediately preceding August 20, 1998, the date her parental
2 leave commenced, and was an “eligible employee” for parental leave.

3 4) *Former* ORS 659.476(1)(a) provided:

4 “(1) Family leave under ORS 659.470 to 659.494 may be taken by an
5 eligible employee for any of the following purposes:

6 “(a) To care for an infant * * * .”

7 *Former* ORS 659.478 provided, in pertinent part:

8 “(1) Except as specifically provided by ORS 659.470 to 659.494, an
9 eligible employee is entitled to up to 12 weeks of family leave within any
10 one-year period.”

11 Complainant was entitled to take up to 12 weeks of family leave to care for her infant.

12 5) *Former* ORS 659.484 provided, in pertinent part:

13 “(1) After returning to work after taking family leave under the provisions
14 of ORS 659.470 to 659.494, an eligible employee is entitled to be restored
15 to the position of employment held by the employee when the leave
16 commenced if that position still exists, without regard to whether the
17 employer filled the position with a replacement worker during the period of
18 family leave. If the position held by the employee at the time family leave
19 commenced no longer exists, the employee is entitled to be restored to
20 any available equivalent position with equivalent employment benefits, pay
21 and other terms and conditions of employment. If any equivalent position
22 is not available at the job site of the employee’s former position, the
23 employee may be offered an equivalent position at a job site located within
24 20 miles of the job site of the employee’s former position.

25 “* * * * *

“ (3) This section does not entitle any employee to:

“* * * * *

“(b) Any right, benefit or position of employment other than the rights,
benefits and position that the employee would have been entitled to had
the employee not taken the family leave.”

Former OAR 839-009-0270 provided, in pertinent part:

“(1) The employer must return the employee to the employee’s former
position if the job still exists even if it has been filled during the employee’s
family leave unless the employee would have been bumped or displaced if
the employee had not taken leave. The former position is the position
held by the employee when family leave began, regardless of whether the
job has been renamed or reclassified. * * *

1 “(2) If the position held by the employee at the time family leave began
2 has in fact been eliminated and not merely renamed or reclassified, the
3 employer must restore the employee to any available, equivalent position.

4 “(a) An available position is a position which is vacant or not
5 permanently filled.

6 “(b) An equivalent position is a position which is the same as the former
7 position in as many aspects as possible. If an equivalent position is not
8 available at the employee’s former job site the employee may be restored
9 to an equivalent position within 20 miles of the former job site.”

10 “* * * * *

11 (10) An employer may not use the provisions of this section as a
12 subterfuge to avoid the employer’s responsibilities under OFLA.”

13 Complainant took family leave from July 27, 1998, to September 24, 1998, on which
14 date she asked Respondent to be restored to her job. Complainant’s position as
15 housekeeper still existed and Respondent did not restore her to work until October 10,
16 1998. Respondent violated *former* ORS 659.484 by failing to restore Complainant to
17 her position before October 10, 1998.

18 6) *Former* ORS 659.492 (1) provided:

19 “(1) “A covered employer who denies family leave to an eligible
20 employee in the manner required by ORS 659.470 to 659.494 commits an
21 unlawful employment practice.”

22 Respondent committed an unlawful employment practice in violation of *former* ORS
23 659.492(1) by failing to restore Complainant to the position of employment she held
24 when her leave commenced. Respondent did not constructively discharge
25 Complainant.

7) *Former* ORS 659.492(2) provided:

“(2) Any employee claiming to be aggrieved by a violation of ORS
659.470 to 659.494 may file a complaint with the Commissioner of the
Bureau of Labor and Industries in the manner provided by ORS 659.040.
The Commissioner of the Bureau of Labor and Industries shall enforce the
provisions of ORS 659.470 to 659.494 in the manner provided in ORS
659.010 to 659.110 for the enforcement of other unlawful employment
practices.”

1 The Commissioner of the Bureau of Labor and Industries has jurisdiction of the persons
2 and of the subject matter herein and the authority to eliminate the effects of any
3 unlawful employment practice found. ORS 659A.183; ORS 659A.820(1); ORS
4 659A.835; ORS 659A.845, ORS 659A.850.

5 OPINION

6 INTRODUCTION

7 In its Specific Charges, the Agency alleged that Respondent violated Oregon's
8 Family Leave Act by: (1) failing to restore Complainant to the position she held at the
9 time she commenced her family leave, and (2) constructively discharging Complainant.
10 The Agency sought \$1,000 in back pay and \$15,000 mental suffering damages to
11 compensate Complainant for Respondent's unlawful acts.

12 FAILURE TO RESTORE COMPLAINANT TO THE POSITION SHE HELD AT THE TIME 13 SHE COMMENCED HER PARENTAL LEAVE

14 To establish a prima facie case that an employer committed an unlawful
15 employment practice by failing to restore an employee to the position she held at the
16 time she commenced her family/parental leave, the agency must prove:

- 17 1. The employer was a "covered employer" as defined in *former* ORS
659.470(1) and *former* ORS 659.472;
- 18 2. The employee was an "eligible employee" for family/parental leave
19 – *i.e.*, she was employed by a "covered employer" and worked for the
20 employer at least 180 calendar days immediately preceding the date on
which her parental leave began [*former* ORS 659.474; *former* OAR 839-
009-0210(2)(a)];
- 21 3. The employee took up to 12 weeks of family/parental leave [*former*
ORS 659.476(1)(a), ORS 659.478];
- 22 4. The employee attempted to return to work after taking
23 family/parental leave and was denied or refused restoration to the position
24 of employment held by the employee when the leave commenced [*former*
ORS 659.484(1); *former* OAR 839-009-0270(1) & (2)].

25 The first and third elements of the Agency's prima facie case are undisputed.

1 The second element, although undisputed regarding whether or not Complainant
2 had worked 180 days for Respondent prior to taking parental leave, requires additional
3 discussion because of the particular circumstances of Complainant's leave. When
4 Complainant left work on July 27, she had worked for Respondent for 180 days
5 "immediately preceding" her leave, but only worked an average of 23 hours per week,
6 two hours less than the minimum average of 25 hours per week required for eligibility
7 for the purpose of taking a "serious health condition" leave due to her pregnancy related
8 condition. See *former* OAR 839-009-0210(2)(b). Eligibility for parental leave, on the
9 other hand, requires only that the employee worked for the employer at least 180
10 calendar days immediately preceding the date on which her parental leave began.
11 There was no evidence presented showing that Complainant's employment relationship
12 with Respondent was in any way severed between July 27 and August 20, 1998. In
13 contrast, Ritchie's testimony was that he expected Complainant to return to her
14 housekeeping duties after her leave. Consequently, because Complainant never
15 stopped being Respondent's employee, the forum concludes that Complainant satisfied
16 the requirement of working for Respondent "at least 180 calendar days immediately
17 preceding" August 20, 1998 and was an "eligible employee" for parental leave as
18 defined in *former* ORS 659.474(2) and *former* OAR 839-009-0210(2)(a). This satisfies
19 the second element of the Agency's prima facie case.

20 **COMPLAINANT WAS DENIED RESTORATION TO THE POSITION OF EMPLOYMENT**
21 **SHE HELD WHEN HER LEAVE COMMENCED**

22 The original Final Order determined that Crain and Garfield had been hired as
23 "replacement workers" for Complainant under *former* ORS 659.484(1) and that
24 Respondent had violated OFLA by failing to give Complainant the opportunity to work all
25 the hours that her "replacement worker[s]" would have otherwise been scheduled to
work." On appeal, the Oregon Court of Appeals reversed and remanded the Order for

1 reconsideration, holding that the Commissioner’s Order erroneously focused “on the
2 status of the employees who were hired while complainant was on family leave.”
3 *Entrada Lodge v. Bureau of Labor and Industries*, 184 Or App 315, 56 P3d 444, 446
4 (2002). The Court held that “the determination of whether an employee has violated the
5 reinstatement right of an employee under [OFLA] requires a determination of the
6 employment advantages that the employee would have enjoyed with the employer if
7 she had not taken family leave. Those advantages must then be compared with the
8 advantages that the employee actually enjoyed on her return to employment. If the
9 employment advantages enjoyed by the employee on her return fall short of those that
10 she would have enjoyed had she not taken family leave, then the employer has failed to
11 restore the employee to her employment position as required by [OFLA].” *Id.* at 446-
12 447.

13 The forum revises its evaluation of the fourth element of the Agency’s prima facie
14 case to conform to the test articulated by the Court. Complainant’s credible testimony,
15 corroborated by her calendar notes, established that Complainant attempted to return to
16 work on September 24, 1998, when she told Ritchie that she was ready to return to
17 work. As stated above, whether or not Respondent failed to restore Complainant to her
18 employment position requires a determination of the employment advantages that
19 Complainant would have enjoyed with Respondent had she not taken family leave, and
20 a comparison of those advantages with the advantages that Complainant actually
21 enjoyed upon her return to employment. In this case, the “advantages” that the forum
22 examines are limited to the number of hours Complainant was scheduled to work, as
23 there were no other benefits to Complainant’s job.

24 Complainant’s work hours varied considerably prior to her parental leave. She
25 began work for Respondent on January 17, 1998. Between January 17 and February

1 15, Complainant worked 88 hours, or 27% of the total hours worked by housekeepers.
2 Only Laurie Knox, who worked 99.5 hours, worked more hours than Complainant.
3 Between February 16 and May 31, Complainant worked 378.25 hours, or 23% of the
4 total hours worked by housekeepers. Only Knox, who worked 435.5 hours, worked
5 more hours than Complainant. Kimberly Ford, who was hired in early March, worked
6 310 hours during the same time period. Between June 1 and July 15, Complainant
7 worked 142 hours, or 12.4% of the total hours worked by housekeepers. Ford worked
8 191 hours, or 16.6% of the total hours worked by housekeepers. Knox worked 194.25
9 hours, or 16.9% of the total hours worked by housekeepers. Complainant left on
10 parental leave partway through the next pay period, and the forum does not consider
11 her hours worked during that time period as representative of her “employment position”
12 at the time of her parental leave. Overall, between January 15 and July 15, 1998,
13 Complainant worked a total of 608.25 hours out of a possible 3,099.25 hours, or 19.6%
14 of total hours available for housekeepers.

15 When Complainant left on parental leave, Respondent considered her a “fine”
16 employee and planned to put her back to work when her leave ended. Complainant
17 asked to be returned to work on September 24. At that time, eight of the 10
18 housekeepers (excluding Complainant) who were employed when Complainant began
19 her leave had left Respondent’s employ. The remaining two were Ford and Kevin
20 Sibert, housekeeper supervisor. In addition, Respondent had hired Korissa Garfield on
21 September 15 and Cristina Crain on September 17, and Josh Price, another
22 housekeeping employee, had just left Respondent’s employ on September 20. Garfield
23 was hired to perform work as needed and Crain was hired with the instruction to call in
24 each day to see if there was work for her. Garfield’s last day of work was September
25

1 25, leaving only Sibert, Ford, and Crain as housekeeping employees between
2 September 26 and October 10. Crain's last day was October 7.

3 Under these circumstances, the forum considers whether Respondent's failure to
4 offer Complainant any work hours from September 25 until October 10, 1998,
5 constituted a failure to restore Complainant to the housekeeper position that she held
6 before taking family leave. Again, the forum focuses on whether Complainant would
7 have been limited to these work hours, had she not taken family leave.

8 At the time Complainant began her family leave, she had worked continuously for
9 Respondent from January 17 to July 26, 1998. Although her work hours varied, as did
10 those of every housekeeping employee, she consistently worked between 12% and
11 27% of total available housekeeping hours. She was considered a "fine" employee at
12 the time she began her leave and there is no credible evidence that her hours would
13 have been cut for any reason other than Respondent's seasonal decline in business.

14 Had Complainant not taken family leave, by September 24 she would have been
15 Respondent's housekeeping employee with the longest continuous service. She would
16 have been available for work on September 15 and 17, the dates Respondent hired
17 Garfield and Crain, two employees who were hired to work on a day-to-day basis, with
18 no expectation of a specific number of work hours or a specific work schedule. She
19 would have been available for work after September 20, Price's last day of work. The
20 forum infers that Garfield and Crain were hired to perform available work other than the
21 work that Ford, Sibert, and Price performed or were available to perform. Had
22 Complainant not taken family leave, she would have been available to perform this work
23 and Respondent would have had no need to hire both Garfield and Crain.¹⁴

24 _____
25 ¹⁴ Crain and Garfield both worked on September 17, 22, 23, and 25. September 25 is the only day on
which Garfield and Crain both worked after Complainant asked to return to work. Had Complainant not
taken family leave, she would have been available to work one of the shifts worked by Crain or Garfield.

1 As stated above in the findings of fact and ultimate findings of fact, the forum has
2 found that had Complainant not taken family leave, Respondent would have offered her
3 at least some hours of work beginning September 25, 1998, and throughout the period
4 ending October 7, 1998. The forum has so found based on an inference from the
5 following facts: Complainant had consistently worked between 12 percent and 27
6 percent of total available housekeeping hours; she was considered a “fine” employee at
7 the time she began her leave; there is no credible evidence that her hours would have
8 been cut for any reason other than Respondent’s seasonal decline in business; and had
9 she not taken family leave, she would have been available to perform work other than
10 the work that Ford, Sibert, and Price performed or were available to perform, leaving
11 Respondent with no need to hire both Garfield and Crain.
12

13 Thus, the key “employment advantage” that Complainant would have enjoyed
14 with Respondent had she not taken family leave is the opportunity to be offered some
15 hours of work on September 25, 1998, and throughout the period ending October 7,
16 1998. Respondent, however, did not offer her any hours of work during that period.
17 Consequently, the employment advantages enjoyed by Complainant on her return fell
18 short of those that she would have enjoyed had she not taken family leave.
19

20 For these reasons, the forum concludes that in failing to offer Complainant any
21 hours of work from September 25 to October 10, 1998, Respondent failed to restore her
22 to the position of employment she held when her leave commenced. That failure
23 violated Complainant’s rights under *former* ORS 659.484(1).
24

25 **RESPONDENT’S DEFENSES**

Once the Agency has established its prima facie case, there is a rebuttable
presumption that Respondent refused to give effect to Complainant’s entitlement to job

1 restoration. *In the Matter of TJX Companies, Inc.*, 19 BOLI 97, 101 (1999). No motive
2 or intent need be proved. *Cf. In the Matter of Roseburg Forest Products*, 20 BOLI 8, 28
3 (2000). Respondent may negate that presumption by coming forward with evidence of
4 one or more of the following:

5 1. The position of employment held by the employee when the leave
6 commenced no longer existed when the employee attempted to return to
7 work; and no available equivalent position existed [ORS 659.484(1); OAR
839-009-0270(1) & (2)];

8 2. The employee gave unequivocal notice of intent not to return to
9 work [OAR 839-009-0270(8)];

9 3. The employee would have been bumped or displaced if the
10 employee had not taken leave [OAR 839-009-0270(1)].

10 Respondent presented no evidence in support of “2” or “3,” but argued that evidence it
11 presented established that Complainant’s position no longer existed when she
12 attempted to return to work and no available equivalent position existed.

13 In this case, Respondent’s primary proffered defense relates to the undisputed
14 temporal nature of its housekeeping positions. It runs something like this: (1) All
15 housekeeping positions are temporary and all housekeepers work on an as-needed
16 basis, subject to hours that fluctuate based on occupancy rates; (2) Because
17 housekeeping positions are temporary, there are no distinctive, identifiable positions –
18 merely an as-needed, variable amount of work to be performed; (3) Complainant was a
19 housekeeper and therefore did not occupy an identifiable position; (4) Because
20 Complainant did not occupy an identifiable position, it is impossible that her “former”
21 position could still exist for the reason that she never had a “position” to start with; (5)
22 Because Complainant did not occupy an identifiable position, Respondent could not
23 have filled her position, during her family leave, with a replacement worker; (6) Because
24 Complainant did not occupy an identifiable position, Respondent was not obligated to
25

1 schedule Complainant, after her request to return to work, for any additional hours other
2 than the as-needed hours that she actually worked.

3 The forum disagrees with Respondent’s contentions. Those contentions rest on
4 the notion that the statutory term “position,” as used in *former* ORS 659.484, requires
5 the level of specificity exhibited in, for instance, jobs with some public-sector employers,
6 in which each “position” is identified by a unique multi-digit number or similar identifier.
7 The forum sees no indication from the statutory text or context that the legislature
8 intended the term “position” to incorporate such a requirement. OFLA applies to every
9 eligible employee of every “covered employer” in the State of Oregon. An employee is
10 eligible for parental leave if he or she worked for the employer at least 180 calendar
11 days immediately preceding the date on which her parental leave began. *Former* ORS
12 659.474. “Covered employers” are employers “who employ 25 or more persons in the
13 State of Oregon for each working day during each of 20 or more calendar workweeks in
14 the year in which the leave is to be taken or in the year immediately preceding the year
15 in which the leave is to be taken.” *Former* ORS 659.472(1). That language shows that
16 the legislature intended OFLA to have extremely broad coverage. No language in
17 OFLA purports to restrict that coverage to employers that have rigidly and uniquely
18 identified “positions” in the sense that Respondent’s argument posits. Rather, OFLA
19 appears to use “position” in its ordinary, nontechnical sense in this context to mean a
20 job. See *Webster’s Third New Int’l Dictionary* 1769 (unabridged ed 1993) (defining
21 “position,” in this context, as “the group of tasks and responsibilities making up the
22 duties of an employee”).
23
24

25 The “group of tasks and responsibilities making up [complainant’s] duties” when
she began her leave were housekeeping duties. The key “employment advantage”

1 Complainant held before her family leave was the routine assignment of work hours
2 within a range of 12 to 27 percent of total available housekeeping hours. To state the
3 point another way, Complainant worked housekeeping hours other than those worked
4 by other housekeepers who worked for Respondent at the time she began her family
5 leave. In this context, her “position” should be viewed no more technically than that.

6 As of September 25, 1998, when Complainant was ready to return to work, Respondent
7 had hours of housekeeping work that were not being assigned to those other workers,
8 who had been reduced by attrition to Ford and Sibert. Accordingly, at that time,
9 Respondent had at least one additional “position of employment” in existence. *Former*
10 ORS 659.484(1) entitled Complainant to be restored to that position “without regard to
11 whether the employer filled the position with a replacement worker during the period of
12 family leave.” Therefore, whether or not Crain or Garfield could be considered to be a
13 “replacement worker” for Complainant Donovan — and this forum explicitly declines to
14 decide that issue — Complainant was entitled to be restored to that position. As stated
15 above, Respondent failed to restore her to that position from September 25 until
16 October 10, 1998. That failure violated her rights under the statute. Respondent
17 presented three other defenses that merit minimal discussion: first, that Complainant
18 never presented a medical release to return to work; second, that Complainant was
19 given all the work that was available; and third, that Complainant did not attempt to
20 return to work until October 3 and turned down Ritchie’s offer of work on October 4.
21 None of these defenses have any merit. First, the medical release is a red herring, in
22 that it is undisputed that Ritchie never asked Complainant to present such a release.¹⁵

23 Second, the argument that Complainant was given all available work has already been
24

25 ¹⁵ See *former* OAR 839-009-0270(5).

1 resolved in favor of the Agency. Third, based on an assessment of Ritchie's credibility,
2 the forum has rejected Ritchie's claim that Complainant failed to contact him about work
3 until October 3 and that she subsequently turned down his offer for work on October 4.

4 **BACK PAY**

5 The Agency sought \$1,000 in back pay in the Specific Charges. Had
6 Complainant been restored to her pre-family leave employment advantages after she
7 asked to come back to work, she would have started working on September 25, 1998.
8 The forum determines the wages she would have earned, had she been restored for her
9 former employment advantages on September 25, by looking at the wages Crain
10 earned from September 25-October 7. The forum uses Crain's hours as a measuring
11 stick instead of Garfield's for the reason that Crain was employed continuously through
12 that period of time. The forum infers that, at a minimum, had Complainant not taken
13 family leave, she would have worked the hours worked by Crain because Respondent
14 would have had no need to hire Crain and Complainant wanted to work as many hours
15 as she could.¹⁶ This inference is supported by the fact that, after October 7, 1998,
16 Ritchie did not use Crain again and scheduled Complainant for all the hours not worked
17 by Ford or Sibert. Those gross wages amount to \$262.50, calculated at 43.75 hours x
18 \$6 per hour.

22 ¹⁶ The Agency implied, during the presentation of its case, that Complainant should have been entitled to
23 a prorated share of Ford's and Sibert's hours after she attempted to return to work. The comparison to
24 Sibert is not appropriate because he occupied a different position than Complainant. If the evidence had
25 established an objective, quantifiable methodology consistently used by Ritchie to determine the specific
number of hours he assigned individual housekeepers to work and the Agency proved that use of that
methodology would have resulted in Complainant being scheduled for some of Ford's hours after October
7, the Agency's argument may have prevailed. Absent such evidence, the forum will not speculate as to
what portion of Ford's hours, if any, Complainant would have been scheduled to work, had she not taken
family leave.

1 **CONSTRUCTIVE DISCHARGE**

2 A prima facie case of constructive discharge resulting from an unlawful
3 employment practice consists of the following elements:

4 (1) The respondent must have intentionally created or intentionally
5 maintained discriminatory working condition(s) related to the
6 complainant's protected class status;

7 (2) Those working conditions were so intolerable that a reasonable
8 person in the complainant's position would have resigned because of
9 them;

10 (3) The respondent desired to cause the complainant to leave
11 employment as a result of those working conditions or knew that
12 complainant was certain, or substantially certain, to leave employment as
13 a result of those working conditions; and

14 (4) The complainant did leave the employment as a result of those
15 working conditions.

16 *In the Matter of James Breslin*, 16 BOLI 200, 217 (1997), *aff'd without opinion*, *Breslin v.*

17 *Bureau of Labor and Industries*, 158 Or App 247, 972 P2d 1234 (1999).

18 **A. Did Respondent intentionally create or intentionally maintain**
19 **discriminatory working condition(s) related to Complainant's protected**
20 **class status?**

21 Complainant's protected class was that of a worker returning from family leave
22 who was entitled to be restored to her former position of housekeeper, which included
23 being scheduled for any hours that a "replacement worker" would otherwise perform.

24 The evidence shows that Ritchie intentionally failed to schedule Complainant for the
25 hours that Garfield and Crain worked between September 25 and October 7, 1998, in
violation of ORS 659.484(1). Ritchie's intentional and discriminatory failure to schedule
Complainant for any hours between September 25 and October 7 satisfies the first
element of the Agency's prima facie case.

1 **B. Were the discriminatory working conditions so intolerable that a**
2 **reasonable person in the Complainant's position would have resigned**
3 **because of them?**

4 The forum has found that Complainant's discriminatory working conditions ended
5 on October 7, 1998, Crain's last day of work. After October 7, Complainant was
6 scheduled to work but the number of hours clashed with her expectation that she would
7 be assigned to work 25 to 30 hours per week. However, the low number of hours that
8 she worked was directly attributable to Respondent's low occupancy rate, not unlawful
9 discrimination. Because of her economic need, she began seeking alternative
10 employment on October 15, a week *after* her discriminatory working conditions had
11 ceased to exist. On October 20, she effectively resigned from employment with
12 Respondent by accepting a higher paying, fulltime job.

13 Based on the fact that discriminatory working conditions no longer existed when
14 Complainant made her decision to seek alternative employment or when she resigned,
15 the Agency has failed to satisfy the second element of its prima facie case.
16 Consequently, the forum need not consider whether the third and fourth elements are
17 satisfied, and the Agency's claim of constructive discharge must fail.

18 **MENTAL SUFFERING**

19 The Agency sought an award of \$15,000 to compensate Complainant for the
20 mental suffering she experienced due to Respondent's unlawful discrimination. The
21 forum has concluded that Respondent unlawfully failed to restore Complainant to her
22 prior position by failing to give Complainant the opportunity to work any hours between
23 September 25 and October 7, 1998. Therefore, Complainant is entitled to damages to
24 compensate her for any mental suffering she experienced as a result of Respondent's
25 failure to restore her as required by law.

1 In determining mental distress awards, the commissioner considers a number of
2 things, including the type of discriminatory conduct, and the duration, frequency, and
3 pervasiveness of that conduct. *In the Matter of James Breslin*, 16 BOLI 200, 219
4 (1997), *aff'd without opinion, Breslin v. Bureau of Labor and Industries*, 158 Or App 247,
5 972 P2d 1234 (1999). Awards for mental suffering damages depend on the facts
6 presented by each complainant. A complainant's testimony about the effects of a
7 respondent's conduct, if believed, is sufficient to support a claim for mental suffering
8 damages. *In the Matter of Sears, Roebuck and Company*, 18 BOLI 47, 77 (1999).

9 In this case, Complainant attempted to return to work on September 24, 1998,
10 after taking family leave. At the time, her family was experiencing acute financial
11 distress, largely as a result of her lack of earnings while on family leave. This financial
12 situation, which caused Complainant and her husband to experience considerable
13 stress, is the primary reason she attempted to return to work on September 24, several
14 days earlier than planned. Although Respondent is not responsible for Complainant's
15 distress caused by her lack of earnings during her family leave, this forum has held that
16 that "employers must take employees as they find them." *In the Matter of Loyal Order*
17 *of Moose*, 13 BOLI 1, 12-13 (1994); *In the Matter of Allied Computerized Credit &*
18 *Collections*, 9 BOLI 206, 217-18 (1991). Here, Complainant was already experiencing
19 considerable stress at the time of Respondent's violation of *former* ORS 659.484(1).
20 However, Complainant and her husband credibly testified that Complainant experienced
21 a heightened stress level between September 25 and October 20, 1998, which
22 manifested itself in the form of Complainant being very worried and scared, and crying
23 frequently because Ritchie had not scheduled her for any hours for the first two and
24 one-half weeks after she attempted to return to work, further exacerbating her family's
25 financial distress.

1 This forum has previously held that financial insecurity and anxiety caused by an
2 unlawful employment practice is compensable. *In the Matter of Katari, Inc.*, 16 BOLI
3 149, 161 (1997), *aff'd without opinion, Katari, Inc. v. Bureau of Labor and Industries*,
4 154 Or App 192, 957 P2d 1231, *rev den* 327 Or 583 (1998). In *Katari*, the
5 commissioner awarded Complainant \$15,000 in mental suffering damages based on
6 circumstances equivalent to what Complainant experienced in this case. Accordingly,
7 the forum concludes that the \$15,000 sought by the Agency to compensate
8 Complainant for her mental suffering is an appropriate award. In making this award, the
9 forum is mindful that the Agency prayer for \$15,000 was based on a failure to restore
10 Complainant to her position, which was proven, and constructive discharge, which was
11 not proven. However, the commissioner's authority to award monetary damages is only
12 limited as to the total amount sought in the Specific Charges or subsequent
13 amendments. *In the Matter of Kenneth Williams*, 14 BOLI 16, 26 (1995). For the
14 reasons discussed, the forum finds that \$15,000 is an appropriate award for
15 Complainant's mental suffering for the violation found.

16 ORDER

17 NOW, THEREFORE, as authorized by ORS 659A.850(4), and to eliminate the
18 effects of Respondent's violation of *former* ORS 659.484(1) and *former* ORS
19 659.492(1), and in payment of the damages awarded, the Commissioner of the Bureau
20 of Labor and Industries hereby orders Respondent **ENTRADA LODGE, INC.** to:

- 21 1) Deliver to the Fiscal Services Office of the Bureau of Labor and
22 Industries, 800 NE Oregon Street, Portland, Oregon 97232-2162, a
23 certified check payable to the Bureau of Labor and Industries **in trust for
Complainant Cheryl Donovan in the amount of:**¹⁷

24 ¹⁷ On December 28, 2000, Respondent submitted a check to BOLI in the amount of \$15,854.73,
25 representing \$15,000 in mental suffering damages, \$262.50 in back pay, and accrued interest to date.
That sum, less the 12% collection fee charged to BOLI by the Oregon Department of Revenue, is
currently held in BOLI's trust account. Consequently, Respondent is not required by this Order to pay any
additional sums.

1 a) FIFTEEN THOUSAND DOLLARS (\$15,000.00), representing
2 compensatory damages for mental suffering suffered by Cheryl **Donovan**
as a result of Respondent's unlawful practices found herein, plus

3 b) TWO HUNDRED SIXTY-TWO DOLLARS AND FIFTY CENTS
4 (\$262.50), less lawful deductions, representing wages lost by Cheryl
Donovan between September 25, 1998 and October 7, 1998, as a result
of Respondent's unlawful practices found herein, plus

5 c) Interest at the legal rate on the sum of \$262.50 from October 8,
6 1998, until paid, plus

7 d) Interest at the legal rate on the sum of \$15,000 from the date of the
Final Order until Respondent complies herewith.

8 2) Cease and desist from discriminating against any employee based
upon the employee's use of the Oregon Family Leave Act.

9
10
11 DATED this _____ day of _____, 2003.
12

13
14 _____
15 Dan Gardner, Commissioner
Bureau of Labor and Industries
16

17 **Focrd/Entrada Final Order on Remand.doc**
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1 **JUDICIAL REVIEW NOTICE**

2 Pursuant to ORS 183.482, you are entitled to judicial review of this Final Order.
3 To obtain judicial review, you must file a Petition for Judicial Review with the Court of
4 Appeals in Salem, Oregon, within sixty (60) days of the service of this Order.

5 If you file a Petition for Judicial Review, YOU MUST ALSO SERVE A COPY OF
6 THE PETITION ON the BUREAU OF LABOR AND INDUSTRIES and THE
7 DEPARTMENT OF JUSTICE - APPELLATE DIVISION

8 AT THE FOLLOWING ADDRESSES:

9 **BUREAU OF LABOR AND INDUSTRIES DEPARTMENT OF JUSTICE**
10 **HEARINGS UNIT APPELLATE DIVISION**
11 **1025 STATE OFFICE BUILDING 400 JUSTICE BUILDING**
12 **800 NE OREGON STREET #32 SALEM, OREGON 97310**
13 **PORTLAND, OREGON 97232-2162**

14 If you file a Petition for Judicial Review and if you wish to stay the enforcement of
15 this final order pending judicial review, **you must file a request with the Bureau of**
16 **Labor and Industries**, at the address above. Your request must contain the
17 information described in ORS 183.482(3) and OAR 137-003-0090 to OAR 137-003-
18 0092.

19 CERTIFIED TO BE A TRUE AND
20 CORRECT COPY OF THE ORIGINAL
21 AND THE WHOLE THEREOF. _____