



Landscape Contractors Board of Oregon Owner/Managing Employee Manual 3rd Edition

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Landscape Contractors Board

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Introduction

This manual was prepared specifically for you as you contemplate either owning or managing a landscape contracting business in Oregon. The information in this manual will help prepare you for the examination that you are required to take in order to own or be the managing employee of a landscape contracting business. The information is gathered from many different sources and the Board strongly advises you that the sources may change their content and the manual may not reflect these changes in a timely manner, but the exam will be based upon what is shown in the manual at the time you take the exam. Once you have successfully moved into owning or managing a landscape contracting business you must verify the current information you need in order to conduct business in Oregon and not rely upon the contents of this manual.

Owning or managing a landscape contracting business is not for everyone. The laws that surround landscaping work are different than other businesses and though there are some similarities, there are some distinct differences which have the potential to create problems; with your clients and with the State Landscape Contractors Board (LCB) if you are not cognizant of these differences. By owning and licensing a landscape contracting business in Oregon, you need to know that you are then under the scrutiny of the LCB and must comply with all the laws that relate to landscaping work as well as the other laws that relate to conducting business in Oregon.

It is the intent of the Board to help guide you through the process of beginning and maintaining a landscape contracting business in order to keep you and your business in compliance with the applicable laws that govern landscape contracting in Oregon.

The Board wants you to succeed and wishes you the best in prosperity as you work in this wonderful and creative field of landscape construction.

OUR MISSION

The Landscape Contractors Board of Oregon is a state agency that protects customers by regulating landscape contracting businesses.

The LCB has a strong commitment to serving and representing licensees, consumers, and the public. The Board promotes consumer protection and contractor competency in the Oregon landscape contracting industry through five major program areas: Examination, Licensing, Enforcement, Claims/Dispute Resolution and Education.



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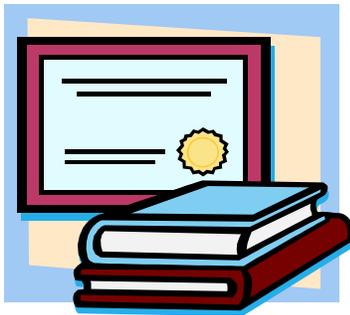
The material in this manual is **for informational purposes only**. It should not be considered to be legal or tax advice. The LCB **strongly** advises you to consult an attorney and/or a Certified Public Accountant when making decisions about the type of business you should use. A smaller investment on professional advice while setting up your business may result in significant cost savings in taxes, legal fees, and professional liability later.

Chapter 1: Business Registration & Licensing

What this chapter covers:

- What a Landscape Construction Professional's license is.
- What a Landscape Construction Business license is.

Landscape Construction Professional's License



In order to bid on, advertise for, or perform landscaping work in Oregon (ORS 671.520), two licenses are required: the individual landscape construction professional license and the landscape contracting business license.

A further requirement for the landscape contracting business is that every business, if not owned by a

The landscape contracting business license is issued to a business "entity" and not to an individual, even when the business is a sole proprietorship and is a separate license.

licensed landscape construction professional, must have an owner or a designated employee who has taken a course on Oregon landscape business practices and laws and passed the laws, rules and business practices section of the examination demonstrating the person is at least minimally competent to manage a landscape contracting business. This person does not obtain a license, but every business must meet this requirement before obtaining the landscape contracting business license. A licensed landscape construction professional will also meet the requirement for the managing owner or designated managing employee for the landscape contracting business.

The two license requirement is very similar to what is required by other competency-tested professions in Oregon such as plumbing and electrical. There is a licensed individual (Landscape Contracting Professional) who has demonstrated a minimum level of competency through experience and testing to perform the work and secondly there is a business entity (Landscape Contracting Business) that the individual either owns or is employed by that is also licensed. This business entity carries the bonding, insurance and worker compensation (if required) providing consumer protection when working for and on the property of a consumer. Contracts are to be written between the landscape contracting business and the

consumer, not between an individual and a consumer even if the individual works as a sole proprietor. The sole proprietorship (business) must also be licensed and thus provide the consumer protection afforded through the insurance and bonding requirements of a licensed landscape contracting business.

The landscape construction professional is an individual, not a business.

To become a licensed landscape construction professional in Oregon, an individual must apply for and pass an examination to demonstrate a minimum level of competency in supervising and performing the functions that are outlined in statute for landscaping work. There are no standards or codes for most landscape contracting work done in Oregon so the examination is imposed to provide a certain level of assurance to the public that the work is being done or supervised by someone who has demonstrated competency in the field.

ORS 671.520(1) "Landscape construction professional" means an individual who for compensation or with the intent to be compensated performs or supervises activities requiring the art, ability, experience, knowledge, science and skill to:

- a. Plan or install lawns, shrubs, vines, trees, or nursery stock;
- b. Prepare property on which lawns, shrubs, vines, trees, or nursery stock is to be installed;
- c. Install, maintain or repair ornamental water features and landscape drainage systems;
- d. Maintain irrigation systems with the use of compressed air and as otherwise provided by the State Landscape Contractors Board by rule;
- e. Install or repair irrigation systems as provided by board rule or;
- f. Plan or install fences, decks, arbors, patios, landscape edging, driveways, walkways, or retaining walls.

The amount of knowledge, skill, experience, and creativity needed to supervise and perform landscape contracting work in a correct manner is extensive and cannot be encompassed in one book or manual. As a result, an individual who wants to obtain this individual license spend at least two years or the equivalent in the landscape field working for a licensed landscape contracting business, where the licensed individual supervising the

The equivalent is 24 months of experience performing work in a field related to landscaping such as landscape maintenance, golf course, or nursery work.

applicant spends quality time mentoring the applicant in landscaping work. As an alternative, the individual can gain the education and experience needed through numerous educational facilities and association programs that

provide a work experience component as a part of the education process.

Individual License Phases

There are currently four phases of licenses that can be obtained by an individual. These allow the licensee to supervise and perform different types of landscaping work. To receive one of these licenses, the individual must first make an application to the Board, pay the required application fee, submit required qualifications and pass the exam sections for that license. The four licenses are:

- **Standard License:** The individual must pass four sections of the exam covering all aspects of landscape construction EXCLUDING irrigation and backflow.
- **Irrigation Only plus Backflow:** The individual must pass three sections of the exam covering irrigation and backflow installation for irrigation and water features only.
- **Planting Only:** The individual must pass three sections of the exam covering planting, and design, grading and drainage.
- **All Phases plus Backflow:** The individual must pass six sections of the exam, covering all aspects of landscape construction.

A passing score is 75% on each section of the exam. Once a section is passed, the score is good for one year, after which the individual must retake the section if a license has not been obtained.

Individual Probationary License

The probationary license is an "All Phase plus Backflow" license that can be obtained by an individual who passes all six sections of the exam within one year of taking the first section of the exam but who has not met the mandated experience and/or education requirements for this license.

For the license to become a full license, the individual must be:

- employed by a licensed landscape contracting business for 24 months under the direct supervision of a non-probationary landscape construction professional; *or*
- employed by a licensed landscape contracting business for 24 months and is supervising the landscape operations of the business but the business only contracts for landscaping work in the amount of \$15,000 or less and carries a \$15,000 bond; *or*
- the owner of a landscape contracting business for 24 months but the business only contracts for landscaping work in the amount of \$15,000 or less and carries a \$15,000 bond, *or*

- actively licensed as a construction contractor under ORS 701 for a period of at least 24 months after the probationary license is obtained.

Responsibilities of the Individual Licensee

Once an individual obtains the landscape construction professional license, they play a very significant role in the landscape contracting business they own or by which they are employed. The statutory responsibility, which is described in ORS 671.565(1)(b), states the individual is to supervise the landscape operations of the business. An important part of this for the

When there is a licensed individual supervising employees of a licensed landscape contracting business, the state of Oregon allows unlicensed individuals to perform landscaping work in Oregon.

licensed individual is to directly supervise all unlicensed employees employed by the landscape contracting business.

This supervision provides the consumer some assurance that the work is being properly performed, as well as maintains the integrity of the competency exam process.

Continuing Education Requirements

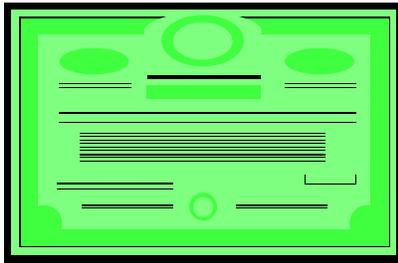
Landscape construction professionals wishing to renew their licenses must participate in continuing education to keep their skills current. A summary of the current process is:

1. Continuing Education Hours (CEH) are required every two years to renew the individual landscape construction professional license.
2. Sixteen (16) hours are required if the licensee has been licensed less than six years. Eight (8) hours are required if the licensee has been licensed more than six years.
3. Reporting is required at time of renewal and is based on license number. LCP numbers ending in an even number are required to report in even numbered years. LCP numbers ending in an odd number are required to report in odd numbered years.
4. Audits will be performed on a randomly selected number of licensees. The audit will only consider education for the two year CEH reporting period.
5. Licensees can earn credit for teaching and volunteer work. Teaching credit is allowed for the first time teaching of a landscape related course with 2 hours of preparation and research time for every hour of instruction. Licensees can earn a maximum of half the CEH hour requirement as credit during the 2 year CEH reporting period. Volunteer credit is earned for volunteer service for providing non-profit service to local or state entities for landscape related work. Volunteer credit can also be earned for serving on industry related boards,

commissions or committee. Three hours of volunteer work earn 1 hour of CEH credit, up to a total of 4 hours per two year reporting period. Volunteer time must be submitted on a form and approved within 180 days of the last service date.

6. The licensed individual landscape construction professional must keep certificates of attendance provided by the course providers to submit in the event he/she is audited.
7. If an individual does not meet the continuing education requirement before the expiration date of the license, the individual's license will be subject to suspension or refusal to renew. The Board may also assess civil penalties for failure to comply with the requirements.

Landscape Contracting Business License



The landscape contracting business is a separate entity from the individual landscape construction professional, even if the business is set up as a sole proprietorship (one owner). All businesses have at least one owner. As such, licensing for the business has different requirements than the individual landscape construction professional and is treated differently by the Board. Any owner who

decides to start a landscape contracting business must carefully assess the business structure that best fits his or her needs.

Choosing your business type has many long-term consequences for how your business operates. The LCB strongly advises you to consult an attorney when setting up your business. A smaller investment on professional advice while setting up your business may result in significant cost savings in taxes, legal fees, and professional liability later.

Applying for a Landscape Contracting Business License

Every person applying for a landscape contracting business license must submit a completed application that includes:

- The application fee.
- The license fee.
- The business name registration, if required (see Registering a Business Name in the next section).
- A surety bond or assignment of savings, certificate of deposit or letter of credit in the amount of:
 - ◆ \$3,000 if the business performs landscaping work on any one project up to \$10,000.

- ◆ \$10,000 if the business performs landscaping work on any one project up to \$25,000 or if the landscape contracting business does any hardscape work without other landscaping work.
- ◆ \$15,000 if the business performs landscaping work on any one project above \$25,000, but less than \$50,000.
- ◆ \$20,000 if the business performs landscaping work on any one project for \$50,000 or more.
- Verification that the business will be operating as an independent contractor and meets the requirements of this status. (Requirements are found in ORS 670.600.)
- A certificate of insurance in the minimum amount of \$500,000 naming the Landscape Contractors Board as a certificate holder.
- A verification of Workers Compensation coverage (if there are employees).
- A notarized designation of the managing owner or managing employee who has completed the course and examination requirements for this role in the business. (See Managing Owner or Managing Employee chapter.)
- A notarized verification for each supervising landscape construction professional and managing employee/owner.
- A list of all unpaid arbitration awards or judgments anywhere in the United States as a result of the performance of landscaping work.
- The signature of the owner/officer/member.

The landscape contracting business's phase of license is based upon the phase of license or combination of the owner(s) or employee(s) of the business. If any part of the business license is based upon a probationary individual landscape construction professional, whether the owner or an employee holds a probationary license, then the business is also considered probationary and is required to obtain a minimum \$15,000 surety bond and is restricted to performing projects that do not exceed \$15,000 for a period of 24 months.

Registering a Business Name

The main reason to register the business name is to inform the public and other businesses as to who is doing business under that name.

You must register a business name with the Business Registry as an assumed business name if the "real and true" name of each person who is carrying on the business is not conspicuously disclosed to the public in the business name. Each person's "real and true" name must include first name,

middle initial and last name. Nicknames are not “real and true” names and must be registered as assumed business names. If there are words that suggest additional owners, such as "company" or "associates," you must register the business name.

Some examples of assumed business names are:

- Syzygy Lawn and Garden Design
- Longacres Low-Cost Landscaping
- Pretty-in-Pink Floral Design
- The Morsmere Company
- Phillips & Associates

A business name that includes the “real and true” names of all owners may also be registered, but the registration is optional. A corporation, limited liability company, limited liability partnership or limited partnership does not need to register its name as an assumed business name, unless the entity wants to use the name without the entity type designation.

Some examples are:

Real and True Name	Doing Business As	
	Don't Need to Register ABN	Need to Register ABN
John Public Construction, Inc.	John Public Construction, Inc.	John Public Construction John Public Homes JPC Homes
Jane J. Jones	Jane J. Jones Enterprises	Jane Jones Enterprises Jane's Enterprises Jones Enterprises Jane J. Jones & Company Jane Jones & Associates
Michael L. Jones & John Smith	Michael L. Jones & John Smith Michael L. Jones & John Smith Enterprises	Michael Jones & John Smith Mike Jones & John Smith M. Jones & J. Smith Jones & Smith M & J Enterprises

Bonding and Insurance

Landscape contracting businesses must maintain both surety bonds and insurance as protections for the consumer.

Surety Bonds

A surety bond is a promise by a bonding agency to provide limited restitution to a consumer if a landscape contracting business fails to pay a landscape contracting business order or arbitration award. A property owner

can file a complaint against a landscape contracting business for breach of contract (including failure to complete work) or for negligent or improper work. If the Board orders a landscape contracting business to pay money to a person who filed a complaint against the landscape contracting business, the landscape contracting business must pay as ordered. If the landscape contracting business does not do so, the bonding company will pay the money owed up to the amount of the bond. The bonding company will then seek reimbursement from the landscape contracting business.

A licensed landscape contracting business must provide and maintain a surety bond in the full amount that is required and have this bond on file with the LCB prior to bidding on or contracting for landscaping work that is subject to the bond amount. Some projects require labor and material or performance bonds in addition to the surety bond required for an active license with the LCB. Your bonding surety and accounting practitioner can help verify that your business can provide the required bonds for a project.

Bid Bonds

A bid bond, or a proposal bond, is a guarantee backed by an insurance company that the successful bidder will enter into the project contract for the agreed-upon price. Instead of a bond, owners may require a certified check as bid security. Many landscape contracting business use bonds to avoid tying up capital in bid securities. Bid bonds are returned to unsuccessful bidders shortly after bid opening. Though not required on all projects, bid bonds are usually required on public works projects.

Insurance Requirements

To protect third parties, such as customers, a licensed landscape contracting business must maintain insurance that provides coverage for public liability, personal injury, property damage, and liability for products and completed operations. Examples of losses might be a landscape contracting business's tractor running into the side of a house or a landscape contracting business's employee causing a grass fire with a discarded cigarette.

Some projects may require insurance coverage and limits that are greater than a landscape contracting business or subcontractor carries. Verify that your insurance agent can provide the required insurance before preparing any estimates.

Managing Owner or Managing Employee

Every landscape contracting business formed after January 1, 2008 is to designate on the business application an owner or a managing employee who has completed a required course and passed an examination to manage the business. The designated person can be a licensed landscape construction professional, they would not be required to take the course.

The course is available through approved providers, and the examination is administered by the Board on a regular basis. This manual is part of the study material for this course. An "owner" is defined in Administrative Rule, OAR 808-002-0734. It means that the individual:

- has an ownership interest in the landscape contracting business;
- is a general partner in a limited partnership;
- is a majority stockholder in a limited partnership;
- is a manager in a manager-managed limited liability company;
- is a member in a member-managed limited liability company; or
- is a person who has a financial interest in a business and manages or shares in the management of the business.

In the final definition of an owner, "manages or shares in the management" means that the owner has a position in the business that's accountable for exercising delegated authority over the human and financial resources to accomplish the objectives of the business. These objectives may include, but are not limited to, planning, directing, implementing, organizing, evaluating, supervising, and/or administering the operations of the business.

A "managing employee" is defined in Administrative Rule, OAR 808-002-0630, as any individual, including a general manager, business manager, or administrator, employed by a landscape contracting business, who manages or shares in the management of the landscape contracting business.

Note: An individual can only be a managing employee of one landscape contracting business at a time.

What does it mean to manage a landscape contracting business? Failure to properly manage the human resources, the equipment, work processes and financial aspects of your business can and usually causes your business to fail.

Part of the course provides basic information on good business practices to give you some knowledge and skills in this area. Whether you practice them or not is up to you. Having a business specific chart of accounts and a record keeping system that allows the business to track and monitor those areas of the business that normally get overlooked is a vital business practice.

The statement "what you don't track you can't control" is a very important aspect of business management.

Local Licensing Requirements

The landscape contracting business license with the Landscape Contractors Board (LCB) allows the business to perform business anywhere within the

state of Oregon. However, you should also check with the local city and county government wherever you want to do landscaping work to see if they require a local business license and/or permit(s) to perform landscape construction in the city, or county or both. For example, if the business is in Portland, both the City of Portland and Multnomah County have operating requirements.

Note: Any local licensing fees or requirements are in addition to the licensing requirements for the State of Oregon.

Chapter 2: Employment Law

What this chapter covers:

- The differences between employees and independent contractors.
- The Oregon regulatory agencies for employment issues.
- Why employment law and regulation are important.

Employees and Independent Contractors



If your landscape contracting business was just you and nobody else, you wouldn't have to worry too much about employment law. But even if you start out as just you and a truck, chances are that you're eventually going to need to hire someone to help you out... at which point, you need to understand about employees.

Although an employee is generally understood to mean someone who receives wages from an employer and for whom the employer pays the employer share of FICA taxes, state and federal unemployment taxes, worker's comp, and other employer tax obligations, it's important for you, the employer, to understand the legal definition of "employee." The laws are very specific. A misinterpretation of the law can result in significant and costly consequences to the landscape contracting business and to any person who is supposed to be an employee.

If you are running a landscape contracting business and you intend to have employees, you must have a clear understanding of the legal definitions and responsibilities for employees and employers.

What Is an Employee?

An employee is legally defined in Oregon as any individual working for remuneration who does not meet the requirements of an independent contractor in ORS 670.600. The specific legal definitions for what constitutes an employee and an employer-employee relationship in Oregon are spelled out in ORS Chapters 654 (Oregon Safety Laws), 656 (Workers Compensation Laws), 657 (Unemployment Laws), and state and federal wage and hour laws. For additional information, see OAR 808-002-0340 and 808-002-0360.

Note: An independent contractor or trainee enrolled in a bona fide training program is not considered an employee under the wage and hour law.

What Is an Independent Contractor?

An independent contractor is defined by law in ORS 670.600. The requirements for independent contractor status are regulated for purposes of personal income tax, workers' compensation, unemployment compensation, and licensing with the LCB.

When applying for a license with the LCB, the landscape contracting business certifies it will follow the requirements of being an independent contractor. In addition, the business assumes financial responsibility for defective workmanship through performance bonds, warranties, or liability insurance.

For the employer, an independent contractor certificate offers no protection from an individual identifying themselves as an independent contractor status at the time of contracting and who later claims to be an employee when injured. When hiring independent contractor, be sure that the relationship between the independent contractor and your business meets the statutory criteria.

An independent contractor must:

- Be free from direction and control in providing the work.
- Be engaged in an independently established business that obtains the required business licenses, furnishes necessary tools and equipment, has the authority to hire and fire employees, files appropriate business tax returns.
- Be licensed under ORS 671 or 701 (State Landscape Architect Board, State Landscape Contractors Board, State Board of Architect Examiners, or Construction Contractors Board) if required for the service.
- Be paid on completion of portions of work or on a retainer basis.
- Publicly represent that an independent contractor provided the work.

In a contract of service for pay, "direction and control" means regulating or directing another's activities, or having the right or power to direct another's activities. "Control" happens when the client sets conditions about how the worker conducts himself or does the work (known as "narrowly set" conditions). Some examples of "narrowly set" conditions are:

- Telling the worker how to dress or act on the job.
- Saying the worker can only work on the job when the client is there.
- Approving workers hired by an independent contractor.
- Saying the worker must be trained by the client.

Sometimes work needs to be done when a business is closed or during off-hours. The employer has control when they can tell the worker when, where,

and how to do the job, even when there might be other ways to do the work.

When an employer has the right to tell the worker when, where, and how to do the job, the worker is an employee, not an independent contractor.

According to ORS 670.600, a business is an independently established business if it meets at least three of five standards:

1. Maintains a business location that is:
 - a. Separate from the business or work location of the person getting the service; or
 - b. In a part of your home that is used mainly for business.
2. Bears the risk of loss. For example, the business:
 - a. Enters into fixed price contracts;
 - b. Corrects poor work;
 - c. Warrants the service;
 - d. Negotiates indemnification agreements or buy liability insurance, performance bonds, or errors-and-omissions insurance.
3. Provides services on contract for two or more people within 12 months, or advertises or promotes the business to get new contracts so it can do the same work for others.
4. Invests in the business by:
 - a. Buying tools or equipment you need to provide the services;
 - b. Paying for the premises or facilities where the services are provided; or
 - c. Paying for licenses, certificates, or special training.
5. Has the right to hire and fire workers.

Independent Contractor or Employee?

Even if a contract between a party and a public entity states that the party is an independent contractor who will indemnify and hold harmless the entity from any suit brought by a third party, courts will look to the relationship between the party and the public entity to determine whether the party is subject to coverage under the OTCA (Oregon Tort Claims Act).

Courts will consider (1) whether the party is performing a function that the public entity itself is authorized to perform and (2) whether the public entity retains the "right to control" the party's work. (Issues of fact determine whether a contractor is an "agent" within the meaning of ORS 30.285 and ORS 30.287.)

The problem for the employer is that, if an individual files a claim with the Oregon Department of Revenue, the Employment Department, the LCB, or the Workers' Compensation Division, or if any of these agencies conducts an audit or investigation of an employer's records, the employment status is determined by the economic realities test and these requirements.

These requirements are narrowly construed: compliance must be very tight for the individual to qualify as an independent contractor. As a result, it is not uncommon for employers to mistakenly treat an employee as an independent contractor.

Care must be taken that someone hired as an independent contractor meets the criteria for acting as an independent contractor. If the court determines that someone hired as an independent contractor does not meet the requirements, the court may deem them an "employee". This mistake has serious legal ramifications, including penalties or fines against the employer

You should take great care to assess a worker's true employment status.

for failure to pay payroll taxes and failure to make the appropriate tax reporting disclosures. The employer's workers'

compensation insurance coverage could also be negatively affected and the hiring agency may even be exposed to civil liability in the case of an accident on the part of the independent contractor.

Unlicensed Contractors Risky for Consumers

Hiring an unlicensed contractor can be risky for consumers, too. If a consumer hires an unlicensed contractor, the contractor can be considered an employee of the consumer, which can lead to significant personal liability for the consumer should there be an accident or a problem with the work.

For a consumer to be in compliance with Oregon statutes and to receive the fullest protection from employer liability, when they hire an unlicensed contractor to perform landscaping work for them in return for any form of compensation (money, good, or services), this person must:

- be employed by a licensed landscape contracting business *or* be employed by a licensed temporary labor provider that supplies labor for the licensed landscape contracting business;
- be under the direct supervision of a licensed landscape construction professional;
- have federal and state taxes withheld;

- be paid at least minimum wage (or meet the salary test for salaried employees);¹
- be covered by workers compensation; and
- be paid by the landscape contracting business (and not directly by the consumer).

Oregon Regulatory Agencies for Employment

There are three state agencies that regulate workplace issues for all businesses in Oregon. By regulating workplace issues, these agencies promote safe and healthy workplaces that serve the needs of employees while promoting a positive business climate for employers. These agencies are the Bureau of Labor and Industries (BOLI), Workers' Compensation Division (WCD), and the Oregon Occupational Safety and Health Division (OR-OSHA).

Bureau of Labor and Industries (BOLI)

The mission of the Bureau of Labor and Industries (BOLI) is to:

- promote the development of a highly skilled, competitive workforce;
- protect the rights of employees and citizens to equal, nondiscriminatory treatment;
- encourage and enforce compliance with state laws relating to wages, hours, and terms and conditions of employment; and
- advocate policies that balance the demands of the workplace and employers with the protection of employees and their families.

The U.S. Department of Labor, Wage and Hour Division, administers federal wage and hour laws and regulations. The BOLI Wage and Hour Division govern and administer Oregon state wage and hour laws. BOLI also helps promote a skilled workforce through its apprenticeship programs and provides assistance to Oregon employers through its educational services.

¹ *The salary test generally requires that an employee receives a predetermined amount each pay check, and that the amount is not subject to reduction due to variations in the quality or quantity of work performed. The salary test also requires that the employee be paid a full week's salary for any week in which he or she does any work. Because of this regulatory framework, reductions in pay for increments of an entire week do not affect an employee's salary status, provided no work is done that week. Additionally, the regulations contain exceptions that allow deductions from the weekly salary under certain limited circumstances. For example, employees can be docked pay for major safety violations without losing their exempt status, even if the result is a partial pay week.*

Determining Independent Contractor Status

BOLI looks at criteria commonly known as the economic realities test to determine if an individual worker is an employee of a company or is an independent contractor who contracts for work with a company. The test looks at the relationship between the individual worker and the employer for minimum wage, overtime, or discrimination claims. No single factor determines the worker's economic dependency on the employer.

Generally, the criteria includes the:

- Degree of control exercised by the employer
- Extent of the relative investments of the worker and the employer
- Degree to which the employer determines the worker's opportunity for profit and loss
- Skill and initiative required in performing the job
- Permanency of the relationship

Each relationship between employer and employee, or independent contractor, is considered in light of the realities of the relationship. It does not make a difference if the individual signs a contract stating that he or she is an independent contractor. Agencies and courts will look behind the contract and determine if an employment relationship exists.

Elements of the Employer-Employee Relationship

There are several key signs of an employer-employee relationship.

Regular Paydays

First, and most importantly, Oregon law states that all employers must establish and maintain regular paydays. Paydays may not exceed 35 days after the first day an employee begins work or between paydays. When an employer has notice that an employee has not been paid the full amount the employee is owed on a regular payday and there is no dispute between the employer and the employee regarding the amount of the unpaid wages, if the unpaid amount is five percent or more of the employee's gross wages due on the regular payday, the employer must pay the employee the unpaid amount within three days after the employer has notice of the unpaid amount, excluding Saturdays, Sundays and holidays. If an employer fails to make timely payments to employees, the commissioner of BOLI may require an employer to post a bond to ensure timely payment of wages.

Payroll Deductions

As part of the payment process, employers must make deductions to withhold state withholding tax, federal income withholding tax, Social Security, Medicare, and Workers' Benefit Fund (WBF) assessment from

employees' wages in accordance with federal and Oregon tax laws. Deductions from wages may only be made for one or more of the following reasons:

- When they are required by law such as for federal and state taxes, Social Security, Medicare, workers' compensation assessment, or a garnishment order.
- When they are for the employee's benefit, are authorized by the employee in writing, and are recorded in the employer's books.
- When they are for other items (such as charitable contributions), and are authorized by the employee in writing, provided the employer is not the ultimate recipient of the money, and the deduction is recorded in the employer's books.
- When they are authorized by a collective bargaining agreement.

In addition, all employers who are required to have workers' compensation insurance must also pay a workers' compensation assessment to the state. This payroll assessment does not have any effect on workers' compensation insurance coverage. The assessment may be split between employees (payroll deduction) and employers, or paid in full by the employer. The workers' compensation assessment pays for specific programs that benefit injured employees and the employers who hire them.

Other deductions may also be withheld under certain special circumstances such as those listed below.

- Employers may make deductions for the fair market value of meals or lodging provided for the private benefit of the employee. If the employee does not want the meals, however, no deductions may be made.
- Employers may not make deductions for the purchase or cleaning of uniforms or tools.

An itemized statement of deductions made from wages must be furnished to employees on their regular paydays at the time payment is made. The statement must show the amount and purpose of each deduction and may be a part of the paycheck, attached to it, or it may be a separate document. If the employee agrees, and has the ability to print or store the statement, the statement may be provided in an electronic format.

When an employer deducts an amount from an employee's wages as required or authorized by law or agreement, the employer must pay the amount deducted to the appropriate recipient within the time required by the law or agreement. If the time for payment is not specified by the law or agreement, the employer must pay the amount deducted to the appropriate recipient within seven days. Failure to pay the amount as required

constitutes an unlawful deduction. An employee may pursue collection of amounts which he or she feels have been unlawfully deducted through a private attorney, in small claims court, or by filing a wage claim with Wage and Hour Division of BOLI.

Personnel Records

Personnel records include those records that are or have been used to determine the employee's qualification for employment, promotion, additional compensation, employment termination, or other disciplinary action. If the employee requests such records, the employer is required to furnish a certified copy of these records or allow the employee to review them within 45 days after receipt of the employee's request. If the employee's personnel records are not readily available, the employer and the employee may agree to extend the time within which the employer must provide the employee reasonable opportunity to inspect the records or furnish the employee a certified copy of the records. After the employee terminates, the employer must keep these records for at least 60 days.

Employee Termination

If an employee quits employment and has given advance notice of at least 48 hours (excluding Saturdays, Sundays, and holidays), final pay is due on the last day worked. If the employee quits without 48 hours notice, final pay is due within five days (excluding Saturdays, Sundays, or holidays) or on the next regular payday after the employee quits, whichever is sooner. If an employee who is regularly required to submit time records to the employer quits employment without giving at least 48 hours notice, the employer is required to pay the employee the wages the employer estimates are due.

If an employee leaves the business and gives 48 hours notice, the final paycheck to the employee is due on the last day worked.

These wages are payable within five days after the employee has quit.

If an employer discharges an employee, or if employment is ended by mutual

agreement, all wages earned and unpaid must be paid by the end of the next business day after discharge or termination.

Prevailing Wages

The Prevailing Wage Rate (PWR) law, also known as the "Little Davis Bacon Act," regulates the payment of wages for work on public work projects. The PWR law applies to projects carried on or contracted for by a public agency for construction, reconstruction, major renovation or painting of a public work. The law also applies to projects for the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure, or improvement of any type that uses funds of a private entity and \$750,000 or more of funds of a public agency or in which 25 percent or

more of the square footage of the completed project will be occupied or used by a public agency.

A public agency includes the state of Oregon or any of its political subdivisions, or any county, city, district, authority, public corporation or entity, or any of their legal agencies.

Workers on public works projects subject to the PWR law must be paid no less than the prevailing rate of wage published by BOLI for the trade or occupation in the locality where such labor is performed. Effective January 1, 2006, landscape contracting businesses must pay workers employed on projects subject to both the state PWR law and federal Davis-Bacon Act the higher of the applicable state or federal wage rate. BOLI publishes rates applicable to projects subject only to the state PWR law and projects subject to both state and federal law, showing which prevailing wage rate is higher.

Landscape contracting businesses, general or subcontractors engaged on a public works project that requires prevailing wage rates must post the applicable wage rates in a conspicuous and accessible place on the project. BOLI provides these wage rates at no cost. They are also available on the bureau's website at www.oregon.gov/boli.

Landscape contracting businesses who have refused to pay the prevailing wage rates or who have intentionally failed or refused to post the prevailing wage rates are ineligible to receive any contract for public works (except for federal contracts) in Oregon for up to three years. BOLI may also debar the officers of debarred landscape contracting businesses, and place them on a "list of ineligibles."

Failure to pay the prevailing wage rate can bar you from public works contracts in Oregon for three years.

Public works projects that are exempt from prevailing wage rates requirements include:

- projects for which the total project amount does not exceed \$50,000
- projects that are privately owned, use funds of a private entity, and in which less than 25 percent of the square footage of the completed project will be occupied or used by a public agency and for which less than \$750,000 of funds of a public agency are used
- projects for which no funds of a public agency are directly or indirectly used
- projects for residential construction that are privately owned and that predominantly provide affordable housing as defined by law
- contracts of a People's Utility District
- projects of the Oregon State Lottery Commission
- projects of the Travel Information Council

- Oregon Department of Corrections' inmate labor work release program assignments
- Oregon Youth Conservation Corps members

Landscape contracting businesses who were awarded a prevailing wage rate-covered public works contract first advertised or solicited prior to January 1, 2008 are required to pay a fee of one-tenth of 1 percent (.001) of the contract price to BOLI. The minimum fee that must be paid is \$100, and the maximum fee that must be paid is \$5,000. The fee is due within 10 days of receiving the first progress payment or within 60 days of the beginning of work on the contract, whichever date occurs first. Public agencies are responsible for paying the fee to BOLI on public works contracts first advertised or solicited after January 1, 2008.

Public works contracts require some additional reporting.

Landscape contracting businesses and subcontractors are required to submit weekly payroll information and certified statements to the

contracting agency by the fifth business day of each month for each week following a month in which workers were employed upon a public work. The landscape contracting business may submit a weekly payroll on either a form provided by BOLI or may use a similar form, provided this form has all the same information. Public agencies and general contractors are required to withhold 25 percent of amounts owed to contractors if certified payrolls are not submitted as required.

If a contract that is initially less than \$50,000 later increases to an amount greater than \$50,000, the landscape contracting business must pay prevailing wage rate wages for the entire project.

The commissioner determines the prevailing wage rates based on annual independent wage surveys. Landscape contracting businesses must reply to wage surveys sent by the commissioner, which will help determine appropriate prevailing wages for landscaping work on public projects in Oregon.

Landscape contracting businesses engaged on projects that require payment of prevailing wages must post a notice, in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work, and the applicable prevailing wage rates for that project. The notice must also contain information regarding any health and welfare or pension plan provided for employees, how and where to make claims, and where to obtain further information. Every landscape contracting business on the site is responsible for the posting of all prevailing wage rates that apply to the project. A civil penalty may be assessed and/or the landscape contracting business may be debarred from public contracting for failing to post the prevailing wage rates as required

Every public contract must also contain a condition that no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of emergency or where the public policy absolutely requires it. In such cases, the employee shall be paid at least time-and-a-half pay for:

- All overtime in excess of eight hours a day or 40 hours in any one week when the workweek is five consecutive days, Monday through Friday.
- All overtime in excess of 10 hours a day or 40 hours in any one week when the workweek is four consecutive days, Monday through Friday.
- All work performed on Saturdays, Sundays, and legal holidays.

In general, the PWR law:

- Covers the **cleanup of hazardous material spills** if the project includes some construction or reconstruction. The PWR law does not cover contracts that only include picking up and hauling away hazardous material not in connection with a covered construction project.
- Covers **demolition work** only if it is to prepare for planned construction or renovation. If no construction is planned to replace the demolished property, the demolition is exempt.
- Does not cover **general maintenance work**, such as sweeping, cleaning, and landscaping is not covered unless it is done as part of a construction, reconstruction, or major renovation project. For example, PWR laws do not apply if maintenance landscaping work such as mowing or pruning is performed on the grounds of an existing building where no other work is being performed. If the same landscaping is part of new construction or a major building renovation, then it is covered work.
- Does not apply to **"owner-operators" of trucks**. Drivers who own and operate their own trucks and who are independent contractors are not required to be paid prevailing wage rate wages. Operators of other equipment or motor vehicles are not exempt from PWR laws.
- Does not apply to persons employed on a public work for the manufacture or furnishing of materials, articles, supplies, or equipment are not workers required to be paid prevailing wages unless the employment of such persons is performed in connection with and at the site of the public work. Persons employed on a public work who are employed by a commercial supplier of goods and materials must be paid no less than the prevailing wage for work performed in fabrication plants, batch plants, barrow pits, job headquarters, tool

yards, or other such places that are dedicated exclusively, or nearly so, to the public works project.

- Apply to persons employed on a public works project who spend more than 20 percent of their time during any workweek performing duties that are manual or physical in nature as opposed to mental or managerial in nature are workers and must be paid the prevailing wage rate. Mental or managerial duties include administrative, executive, professional, supervisory, or clerical duties

Employees are not required to be paid prevailing wage rate wages for travel time unless they are traveling between the job site and a dedicated site. Other wage and hour regulations may require that travel be compensated, however. (Contact BOLI for more information.)

If a business fails to pay the prevailing wage, they are liable for the underpayment as well as possible civil penalties.

Any landscape contracting business failing to pay prevailing wages as required is liable for the amount of underpayment. Employers may also be

liable for liquidated damages equal to the amount of unpaid wages and additional civil penalties for the underpayment of wages. For example, if a landscape contracting business underpaid an employee by \$1,500, the landscape contracting business is responsible for the unpaid wages plus an equal amount in liquidated damages for a total of \$3,000.

In addition to any other penalty provided by law, BOLI may assess a civil penalty not to exceed \$5,000 for each violation of any provision of PWR law or any rule the commissioner has adopted pursuant thereto. BOLI may, as a condition of settling a case, require the landscape contracting business to take a training course on PWR law and ask for a commitment of future compliance.

Employee Claims for Wages

If the employer does not pay an employee wages to which he or she is

Ensuring that workers are paid minimum wage and that overtime is calculated correctly are functions of BOLI.

entitled, the employee may file a claim with BOLI. The following procedure outlines the steps to be followed by employees who file claims in connection

with wage disputes:

1. An employee's first step is to file a claim with BOLI. The wage claim will be reviewed for completeness and to make sure the division has jurisdiction. The employee may be asked to provide additional information and/or evidence to support the claim.

BOLI will not accept a wage claim if:

- a. A private legal action has already begun to recover the wage claims;
- b. No work was performed in Oregon;
- c. The claim is against a business in which the employee was a partner, an owner, or had a direct financial interest;
- d. The claim is against a relative; or
- e. The employee is unwilling to take the employer to court.

In case of a dispute over wages, the employer must pay, without condition and within the time set by law, all wages the employer agrees are due. The employee retains the right to claim any balance the employee alleges is due by filing an action with the court or a claim with BOLI.

If an employer willfully fails to pay an employee final wages when due, the employer is subject to a penalty of the employee's hourly rate for eight hours per day for each day the employee remains unpaid up to a maximum of 30 days. The penalty may not exceed 100 percent of the unpaid wages if the employer pays the wages due within 12 days after written notice of nonpayment is sent to the employer, and the employer has not willfully violated the final pay provisions of the law in the preceding year.

Employers are liable for unpaid wages for a period of six years from the date the wages were earned and two years for claims of unpaid overtime. Employees may lose their right to their wages if they fail to pursue claims in a timely manner.

Discharging or otherwise retaliating against an employee because the employee has discussed, inquired about, or filed a wage claim is prohibited.

2. Upon receipt of a wage claim, BOLI will notify the employer of the claim by mail.
 - a. If the employer agrees the amount claimed is due, the employer may issue a check to the claimant and send it to BOLI.
 - b. If the employer agrees that a portion of the amount claimed is due, that amount should be paid promptly.
 - c. If the employer disagrees with the wage claim, the claim will be assigned for investigation to a wage and hour compliance specialist, who will review the employer's records and other relevant information to determine whether wages are owed and if so, the amount of unpaid wages.

3. If the employer disputes the compliance specialist's determination, an administrative hearing or court trial may be held in the matter.

Minimum Wage and the Fair Labor Standards Act

A business must have two or more employees and have an annual sales volume of \$500,000 or more to be subject to the federal Fair Labor Standards Act (FLSA), which is administered by the U.S. Department of Labor. Individual coverage applies to employees whose work regularly involves them in commerce between states (interstate commerce). An employee who works on or handles goods that move through interstate commerce is subject to the protection of the FLSA, regardless of the sales volume of the employer. The Fair Labor Standards Act requires the payment of the federal minimum wage.

If state and federal regulations differ, you use the regulation that benefits the employee most.

Most Oregon employers are subject to both federal and state minimum wage and overtime laws. The effect of this dual coverage is that the employer must

comply with the standards most beneficial to the employee when there are conflicting requirements in the laws. For example, since Oregon law currently requires a higher minimum wage rate than federal law, all Oregon employers must pay the Oregon state rate, unless their employees are exempt under Oregon law. Oregon law requires the minimum wage rate to be adjusted annually for inflation by September 30 of each year for the following calendar year. You should check the Oregon state and federal minimum wage requirements before employing anyone to make sure you're in compliance.

Minimum wage applies to all employees in Oregon, unless they are classified as exempt. Employees must receive at least minimum wage for all hours worked, including preparation time, opening and closing times, and required meetings. State and federal minimum wage laws define the term "employ" as "to suffer or permit to work." "Work time" includes both time worked and time of authorized attendance. For each hour of work time that the employee is gainfully employed, no employer may employ any employee at a lower wage; however, BOLI may approve hourly wage rates lower than the minimum wage for persons who are mentally or physically disabled or who are student-learners.

Every employer employing any employees subject to the minimum wage provisions shall post and keep posted an Oregon Minimum Wage Poster in conspicuous places in every establishment where employees are employed so as to permit them to readily observe a copy. Posters are mailed by BOLI annually to every Oregon employer and are also available upon request and on the bureau's website at www.oregon.gov/boli.

By this definition, any time spent by an employee in the performance of any duties must be recorded and paid as time worked. Under Oregon law, it is permissible to pay wages by the hour, as a salary, in commissions, or at a piece-rate. Whichever method is used, employers must keep accurate time records and the employee's total earnings must equal or exceed minimum wage for all hours worked. Employers are responsible for maintaining accurate time records of all hours worked. The records must be kept for up to three years in order to defend against wage claims and comply with audits.

In order to avoid liability related to payment of wages, it is the employer's duty to have and to enforce rules prohibiting unauthorized work. For example, assume an employee arrives at work early or stays late because of transportation problems. The employee prefers to work rather than remaining idle, and states that he or she will volunteer the time. Wage and hour laws require that an employer must compensate an employee for all hours worked, whether those hours are authorized or not, even if those hours would be overtime hours. If an employee violates the business policy and works regular time or overtime without required authorization, the employer may discipline the employee but the employee must still be paid for the hours worked.

Unless exempt, private sector employees must be paid overtime at one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. This rate is the same for the state of Oregon and the federal government. Employers may not discriminate between the sexes in payment of wages for work of comparable character requiring comparable skills. Whenever overtime is being calculated on a daily basis, it also must be calculated on a weekly basis. The greater of the two amounts is the one to be paid. The payment of overtime is required by state and federal law and cannot be waived by agreements with employees.

Employers may be assessed both civil and criminal penalties for violating wage and hour standards.

A workweek is any seven consecutive 24-hour periods as determined by the employer. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the state or federal overtime requirements. For purposes of overtime computation, each workweek stands alone.

Meal and Rest Periods

Oregon law specifically mandates meal and rest periods. These periods may not be waived or used to adjust working hours.

The general rules for meal periods are:

- Adults must be given a 30-minute meal period if the workday is six hours or longer.
- Minor workers less than 18 years of age must be given a 30-minute meal period no later than five hours and one minute after the minor reports to work. Minors ages 14 and 15 must be fully relieved of work duties at this time. Minors who are 16 and 17 years of age and adults may work during the meal period under exceptional circumstances, if they cannot be relieved, but must be paid for that time.
- In exceptional circumstances, if the employee can't be relieved due to the nature or conditions of the work, then the meal period must be paid. The scheduling of meal periods depends on the length of the workday. If the work period is seven hours or less (but at least six), the meal break must be between the second and fifth hour worked. If the work period is more than seven hours, the meal break must be taken between the third and sixth hour worked.

The general rules for rest periods are:

- Paid rest periods of at least 10 minutes must be provided during each four-hour work period or major part thereof. The rest period is to be taken approximately in the middle of each work segment. There are narrow exemptions to the rest period requirements for part-time adult employees working alone in retail/service businesses.
- Minor workers must be provided a 15-minute break during each four hours of work.
- Rest periods may not be added to the meal period or deducted from the beginning or end of the work period in order to reduce the length of the work period.

Employing Minors

There are special rules in Oregon for employing minors (people under the age of 18). Although some of these are described in this section, there are many other rules relating to the employment of minors. If you employ minors, you should consult with an attorney who specializes in employment law or contact BOLI's Technical Assistance for Employers division.

There are a number of restrictions on the type of work minors may do:

- Minor employees who are ages 16 and 17 may work in construction with restricted use of some machinery and explosives.
- Minors are not allowed to perform hazardous work activity. Hazardous work includes using motor vehicles and transporting goods (except under limited circumstances for minors 17 years old); use of woodworking machines, battery-powered handheld drills and sanders;

operating power-driven hoisting apparatus or power-driven metalworking machines; or being involved in activities such as wrecking, demolition, excavation, and roofing.

- Minors under 16 years of age may not be employed in construction activities.

There are some additional requirements for record keeping when hiring minors:

- Minors must obtain a Social Security card the same as adult employees.
- Employers who hire minors must obtain an annual employment certificate. The certificate covers all minors the employer hires. The employer estimates the number of minors that will be employed during the year, lists the job duties they will be performing, and identifies any machinery or equipment they will be using. This certificate must be posted in a conspicuous place in the work area where employees may review it.

Employment certificate applications may be obtained from the BOLI Child Labor Unit, Wage and Hour Division (503-731-4105), or may be downloaded from BOLI's website at www.boli.state.or.us/wage/wh-216-1.pdf.

Minors must be paid the applicable minimum wage rate. Employees ages 16 and 17 may work at any time with no daily hour restrictions up to 44 hours per week. However, they must be paid time and one-half the regular rate of pay for any time worked over 40 hours in a week.

Some child labor law exceptions apply for employment by a minor's parent(s). Contact BOLI for specific information.

Exempt vs. Non-exempt from Minimum Wage and Overtime Employees

There are limits to the types and amounts of deductions an employer may make against an employee's salary without jeopardizing their exempt status. This section provides an overview of the complex regulations concerning exempt and non-exempt status.

Exempt Classification

When an employer classifies an employee as exempt from minimum wage and overtime, it is up to the employer to establish that the employee meets the criteria for exempt status. There are three categories of "white collar" employees that may qualify for exempt status:

- executives (supervisors),

- administrative managers, and
- professional employees.

Both federal and state regulations require that employees must satisfy all of the duties tests and also be paid a genuine salary to be classified as exempt employees.

Exempt executives (supervisors) must satisfy the following duties tests:

- Primarily manage a distinct unit or subdivision within the organization,
- Spend most of the workweek performing management duties. This generally means more than 50 percent of the work time; however, other factors might support exempt status if less than 50 percent of work time is spent in management. Other factors could include:
 - ◆ the employee is paid a significantly higher salary than is paid to nonexempt staff;
 - ◆ the employee makes frequent management decisions;
 - ◆ the employee is free from direct supervision;
 - ◆ supervises two or more full-time employees (or the equivalent of two or more);
 - ◆ has hiring or firing authority or, if not full authority, their recommendations are given particular weight;
 - ◆ customarily and regularly exercises authority to make decisions of significance.

Exempt administrative employees must satisfy the following duties tests:

- Primarily perform office or non-manual work directly related to management policies or general business operations. The work must be distinguished from production or sales work and is limited to duties directly related to the running of a business and not merely the day-to-day carrying out of its affairs.
- Perform work as an administrative assistant, such as an executive's assistant who has management duties; a staff employee, such as an advisory specialist or department head; or as a special assignment employee such as a field manager.
- Spend most of the workweek performing management duties. As with exempt executives, this generally means more than 50 percent of work time; however, other factors might support exempt status.
- Customarily and regularly exercise authority to make decisions of significance.

Professional employees must satisfy the following duties tests:

- Primarily perform work as professionals in either learned or artistic professions, or as teachers in an educational institution or as highly skilled computer professionals. Learned professionals, teachers and highly skilled computer professionals are those who have attained knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study. A four-year degree may satisfy this requirement, however associate degrees do not.
- Spend most of the workweek performing professional duties. This generally means more than 50 percent of work time; however, other factors may be considered if less than 50 percent of the week is spent in professional work.
- Perform work that is predominantly intellectual and varied rather than routine, manual, mechanical, or physical.
- Consistently exercise discretion and independent judgment.

In addition to the duties tests, exempt employees must be paid on a genuine salary basis as opposed to hourly or other methods of payment. Almost all Oregon employers are subject to the Fair Labor Standards Act (FLSA). Employers subject to the FLSA are required to pay a minimum weekly salary of \$455 a week or \$23,660 annually. This new salary level was enacted on August 23, 2004.

The salary must be a predetermined amount that is not varied based on quantity or quality of work. Exempt employees need not be paid for weeks in which no work is performed, however the general rule requires that the employee receive the full salary for any week in which work is performed without regard to the number of hours or days worked. The general rule is subject to exceptions as follows:

- Salary may be prorated (reduced) if an exempt employee takes a day or more off for personal reasons other than sickness or accident.
- Salary may be reduced for absences of a day or more for sickness or disability if the reduction is made according to the employer's plan, policy, or practice of providing paid sick or disability leave. For example, if an employer has a paid sick leave plan and the employee has exhausted all available paid leave under that plan, then his or her salary may be reduced by those absences of a day or more for sickness or disability.
- If the employee performs any work during the workweek when serving on jury duty, military leave or when attending a proceeding as a witness, the exempt employee's weekly salary must be paid. However, the employer may offset any amounts received by the employee as jury or witness fees or military pay for that week.

- Reductions in an exempt employee's salary may not be made as a disciplinary measure unless the penalty is imposed for violations of safety rules of major significance such as smoking in an explosive plant or oil refinery. However, if the employee is suspended for a full workweek, and no work is performed during that week, no salary is required.
- Reductions for unpaid disciplinary suspensions of one or more full days for workplace infractions or workplace conduct. Suspensions must be imposed pursuant to written policy applicable to all employees.
- An employer is not required to pay the full salary in the initial and terminal week of employment.
- In private sector employment, the exempt employee's salary may not be reduced when an employee is absent for part of a day, unless the absence qualifies as leave taken under the federal Family and Medical Leave Act. (Special rules apply to government agencies).

Commonly Asked Questions about Exempt Status

This section contains commonly asked questions about exempt from minimum wage and overtime payment status.

Q. Are employers required to track hours worked by exempt employees?

A. No, if an employee is truly exempt as a "white collar" employee, there is no need to track hours worked. However, it is permissible for employers to track hours worked for legitimate business purposes such as job costing, or benefit accruals. It is also permissible for employers to require exempt employees to be present during specified hours.

Q. Is it permissible to require exempt employees to use accrued vacation or sick leave when they are absent?

A. Yes, the Ninth Circuit Court of Appeals has decided that deductions from leave banks for absences are permitted since the words "amount" and "compensation" in the regulations refers to "cash" or "salary." Therefore, as long as the employee receives the appropriate payment in cash or salary, deductions from leave banks do not affect the exempt employee's status. However, it is essential that the exempt employee's salary is not "subject to deductions" for partial day absences. Therefore, employers should adopt policies clearly stating that the salary will not be reduced for absences of less than a full day, if the employee has no available accrued leave to access.

Q. If the employee is absent for a full day or more due to sickness or disability, and has no accrued paid leave to use, may the employer reduce the employee's salary?

A. Yes, as long as the employer has a paid leave plan that provides compensation in cases of illness or disability.

Q. Is it OK to pay extra amounts, in addition to the salary, to exempt employees?

A. Yes. Oregon regulations specify that extra amounts may be paid to exempt employees even if they are based on hourly rates. Federal regulations do not specify that extra compensation may be paid on an hourly basis, but state that bonuses, commissions, or shift amounts may be paid in addition to the guaranteed salary. Some court cases have questioned the practice of paying extra amounts on an hourly basis. Therefore, it is recommended that extra amounts be in the form of bonuses or other "lump" sums rather than "hour for hour."

Q. Is it permissible to reduce the exempt employee's salary if the employer shuts down for part of a week due to slowdowns in orders, or for equipment failures, or for other operating requirements of the business?

A. No, the general rule requires that exempt employees be paid for the full week if any part of the week has been worked.

Q. Can an employer require an exempt employee to use accrued paid leave during a part-week shutdown?

A. An opinion letter dated November 20, 1995, issued by the U.S. Department of Labor (DOL), states that the employer may not require exempt employees to use accrued leave for absences occasioned by the employer. However, the U.S. Department of Labor has revised its enforcement policy and now relies on opinion letters issued on February 15, 1994 and April 6, 1995. The DOL's current interpretation is that an employer may require the use of paid leave, so long as the employee receives his or her full weekly salary. This means that an employee who has exhausted all paid leave must nonetheless receive his or her full weekly salary when a part-week shutdown occurs.

Q. I understand that a basis for determining whether employees are exempt is that they are paid on "a salary basis." What does that mean?

A. In general, an employee is considered to be paid on a salary basis if he/she receives a predetermined amount (salary) for the pay period, and that amount is not subject to reduction in any week in which he/she performs any work, regardless of the number of days or hours worked.

Q. Does this mean that deductions are never allowed from the salary?

A. No. Deductions may be made in the following situations:

- Employees need not be paid for any work week in which they perform no work.
- Deductions may be made when the employees are absent from work for a day or more for personal reasons.
- Deductions may be made when the employees are absent from work for a day or more for sickness or a disability if the employer has a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability.

Q. Does this mean that if an employer does not have a paid sick leave plan that covers both sickness and disabilities, the employer could not deduct for such sickness and/or disability?

A. Yes. If there is no plan, policy or practice of providing compensation for such sickness or disability the deduction would be disallowed if the employee were to remain exempt.

Q. May I deduct for a day or more of sick leave if the employee has not been with my company long enough to qualify for compensation under my sick leave plan?

A. Yes.

Q. If an employee has used all accrued sick leave, may I deduct for periods of less than a day?

A. No. Deductions may only be made for a day or more.

Q. What kinds of deductions would not be allowable if the employer wants to regard the employee as being paid on a salary basis?

A. Deductions may not be made for:

- Time when work was not available.
- Absences occasioned by the employer or by the operating requirements of the business.
- Absences caused by jury duty, attendance as a witness or temporary military leave. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.
- Absences of less than one day.

Note that although the employer is prohibited from docking an exempt employee for such absences, the employer may require that the exempt employee use accrued paid leave.

Unemployment Insurance

Unemployment insurance is defined as a tax used for the payment of benefits to unemployed employees.

A person is considered disqualified from receiving unemployment benefits if:

- the person was terminated from a job because of misconduct, or
- the person voluntarily left work without good cause, or
- the person is discharged or suspended because of the unlawful use of any controlled substance unless that person is participating in a recognized drug rehabilitation program. The person may also be disqualified for being discharged two or more times within a 12-month period for substance abuse. The person will be disqualified if it is found that the person committed a felony or theft in connection with work, admits the act, and is convicted in a court.

Unemployed persons will continue to be regarded as disqualified if they fail to apply for available suitable work when they are referred by the employment office or fail to accept suitable work when it is offered

A person will not be disqualified for benefits if:

- The person quits work or fails to accept work when a collective bargaining agreement is in effect and the employer modifies the amount of wages in breach of the agreement.
- The person is laid off.
- The person is discharged for other than misconduct or use of controlled substances.
- The person voluntarily left work before the date of a good-cause voluntary leaving date.
- The actual voluntary leaving occurs no more than 15 days before the planned date of voluntary leaving.

An employer may be liable for "wrongful discharge" in violation of public policy if the employer terminates the employee for complying with a public duty, or for pursuing a right granted by law. Examples of such violations include an employee who is terminated because he or she:

- Brought a job-site safety concern to the employer's attention
- Had to miss work to serve jury duty.
- Reported in good faith what he or she believed to be illegal conduct or activities being committed by fellow employees or supervisors.

Employment Agreements

An express contract is an actual agreement of the parties, which consists of the terms that are declared at the time it is formed and stated in clear and explicit language, either verbally or in writing. Under certain circumstances, an employee handbook or manual can constitute a contract.

An implied contract is one that is not formed by an explicit agreement of the parties. Instead, it is inferred from the acts or conduct of the parties that show the existence of an agreement between them.

Collective bargaining agreements are contracts that have been negotiated between union representatives and company representatives on behalf of the union member.

An employer may be in breach of an agreement when the employer does not live up to the express, implied, or bargained agreement. A breach includes such actions as not paying an agreed-upon salary, not paying wages in a timely manner, not providing agreed-upon benefits, and not providing workers' compensation coverage. Monetary and other relief may be awarded in a legal action for breach of an employment contract. An agreement between employer and employee as to terms and conditions of employment, how the employer will handle discipline or termination, and so on, may be binding on the employer. Note that not all such agreements are written.

Family and Medical Leave Laws

This section describes family medical leave under both federal and state laws. When the two laws overlap, the two laws will be applied congruently; however, if there are greater rights under Oregon law, those laws will apply. In practical terms, this generally means that in Oregon Family Medical Leave (OFLA) laws will apply for Oregon employees since coverage is generally broader under the state law than under federal law. The law applies to businesses that have 50 or more employees.

Federal Family and Medical Leave Act

The federal Family and Medical Leave Act (FMLA) allows eligible employees of an employer to take up to 12 work weeks of unpaid leave (480 hours) in any 12-month period for a serious health condition of the employee or family member. This is commonly referred to as "protected" leave because taking family medical leave cannot be counted against a job applicant or an employee in assessing his or her work record. Family medical leave also "protects" an employee's job by allowing him or her to return to his or her job once the leave is over (except in some limited situations). The FMLA also allows that an employee's medical benefits remain at the same level while the employee is on leave and that the employee must generally be allowed to return to the same or an equivalent position upon return from leave.

Under the FMLA, both male and female employees are eligible for family leave for the birth, adoption, or foster care placement of a child.

FMLA leave is also available to care for a spouse, child, or parent with a serious health condition. The FMLA defines a "serious health condition" as an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.

An employer may require medical certification from a health care provider to verify that an employee or the employee's family member has a serious health condition. In the case of an unanticipated emergency, an employer must allow at least 15 days for the employee to obtain the medical certification form from his or her physician. In general, no direct contact by the employer with the employee's health care provider is permitted. Employers who have reason to doubt the validity of the initial medical certification may require a second opinion at the employers' expense; however, the ability to obtain a second or third medical opinion is limited by law. It is a good idea to attach the employee's job description to the medical certification form so the health care provider may refer to it when filling out the medical certification form and any subsequent Fitness for Duty Reports.

Oregon Family and Medical Leave Act

The Oregon Family and Medical Leave Act (OFLA) provides an unpaid leave of absence for up to 12 weeks to eligible employees of Oregon employers for certain family and medical reasons. This law applies to employers who have 25 or more employees. Eligible employees may request OFLA leave for any of the following qualifying purposes:

- parental leave for the addition of a child to the family through birth, adoption, or placement by foster care.
- serious health condition leave to care for a family member with a serious health condition or the employee's own serious condition.
- pregnancy disability leave for pregnancy disability or prenatal care.
- sick child leave to care for a sick child who does not have a serious health condition but requires home care.

Employees are required to give written notice to the employer 30 days in advance of the leave unless the leave is taken for an emergency. Employees who fail to give written notice may be subject to discipline by the employer.

There is no requirement that family medical leave be paid. However, employees must be allowed to use any existing accrued vacation leave, and the employer must apply its existing sick leave policy. OFLA requires the employer to also allow employees to use any accrued sick leave. This means that if an employee wants to be paid and uses accrued paid vacation and

sick leave when on FMLA and OFLA those hours reduce the number of FMLA and OFLA hours available for protection of their job. Employees do not have to exhaust all their paid leave before being allowed to take leave without pay and have their job protected by FMLA and OFLA. An employee is allowed to retain up to 40 hours of accrued paid leave and then use the remaining FMLA and OFLA hours as unpaid. When employees return to work from leave, they are entitled to their former job or to an available equivalent job if the former job has been eliminated. Employers covered under both OFLA and FMLA must allow the employee on leave to return to the former job, if that job still exists.

Overlapping of FMLA and OFLA with Workers' Compensation Laws

The overlapping of the FMLA and OFLA laws can become complicated. You are encouraged to seek legal advice for specific information about how to apply these laws. Larger companies are covered by both FMLA and OFLA. The OFLA applies to employers with 25 or more employees whereas FMLA applies to employers with 50 or more employees.

If the FMLA and OFLA differ, use the regulation that benefits the employee most.

In an employee absence due to a workers' compensation claim, the absence can be counted as family leave if it meets the definition of a serious health condition under OFLA or FMLA. Employers must then look at the reinstatement rights under the leave laws and under the workers' compensation discrimination laws and do whatever is beneficial for the employee.

When an employer grants a family leave for a condition that is also a disability under the ADA, the employer must reasonably accommodate an employee's disability if it does not create undue hardship. If an employee's family leave entitlement has been exhausted for a serious health condition that is also a disability, the reasonable accommodation obligation still remains.

An example would be an employee who suffered permanent injuries to his or her back, and although able to return to work, needs special office furniture or equipment to allow him or her to perform the job after the 12-week family leave period.

Protection for Whistleblowers

Whistleblowers are protected by Federal and Oregon laws.

An employee who opposes employment practices that he or she believes, in good faith, are unlawful and who is subsequently terminated or suffers an adverse employment action, such as a reduction in pay or a transfer to a less desirable job, may successfully sue his or her employer for retaliation or discrimination under state or federal law. Employers should know what the

laws are and should seek legal advice in avoiding liability and preventing retaliatory action or discrimination.

Federal Law

Several federal laws prohibit retaliation against a person who has, in good faith, made a Title VII complaint or assists another's complaint.

The Age Discrimination in Employment Act prohibits retaliation against an applicant or employee who makes an ADEA complaint or who assists another's complaint.

The Americans with Disabilities Act also prohibits retaliation for asserting one's rights, opposing unlawful conduct, or assisting another complaint.

Oregon Law

It is against Oregon law to discriminate against an individual who has:

- opposed any discriminatory practice, assisted another's complaint, or attempted to do so
- opposed a practice prohibited by the Oregon Safe Employment Act or assisted another's complaint
- exercised his or her individual rights or inquired about his or her rights under the workers' compensation system, the disability laws, OR-OSHA, family leave laws, and/or other laws prohibiting discrimination
- used, invoked, or assisted a complaint under the workers' compensation system
- testified before the Legislative Assembly
- testified at an unemployment hearing
- made a wage claim or discussed a wage claim with anyone
- reported, in good faith, what that person believes to be criminal activity, caused a criminal complaint to be filed, cooperated with law enforcement, brought a civil proceeding against an employer, or testified at a civil proceeding or criminal trial

Miscellaneous Discrimination Laws

Miscellaneous discrimination laws cover the following areas:

- It is unlawful to discriminate because of an expunged juvenile record.
- It is unlawful to discriminate against an individual because another member of that individual's family works for the employer.
- It is unlawful to require as a condition of employment that an individual refrain from lawful tobacco use during nonworking hours.

- It is unlawful to discharge or commit certain acts against an employee due to his or her jury service.
- It is unlawful to deny accrued paid leave to an employee donating bone marrow.
- It is unlawful to discharge a person because his or her wages are garnished.
- It is unlawful to discriminate against an employee for reporting a violation of health or residential facilities laws.
- It is unlawful to refuse to grant leave to a member of the National Guard called into service.

It is also unlawful in Portland, Eugene, Corvallis, and Ashland to discriminate on the basis of sexual orientation, pursuant to those cities' codes. It is unlawful in Portland, Eugene, Corvallis, and Ashland to discriminate on the basis of an individual's source of income.

Additional Statutory Rights of Employees

Under certain circumstances employees are entitled to rights related to family obligations, medical leave for themselves or certain family members, job-site injuries, or disabilities. Employers must comply by allowing employees to exercise their rights under those laws and by not retaliating against the employees for doing so or for inquiring about their rights.

Hiring Practices

This section lists some of the most common dos and don'ts when hiring employees:

An employer may not ask if an applicant is disabled or inquire about the nature or severity of a disability. Employers may be liable if they ask questions that would elicit information about a disability; for example, "How many times have you been sick in the last year?" Employers should focus inquiries on an applicant's ability to perform job-related functions.

An employer cannot require a medical examination until after a job offer has been made. However, an employer may condition a job offer on the results of a post-offer medical examination if the employer requires all entering employees in the same job category to take the examination.

Upon receiving a request for reasonable accommodation, an employer may request additional information, including medical verification of the condition requiring accommodation

Federal and state law prohibits employers from advertising or making any inquiry expressing a preference based on protected class status. Therefore, all pre-employment questions should be designed to obtain information

relating only to qualifications for successful job performance. Avoid questions that ask for:

- Direct information about an individual's race, sex, age, marital status, or other protected class status.
- Information typically evaluated differently for men and women, such as questions regarding childcare arrangements.
- Information that could be used to screen out members of protected classes, such as questions about religious practices or medical conditions.

Employers can ask questions relating to an individual's ability to perform essential tasks, but the ADA prohibits questions relating to physical impairments or disabilities. An employer can inquire about these issues if driving is an essential function of the job (but not for purposes of determining whether the person can get to work).

Questions regarding an applicant's general medical condition should also be avoided. Below are some examples of illegal questions that could violate an applicant's protected class status:

- **Don't ask: Do you have a physical or mental condition that would interfere with your ability to perform the job?**
Instead ask: Can you perform the essential functions of the job with or without a reasonable accommodation?
- **Don't ask: Marital status: Are you married? Divorced? Separated? Who do you live with? How many children do you plan to have? What does your spouse do for a living?**
Since it is illegal to discriminate on the basis of marital status, any such inquiries are inappropriate.
- **Don't ask: Age: Birth date? How old are you?**
Instead, if it is necessary to know if an applicant is over a certain age for legal reasons, this question could better be stated as "Are you 21 or over?" or "Are you 18 or older?"
- **Don't ask: Race, Gender: What is your race? Gender? Furnish a photograph. Hair and eye color.**
If it is necessary to ask for this information for affirmative action purposes, a statement indicating that the information is needed for affirmative action reporting purposes only and will not be used to discriminate should accompany such inquiries. A photograph should not be required unless physical appearance is a bona fide occupational requirement for the job.

- **Don't ask: Sex: Are you pregnant? Do you plan to start a family?**

Oregon Law clearly states that discrimination on the basis of pregnancy is sex discrimination. According to the law, pregnant employees must receive the same benefits as other employees in similar job classifications.

- **Don't ask: Injured Worker: Have you ever applied for workers' compensation?**

This question is unlawful under the ADA. In addition, Oregon employers with six or more employees cannot refuse to hire an applicant because of that person's prior workers' compensation claims.

- **Don't ask: Religion: What is your religious affiliation? Are you able to work Saturdays and Sundays?**

Since it is unlawful to refuse to hire an applicant because of a religious affiliation, such questions could be perceived as discriminatory.

- **Don't ask: National Origin: Were you born in the U.S.? Are you a citizen of the U.S.?**

It is better to state that if hired, it will be necessary to present identification in accordance with Immigration Reform Control Act (IRCA) requirements.

- **Don't ask: Family Relationship: Do you have any relatives currently employed in this company?**

An employer cannot refuse to hire because the applicant has a relative working for the same business, unless one family member would work in a supervisory capacity over the other, or unless the employer could prove the existence of some other bona fide occupational disqualification

- **Don't ask: Criminal History: Have you been convicted of a crime?**

An employer may ask about relevant convictions but not about arrests. An employer should not have a blanket rule of rejecting all ex-convict applicants. Employers should instead consider the relationship between the crime and the job. Employers should state on the job application that a conviction will not necessarily bar employment. In assessing a conviction, the employer should take into account how old or recent the conviction is, the age of the applicant when the crime occurred, the seriousness and nature of the crime, and any rehabilitation the applicant has undergone. Applicants should only be excluded from employment based on job-related convictions.

Giving and Getting References

The main risk in giving references is that the employer may end up defending a claim that adversely reflects on an employee's abilities or character. Under Oregon law, employers are protected if the statements:

- Relate to job performance
- Are made with a good-faith belief that they are true
- Serve a business interest or purpose
- Are limited to that specific business interest or purpose
- Are made on a proper occasion
- Are communicated to proper parties.

Employers are not required to give references. However, a consistent policy should be adopted that one person or department will handle all requests for references. If the policy is to decline requests for references, prospective employers should be informed of the policy so no negative or positive reflection on the employee is imparted.

It is a good idea to require that all requests be in writing on company letterhead and to require a written release signed by the employee or former employee. Also, it is recommended that you keep a written record of what was said.

When answering questions, avoid opinions and limit comments to documented observations. Do not discuss an employee's disability (if any), physical or mental limitations, medical, or claims history.

There is no law that requires an employer perform reference checks. However, employers must exercise reasonable care to ensure that employees, customers, clients, and visitors are free from harm inflicted by unfit employees if the employer either knew or should have known of the employee's dangerous actions. Employers who fail to exercise reasonable care to screen out unfit employees may be sued for negligent hiring or negligent retention of unfit employees.

Some suggestions for getting references include the following:

- Write a letter requesting references from each employer listed.
- Obtain a written release from the applicant and send this with the letter requesting references from each employer.
- Verify educational degrees.
- Look for gaps in employment history, obtain explanations for the gaps, and verify the explanation.

Age Discrimination

Oregon law prohibits employment discrimination because a person is 18 years of age or older. This contrasts with the federal Age Discrimination in Employment Act, which protects employees 40 years of age or older. The Oregon statute applies to all Oregon employers.

Blacklisting is the intentional prevention of the future employment of an employee by the former employer and is an unlawful employment practice in Oregon. Blacklisting usually occurs when the former employer makes representations to prospective employer(s) that the individual should not be hired. It should be distinguished from a reference, which is essentially a request for information about job performance.

The law also prohibits discrimination in hiring and firing on the basis of citizenship status or national origin. The Bureau of Citizenship and Naturalization Service is responsible for implementing the Immigration Reform and Control Act of 1986 that requires employers to hire only American citizens and aliens who are authorized to work in the U.S. As a landscape contracting business with employees, you need to verify the employment eligibility of anyone hired after November 6, 1986. The employee completes Section 1 and the employer completes Section 2 of Form I-9.

Form I-9 Requirements

To comply with the Form I-9 requirements as an employer, you must:

- Complete Form I-9 and keep it on file for at least three years from the date of employment or for one year after the employee leaves the job, whichever is later.
- Verify on Form I-9 that you have seen documents establishing identity and work authorization. This must be done for both U.S. citizens and noncitizens.
- Accept any valid documents provided by your employees. You may not ask for more documents than those required, and you may not demand to see specific documents, such as a "green card," because that is considered an act of discrimination.
- Be aware that work authorization documents must be renewed on or before their expiration date. Form I-9 must be updated at the same time.

To comply with the Immigration and Naturalization Act (INA) antidiscrimination provisions, an employer should:

- Let employees choose which documents to present as long as they prove identity and work authorization.

- Accept documents that appear to be genuine and related to the individual.
- Treat all people equally when you announce the job, take applications, interview, offer the job, and verify employment eligibility, hire, and fire.
- Avoid "citizens only" hiring policies.
- Give out the same job information over the phone and use the same form for all job applicants.
- Base all decisions about hiring and firing on job performance and on-the-job behavior rather than on appearance, accent, name, or citizenship status of employees.

Employers are encouraged to develop training on Form I-9 procedures, implement a compliance program, and develop a tickler file as a reminder of when all Form I-9s need to be re-verified or when they can be destroyed.

Employers who do not comply with the Form I-9 requirements may face fines and penalties. Employers who discriminate may be required to pay fines and penalties, to hire or rehire the employee, and to pay back wages.

Workers' Compensation Division

The Workers' Compensation Division (WCD) administers and enforces Oregon's workers' compensation laws. WCD works to ensure that:

- Employers provide coverage for their workers.
- Employees with occupational injuries or diseases receive their entitled benefits.

The Workers' Compensation Division (WCD) oversees the administration of workers' compensation insurance. It also regulates workers' compensation insurance carriers and employers to ensure that workers injured on the job receive the benefits due them and the employment assistance necessary to regain their economic self-sufficiency. The Workers' Compensation Board reviews appealed cases for workers' compensation claims and ensures that resources and procedures are provided for fair resolution of disputes. This regulatory responsibility is balanced with fair and consistent policies that encourage a healthy business climate for companies regulated by WCD.

All workers are subject workers with a few exceptions as noted in workers' compensation law ORS chapter 656.

Every business that employs one or more subject workers must provide workers' compensation insurance coverage. Workers' compensation covers an employee's medical expenses for on-the-job injuries and disease. It also provides payments to employees while they are temporarily or permanently disabled by that injury. Workers' compensation also provides death benefits

to dependents if an employee dies as a result of occupational injury or disease. This is a no-fault type of coverage.

The goals of Oregon's workers' compensation law are to:

- provide, regardless of fault, sure, prompt, and complete medical treatment for the employee's job-related injury or disease as well as fair, adequate, and reasonable income benefits to injured employees and their dependents
- provide a fair and just administrative system for delivery of benefits to injured employees
- restore injured employees quickly to physical and economic self-sufficiency
- encourage employers to implement accident studies, and to institute prevention programs that reduce economic loss and human suffering caused by industrial accidents
- provide the exclusive source and means for employees to seek and qualify for workers' compensation

Workers' compensation insurance is good for employees and good for business. If an employee gets hurt, workers' compensation insurance provides him or her with medical treatment, payment for lost time and disability, and even re-employment assistance if it is needed. Workers' compensation insurance also protects employers by providing a fair and equitable system for medical care and income for employees who are accidentally injured on the job. There was a time when employees who were hurt on the job sued their employers for help with their expenses. An employer could risk financial ruin if the worker received a large award in court.

Workers' compensation replaces legal liability with no-fault insurance. Employees with injuries or diseases caused by work can get treatment quickly, without proving the employer at fault and the employers are protected from lawsuits. Benefits are for actual loss and do not add up to large sums intended to punish the employer or pay for pain and suffering. As long as the injury or illness resulted from work, the employer or employee can avoid going to court by using this process.

Types of Employee Benefits

Employees covered by workers' compensation insurance in Oregon have benefits for work-related injuries that generally include:

- coverage when required by their employer to temporarily work in another state
- medical treatment necessary for the job-related injury or disease

- compensation for lost time
- compensation for partial or full disability
- retraining

The duties of an employer are to:

- ensure that employees injured on the job or their beneficiaries will receive compensation for compensable injuries as defined by the Workers' Compensation Law
- qualify as a carrier-insured employer or self-insured employer
- provide workers' compensation insurance coverage using an approved method

Workers' compensation benefits are paid depending on how an employee is injured or dies on the job.

- If an employee is injured or dies because of the employee's intention to harm or kill him or herself, no benefits will be paid.
- If an employee is injured or dies because of the employer's deliberate intention to harm or kill the employee, the employee or the employee's dependents may not only collect workers' compensation benefits but may also have cause for action in court.
- If an employee is injured or dies because of the acts of a third person not employed by the same company, the employee or his or her dependents may seek a remedy through the courts.

Workers' compensation insurance coverage is available through the following venues:

- **Self-Insurance** An employer may be able to qualify as a self-insured employer. This option is usually available to large employers because the employer must have resources to pay for major claims. An employer is required to have a substantial security deposit and be certified by the WCD to be self-insured.
- **Private Insurance Carrier** An employer can obtain workers' compensation insurance from any insurer authorized to provide such coverage in Oregon. There are more than 300 insurers authorized to write workers' compensation insurance in Oregon. Many of these insurers sell policies through agents. Often the agency that handles a business' insurance can also write workers' compensation insurance. Some insurers will deal directly with the employer; others have special arrangements to provide workers' compensation through business organizations or associations. The Employer Compliance Unit can provide information about obtaining insurance.

- **Oregon Workers' Compensation Insurance Plan** The Oregon Workers' Compensation Insurance Plan, commonly known as the assigned risk pool, is a safety net for employers who are trying to obtain workers' compensation coverage, and have been refused at least once by a private insurance carrier. Liberty Northwest and State Accident Insurance Fund (SAIF) are the two carriers who process policies and claims for the plan.

The Oregon Workers' Compensation Insurance Plan provides workers' compensation insurance coverage to employers who are classified in an assigned risk pool. In an assigned risk pool, the workers' compensation insurance rates are not negotiable and may require a higher premium level than those rates in the voluntary market of private carriers. Although you can seek an assignment for coverage under the Oregon Insurance Plan when you are refused once by a private carrier, it may be worthwhile to continue seeking less-expensive coverage in the voluntary market.

Employers in the Oregon Workers' Compensation Insurance Plan may enter the voluntary market after maintaining an injury-free work environment, developing a good payment history, and establishing good job safety records with OR-OSHA. For more information, you may contact the Workers' Compensation Ombudsman for Small Business Employers.

Worker Leasing Companies

For Workers' Compensation for Leased Employees, the leasing company will handle payroll, workers' compensation, and most other paperwork for workers hired through a worker leasing company. Worker leasing companies must be licensed with WCD to do business in Oregon. Call the WCD to check the licensing status of a worker leasing company.

Consequences for Not Complying with Workers' Compensation Requirements

The penalty for a first offense assessed by the WCD is two times the amount of premium that should have been paid for insurance, but with a minimum of \$1,000. In addition, the non-complying employer is responsible for all claim costs including the administrative fees of the assigned claims agent.

If an employer continues to employ without coverage, the penalty goes to \$250 per day with no limit on the total fine. WCD will also request a permanent court injunction to force the employer into compliance. An employer who disobeys an injunction is in contempt of court and is subject to other types of sanctions, including jail time.

By law, bankruptcy does not defeat (remove) obligations for noncompliance. Corporate directors, officers, and limited liability company members and managers are personally liable for penalties and claim expenses. An employee can also file civil suit against a non-complying employer in addition to obtaining benefits from a workers' compensation claim.

Rights for Employees Injured on the Job



Most Oregon employers are prohibited from discriminating against employees because of such injuries. Usually, injured employees must be allowed to return to their former positions when they are able to perform them. In addition, employers are obligated to return employees to suitable positions when the employees are unable to perform their former jobs but can perform in other position(s).

If the former position has been eliminated for legitimate business reasons, the employer does not have to create a job or resurrect the old job but must offer the employee a suitable vacant job (re-employment). A suitable position is one that is substantially similar to the former position in compensation, duties, skills, location, duration (full or part time, temporary, or permanent) and shift.

An employee loses the right to reinstatement/re-employment if any of the following occurs:

- The employee is determined to be medically stationary and not physically able to return to the former position (for loss of reinstatement rights) or to any position (for loss of re-employment rights).
- The employee is eligible for and participates in vocational assistance.
- The employee accepts suitable employment with another employer after becoming medically stationary.
- The employee refuses the employer's offer, made in good faith, for doing suitable light duty or modified work employment from the employer before becoming medically stationary.
- Demand for reinstatement is not made by the employee within seven days from the date the employee is notified by the insurer or self-insured employer by certified mail that the employee's attending physician has released the employee to the former position (for loss of reinstatement rights) or for reemployment (for loss of re-employment rights).
- Three years have elapsed since the date of the employee's original injury.

- The employer discharges the employee for reasons not connected with the injury and for which others are or would be discharged.
- The employee clearly abandons future employment with the employer.
- The employee does not report to work as specified in the employer's suitable job offer.

As long as the workers' compensation claim is compensable, the employer may not discipline the employee for any absences that are related to that claim. The employer must pay the benefits if that is what the employer does for other employees. In no instance may an employer provide fewer benefits for an injured employee than for other employees.

Workers' Compensation Claims Procedure

If an employee files a claim for workers' compensation; the employer has five days to report to the insurer. The report must include:

- The date, time, cause, and nature of the accident and injuries
- Whether the accident arose out of, and in the course of, employment
- Whether the employer recommends or opposes acceptance of the claim and the reasons why
- The name and address of any health insurance provider for the injured employee
- Any other details the insurer may require

Written notice of acceptance or denial of the claim must be furnished to the employee by the insurer within 60 days after the employer receives notice of the claim. The insurer may revoke acceptance and issue a denial at any time for fraud, misrepresentation, or certain other illegal activities by the employee.

When an employee requests a hearing on a denied claim that alleges fraud, misrepresentation, or other illegal activity, the insurer has the burden of proving the deception. If the employer produces such proof, the employee then has the burden of proving the compensability of the claim. If the insurer accepts a claim in good faith, and later obtains evidence that the claim is not compensable, the insurer has two years to deny the claim. Once an employee requests a hearing about revocation of acceptance and denial, the insurer must prove that the claim is not compensable, or that the insurer is not responsible for the claim. If an administrative law judge sets aside denial of a previously accepted claim, the Workers' Compensation Board, or the court, benefits must be paid to the employee starting from the date the benefits were terminated.

If an appeals process goes as far as litigation, the insurer will have an attorney. Injured workers will probably retain attorneys. Fees will be paid out of, or in addition to, the compensation award.

Exemptions

Some workers do not need to be covered by workers' compensation insurance, even if they are employees. Here are some common exceptions:

- **Sole Proprietors.** If you are a sole proprietor, you are not required to have workers' compensation on yourself. You must have coverage for your subject workers. This coverage must include your family members.
- **Partners.** In the construction industry in Oregon, two partners may be exempt (more if all are members of the immediate family). The partners must each have substantial ownership.
- **Corporate Officers or Limited Liability Company Members.** Two (more if all are members of the immediate family) corporate officers or limited liability members/managers who are also substantial owners and directors may be exempt from having workers' compensation on themselves.
- **Private Residence Employees.** A worker may be exempt who is hired to do gardening, maintenance, repair, or remodeling in or about the private home of the person employing the worker. This exception does not include a worker doing new home construction.
- **Out-of-State Employees.** If an employer from out of state brings employees into Oregon, the workers' compensation coverage from the home state will usually satisfy Oregon's requirement for those workers temporarily in Oregon. Coverage from states that do not also recognize Oregon's coverage in their states is not acceptable coverage for doing work in Oregon, and Oregon coverage would have to be obtained. If the landscape contracting business hires a worker specifically to work in Oregon, then Oregon-specific coverage is required.

Oregon Occupational Safety and Health Division (OR-OSHA)

Oregon Occupational Safety and Health Division (OR-OSHA) administers the Oregon Safe Employment Act (OSE Act) and enforces Oregon's occupational safety and health rules. The OSE Act was enacted to ensure the occupational safety and health of Oregon's workforce. OR-OSHA rules establish minimum safety and health standards for all industries. By promoting safety and reducing occupational

All landscape contracting businesses must comply with the OSE Act when hiring employees.

hazards, OR-OSHA programs have helped reduce Oregon's workers' compensation premiums.

When hiring new employees, make sure to use a written employment application and make sure the application contains legal questions about any safety training a prospective employee may have received in the past. This provides a point of reference so you know what minimum training the employee has already received and what training you must provide.

OSHA and Safety Regulations are discussed in further detail in Chapter 13.

Why Is All This Important?

These requirements are in place to protect the consumer, the employee, and the employer. If an employee is working on the consumer's property and is injured on the job, the responsibility for the injury or accident does not fall back onto the consumer but is assumed by the landscape contracting

Employment regulations provide a measure of protection for everyone.

business. There is also added protection for the working individual in that they are assured medical care through Worker's Comp and Social Security. Proper employment status also guarantees that the

employees will maintain a certain level of income when working (minimum wage requirements) even if they're injured or are unemployed for specific reasons.

For example, if a determination is made during an investigation that the individual working is not a true employee and is being treated as an independent contractor but does not meet the independent contractor requirements, the landscape contracting business in question can be subject to harsh penalties plus back payments for taxes and employment costs. Also, the employee that is being treated as an independent contractor may be subject to penalties for working without being properly licensed, since the person will not meet the exemption provided in ORS 671.540.

Chapter 3: Contracts

What this chapter covers:

- What a contract is.
- What needs to be in a landscape construction contract.
- How to handle customer relations and expectations.

What Is a Contract?



Contracts are the way a business communicates with a client: the consumer. A contract specifies the obligations or duties for the contracting parties to do or not to do a particular action. Specifying "what, when, how, and for how much" protects both the consumer and the landscape contracting business. In the event there is a claim or complaint filed against a landscape contracting business, the terms of the contract are the basis for determining

whether there is a breach of contract or negligent work. Having a well-written and easily understandable contract is imperative for the protection of both the consumer and landscape contracting business.

Contract law describes and controls the relationships between parties when they agree to an exchange of items with value. The "contractor" in this chapter is the landscape contracting business. Although the information in this chapter pertains to contracts written for landscaping work, it is written primarily using language for construction contracts issued by general contractors licensed under ORS 701. Though landscaping work has a separate and more restrictive contract law for written contracts, the information is applicable in most cases.

When the contract is in writing, it serves as proof of the parties' obligations.

Mandated Contract Requirements

ORS 671.625 states that all landscape construction work (landscaping work) performed in Oregon, **over \$2,000**, is to be done with a written contract (ORS 671.625), and is to contain certain elements that the LCB has stipulated by rule. The contract is also to be reviewed and initialed by the licensed individual landscape construction professional who is

All landscape contracting work over \$2,000 needs to be done pursuant to a written contract; otherwise it is not enforceable in a court of law in Oregon by the landscape contracting business (however, the consumer can enforce the contract).

either the owner or an employee of the business.

Elements (described in detail in OAR 808-002-0020) that need to be included in the contract for landscaping work:

Landscape contracting business name, license number, business address & telephone number	Estimated time for completion or estimated completion date	Statement that the business is licensed by the State Landscape Contractors Board, and the current address and phone number of the board.
Consumer's name and address	Price and payment schedule	If subcontractors will be used for the performance of landscaping work, a statement notifying the consumer that there will be subcontractors used for landscaping work.
Address or location of work to be performed if different from the consumer's address	Description of guarantee; if no guarantee such a statement shall be included	
General description of the work to be performed and materials to be installed	Signatures of the authorized business representative and the consumer	

Note: These elements do not constitute a complete contract.

These elements must be included for the written contract to be enforceable by a landscape contracting business. Failure to include any one of these elements may lead to the inability for the landscape contracting business to collect payment on the work performed due to the contract being unenforceable in a court of law in Oregon (ORS 671.625). Additionally, incomplete contracts or failure to have a written contract will result in a civil penalty issued by the LCB.

General Contract Requirements

To understand contract law, you must become familiar with some legal language that has special meanings used in written law and by the courts. The four basic elements of contract law are formation, performance, breach,

and remedy. Before a contract exists, it must meet specific requirements to be formed. Then, the contract can run its course through the remaining elements of contract law.

After the contract is formed, the parties perform obligations. If a party fails to perform, or performs unsatisfactorily, the contract is breached. If the other party has been damaged by the breach, the law provides remedies that the damaged party can use to obtain the benefits bargained for in the contract.

Elements of a Contract

A legally enforceable contract has a number of necessary elements:

Legal Capacity

The parties need to have the legal capacity to enter into a contract. In addition to age and other elements of legal capacity, a landscape contracting business must be licensed and display their landscape contracting business license number on estimates, bid forms, and contracts.

Legal Purpose

The contract must have a valid (legal) purpose to be enforceable. A legal purpose means that:

- the performance of the contract is not in and of itself unlawful; and
- performance of the contract will not result in a violation of law.

Consideration

The contract must have consideration, something of value exchanged on both sides. Consideration can be something actual, like money or property, or can be a promise to do or not to do some action. The terms of the offer determine what kind of consideration is needed to form a contract.

A landscape contracting business usually provides consideration by promising to perform specified work either directly or through a subcontractor. Once the contract is formed, the landscape contracting business then has the duty to do what was promised. The standard landscape contracting business contract specifies the business's responsibilities and rights.

The owner, in return, provides consideration by promising to pay, and then performs by actually paying the agreed amount in the specified manner. In addition, the owner has the following obligations that are usually specifically stated or implied in the contract:

- Providing plans and specifications that are complete, accurate, drafted according to code, and suitable for the intended purpose of the contract.
- Making timely payments to the landscape contracting business and provide access to the job site. Even if the contract is silent on the matter, the owner has an implied duty to provide the landscape contracting business with access to the job site.
- Providing permits, fees, and licenses required before proceeding with the project. Under building codes, the property owner is responsible for obtaining construction permits. However, the landscape contracting business can offer to obtain the needed permits as a service. Under Oregon law, before the landscape contracting business performs any work requiring a permit, the business must have the required construction permits.

Offer to Act

As part of the contract process, there must be an offer, which is a promise made by one party to do, or not to do, a specific act or acts. The landscape contracting business usually makes the offer in the form of a proposal, bid, or binding estimate. To be valid, an offer requires:

- an intent on both parties to enter into a contract;
- both parties have the legal capacity to enter into the contract (see above); and
- a definite statement of required terms, such as identification of the parties, scope of work and price.

Besides the three requirements of a valid offer, it is recommended that the following terms also be included in the offer:

- time for performance of work;
- schedule or project duration;
- number of days of work;
- special conditions that may affect the work like time, materials, or cost;
- how changes to the work will be requested and agreed upon (change orders);
- provisions for dispute resolution (may include mediation and/or arbitration); and

- any other terms and conditions that may affect performance by the landscape contracting business or payment by the property owner or landscape contracting business.

Acceptance of the Offer

There must be an acceptance of the exact terms of the offer. Acceptance of an offer occurs when a person to whom the offer has been directed makes an appropriate statement of agreement with the terms of the offer. For an acceptance to be valid, it must:

- be voluntary (not the result of threats or made under duress);
- the party accepting must have legal capacity to accept the definite and explicit terms of the offer; and
- be of the exact terms of the offer. Any attempt to change terms is legally a rejection of the offer, and the changed terms become a counteroffer, which can then be accepted or rejected by the other party.

Performance of the Contract Terms

Once the contract has been signed by the parties, the contract must be performed. As part of the fulfillment of the legal obligation in the contract the landscape contracting business does the work and the consumer (or person receiving the benefit of the work) pays.

The landscape contracting business's primary contractual right is to be paid for the work. A well-drafted contract specifies when and how payment will be made, including when progress payments and final payment are due. The contract should also define procedures for allowing and paying for added project costs. The contract should specify exact start and completion dates and discuss when time extensions or accelerations of time will be allowed. The contract establishes schedules for bonuses and for withholding pay because of incomplete or inadequate work, as well as establishing consequences for late work.

An owner's contract with a landscape contracting business ordinarily allows the landscape contracting business to contract with subcontractors (within the ability of the license), order materials, and implement whatever construction methods, processes, and coordination of activities the landscape contracting business thinks are appropriate. The contract may contain an escalation clause or describe how the landscape contracting business will be reimbursed for unexpected increases in the cost of labor, equipment, or materials.

The following basic responsibilities are either implied or specifically stated in contracts for landscape contracting businesses:

- give sufficient attention to the project to fully perform the required work in a timely manner;
- complete the project as specified;
- follow project designs, drawings, and specifications;
- obey all laws and regulations, including those dealing with employment, environmental protection, and safety;
- provide all relevant insurance coverage;
- inform owners of any changes, delays, problems, or errors;
- act in good faith and deal fairly; and
- warrant good workmanship.

Inadequate supervision of subcontractors or employees is the basis for many claims against landscape contracting businesses.

The landscape contracting business is responsible for work performed by the subcontractors and must provide adequate overall supervision.

Owners are not allowed to interfere with the landscape contracting business's work, direction, work methods, or control. A landscape contracting business is considered by law to be an independent contractor and not the owner's employee. Owners who do not allow a landscape contracting business to proceed independently may be in breach of contract. However, among the owner's rights that may be found in a landscape contracting business's contract are the rights to:

- make modifications, additions, or deletions to the project;
- offer other contracts related to the project;
- inspect project work without interfering with progress;
- perform any work on which a landscape contracting business defaults;
- use substantially complete portions of the work, so long as that use does not interfere with the progress of remaining work;
- require a performance or payment bond from the landscape contracting business in addition to the surety bond each licensed landscape contracting business posts;
- accelerate or extend completion times under specified conditions;
- retain a portion of progress payments until the landscape contracting business's work is complete; and
- withhold or deduct from payments due to pay for work that is incomplete or has not passed inspection.

"Substantial performance" occurs when a party has made a good faith effort to perform his or her obligations under a contract and has completely performed all essential obligations. A contract may be substantially performed even if minor, nonessential obligations have not been fully performed

Breach of Contract

A breach is an unexcused failure by a party to a contract to do what the contract requires. A party is in breach of a contract when, without a legally sufficient excuse, there is a failure to fully and properly perform a duty. There can be material and immaterial breaches of contract.

Damages

Damages are a way to compensate the non-breaching party for economic losses arising from a breach of contract. Such losses can occur as a result of reliance on the contract, or because the non-breaching party's expectation of gain (usually called the "benefit of the bargain") has been lost. The usual remedy for breach of contract is monetary damages.

Monetary damages awarded in a breach of contract action are calculated to include:

- Actual losses suffered by the non-breaching party; and
- The benefits that would have been received from performance of the contract by the non-breaching party (called the "benefit of the bargain" by lawyers and judges). For the landscape contracting business, benefit of the bargain will include the profit the landscape contracting business would have made from the job. For the owner, benefit of the bargain is usually the difference between the original contract price and the amount the owner actually had to pay to have the work completed by a different landscape contracting business after a breach by the original landscape contracting business.

Special Contract Relationships in Landscape Construction

The landscape contracting business (but not the subcontractors) is a party to a contract with the owner of the property. Since they are parties to the same contract, the landscape contracting business and the owner are in *privity of contract* with each other.

Subcontractors are parties to contracts with the landscape contracting business but not the property owner. The subcontractors and the landscape

contracting business are in privity of contract with each other. Subcontractors are not in privity of contract with the property owner.

Landscape Contracting Business, Subcontractor, and Supplier Duties

Landscape contracting businesses and subcontractors are always obligated to perform their contractual duties. Who has the right to enforce performance of those duties varies depending on the parties to the contract. When a landscape contracting business subcontracts out portions of the landscaping work to other licensed landscape contracting businesses the originating business is responsible for the work performed by the subcontractors. The business is obligated to provide adequate overall supervision and accountability for the work being performed. Inadequate monitoring of these subcontractors is the bases for many claims against landscape contracting businesses.

General Contractors

In some instances a general contractor, licensed under ORS 701, is subcontracting to licensed landscape contracting businesses for the landscaping work. The general contractor on a major project is usually the only contractor in a direct contract relationship with the owner and the responsibilities of the general contractor to the owner are to provide for completion of the entire project. The general contractor typically does not (and in the case of landscaping work, cannot) perform the work unless licensed with the LCB or is doing a limited amount of landscaping work when under contract to construct a new residential home for a homeowner pursuant to ORS 671.540 (h) or (i). Instead, the general contractor can, and often does, subcontract landscaping work out to licensed landscape contracting businesses. Many times landscape contracting businesses subcontract to other contractors and act as limited general contractors based upon the scope of the license that the business holds.

Regardless of whether the general contractor has subcontracted for the performance of any part of the work, the general contractor is directly responsible to the owner for all performance. If a subcontractor or supplier fails to perform, the owner can hold the general contractor fully responsible. The general contractor's responsibilities include the scheduling and coordination of trades, purchasing materials, and all construction work. Slow performance or delivery by a subcontractor or supplier will not usually serve as an excuse in the general contractor's dealings with the owner.

The general contractor also has the duty to provide for overall job-site safety. While both original contracts and subcontracts frequently address this issue, the general contractor has control over the job site and must maintain safe working conditions.

Subcontracts are between the general contractor and other independent contractors, and the owner is generally not a party to those contracts. Therefore, the subcontractor must look only to the general contractor in the event of a breach and file claims with the appropriate licensing board.

Subcontractor Contracts

The general contractor is responsible to the property owner for performance of their contract. It is the general contractor's responsibility to determine who will perform the work. The general contractor may take a role in performing some activities, or may assign responsibilities to employees or subcontractors. When work is subcontracted, the general contractor must verify that the subcontractor is a licensed independent contractor with active surety bond and liability insurance.

Duties and Conditions

A subcontract is an agreement between the landscape contracting business and a subcontractor. The role of the subcontractor is to perform certain aspects of landscape construction work according to the original contract between the owner and the landscape contracting business, and the subcontract with the landscape contracting business. The subcontractor does not have a direct relationship (not in privity of contract) with the owner but only with the landscape contracting business. Typically, subcontracts are awarded for work in specialty trades within the construction industry such as plumbing, heating, ventilation and air conditioning (HVAC), earthwork, foundation and landscaping work. Most subcontracts specify that subcontractors must comply with all the conditions of the general contract and the project documents. While verbal subcontracts may be valid for small jobs (although not landscaping work), a detailed written subcontract helps avoid many potential disputes. In some cases, the approval of the owner is required for each subcontract.

Suppliers

Suppliers furnish materials and equipment, in contrast to labor and services. Suppliers may have a contract with a subcontractor, the landscape contracting business, and in some cases, with the owner of the project.

Performance

In the performance of their duties, Landscape contracting businesses, subcontractors, and suppliers are held to a standard of performance equivalent to the generally accepted standards and practices of the industry in the geographic area where the work is being performed. The owner is entitled to insist on compliance with the plans and specifications. The contractor must fully perform the essential elements of the work to achieve

substantial completion. This is what the owner bargained for and this is what the owner is entitled to receive for his or her payments.

Principles of Contract Interpretation

For the most part, parties are free to establish the terms of their own contracts. When a dispute occurs, a court or arbitrator will enforce the contract according to its meaning and the intent of the parties. For this reason, it is important that landscape contracting businesses carefully read contract language. If there is any doubt as to the meaning of contract terms, landscape contracting businesses should seek legal advice. Legal advice obtained during the process of forming the contract can help to prevent problems or disputes from occurring.

The following are general descriptions of how commonly used terms have been interpreted by courts over the years, but a landscape contracting business who sees these terms in a written contract may want the advice of legal counsel before signing.

"Time is of the Essence"

Landscape construction contracts must contain conditions relating to time, in particular the project starting and completion dates. If a contract is silent on the time for performance of work, the courts may deem the contract unenforceable due to the contract lacking this information. When the contract states that "time is of the essence," the completion date or time is critical and time itself has a high value. When a contract provides that time is of the essence, failure to meet a performance deadline can be a breach of contract. In addition to being a ground for a breach of contract, time is of the essence provisions can affect compensation under a contract. Contracts often stipulate rewards for early completion and impose damages for late completion. When time is of the essence, the dates for performance, bonuses, and penalties are strictly enforced.

Contract Price and Payment Schedule

A written contract will state the contract price and may indicate a payment schedule. A landscape construction contract may also provide for retainage by the owner of part of each invoice amount until the landscape contracting business's performance is complete. It is important for the landscape contracting business to negotiate the payment schedule with an eye toward the cash-flow needs of the business. This includes the financial obligations incurred from performance of the project like paying direct job costs, business overhead, and profit. Different types of landscape construction contracts will involve different calculations of progress payment due amounts.

Cost-Plus-Fee Contract

Payments to the landscape contracting business under a cost-plus-fee contract are generally based on reimbursement of expenses incurred by the landscape contracting business during the preceding performance period, plus an agreed-upon fee for the landscape contracting business's services. Maintenance by the landscape contracting business of complete and accurate cost records is essential for preparation and support of payment requests. Within each type of construction contract, Oregon law requires provisions that call for timely payments to landscape contracting businesses.

Billing

ORS 671.625 gave the LCB authority to make requirements on billings (invoices) for landscaping work performed in Oregon to help consumers know what they are paying for and the costs associated with the billed work. All billings by a licensed landscape contracting business shall include the following per OAR 808-002-0020:

- name, address and telephone number of the licensed landscape contracting business;
- name and address of the consumer;
- total contract price and amount paid to date; and
- the amount now due and the work performed for the amount due.

Unit-Price Contract

Requests for payments are typically based on actual quantities of each bid item completed to date. The contract generally states how the parties will determine the completed quantities.

Lump-Sum Contract

Payment requests are typically prepared by estimating the percentage of work completed and in place, including the percentage of work completed by subcontractors based on their submitted invoices.

Scope of Work

To avoid uncertainty and help prevent disputes; the scope of work to be performed should be detailed in the landscape construction contract. If there is insufficient detail, a dispute could lead to an attempt by a court or arbitrator to determine the intent of the parties at the time the contract was formed. In defining the scope of work, the landscape contracting business may reference plans and specifications used in preparing the contract price, or identify such plans and specifications as an exhibit to the contract.

Unenforceable Contracts

Verbal or written contracts may be unenforceable because of a failure to comply with all the elements of contract formation. Sometimes even a contract that is validly formed will be unenforceable because of practical considerations.

Void Contracts

A void contract has no legal force or binding effect generally because the purpose of the contract is illegal or against public policy.

Voidable Contracts

Even if a contract is made for a legal purpose, some contracts may be subject to cancellation. This can occur when the contract terms are too vague and uncertain to interpret or the defaulting party is "judgment proof" (in other words, available assets are insufficient to pay damages awarded in litigation).

Performance Excused – Failure of Condition Precedent

A party can defend against a breach of contract claim by showing that a condition precedent did not occur.

Dispute Prevention and Resolution

"An ounce of prevention is worth a pound of cure." Most of us have heard this old saying, and its truth is established almost every day in landscape construction contracting. When entering into a contract, look for ways to stop disputes from arising, minimize disputes that do occur, and provide a mechanism for quick and relatively inexpensive resolution.

Dispute Prevention Partnering

Dispute prevention partnering is a technique in which the property owner, landscape contracting business, architects, and principal subcontractors establish ongoing and open lines of communication through all stages of the project. Each party contributes to all significant decisions, and the group attempts to anticipate problem areas of the project and work out plans to deal with unforeseen problems. The cornerstone of the system is prompt and full disclosure of problems that arise. Dealing with problems early reduces the likelihood of serious disputes. An important part of the partnering process is to make certain that changes in the work or other duties and responsibilities are fully documented in writing. Partnering concepts are being increasingly incorporated into substantial project contracts.

Negotiation

In situations where partnering mechanisms are not being used, prompt disclosure and negotiation are the preferred methods of dealing with potential and actual disputes. As soon as a landscape contracting business sees that a problem might arise, or discovers an unforeseen problem, the landscape contracting business should start immediate negotiations with the property owner, architect, and/or subcontractor(s) to resolve the problem with minimal cost and disruption of the project. If an agreement is worked out, it should be in writing and signed by all the parties.

Alternative Dispute Resolution

When a contract is formed, parties can agree to terms and conditions for alternative dispute resolution. The cost and time involved in court litigation of disputes, and the desire to keep disputed projects as much on track as possible, have led to the use of a variety of alternative (to courts) dispute resolution methods. The parties must agree to all alternative dispute mechanisms (except for the landscape contracting business's right to cure defects, and court-ordered and LCB arbitration) either in the original contract or a subsequent written agreement. For more information on dispute resolution, see Chapter 8, "Claims and Dispute Resolution."

Mediation

Mediation is a negotiation presided over and guided by an experienced mediator. An effective mediator has received special training and has a strong working knowledge of landscape contracting law and practices. The mediator will hear the claims and factual presentations of the various sides to the dispute and will call upon his or her experience to help work out an agreement satisfactory to the parties. Mediation is not binding, but if the parties are open to a negotiated resolution, the process can be extremely effective.

Arbitration

A contract can provide for the parties to arbitrate disputes. However, parties can voluntarily agree to arbitrate even if the contract does not have terms for arbitration or resolving disputes. A court can order arbitration in matters having relatively low economic damage claims. Binding arbitration is much more common in the construction industry. When efforts to negotiate and/or mediate a matter have failed, an appointed arbitrator will conduct what is for all intents and purposes a trial of the matter. The arbitrator will issue a ruling that is binding on the parties and can be enforced through court processes. The arbitration process is usually as costly as litigation in terms of attorneys' and arbitrators' fees. The advantage over litigation is that the matter can usually be arbitrated quicker than by conducting a court trial.

If mediation and arbitration are not successful the next step could be court litigation.

Court Litigation

In the absence of agreed-upon or mandatory alternative dispute mechanisms, court litigation is the last resort for settlement of disputes.

Little need be said about this method of dispute resolution, except to emphasize the importance of including in every written contract *a comprehensive attorney fee recovery provision*. In the absence of such a written provision, the winning party cannot recover those costs from the other side.

The LCB Dispute Resolution Process, described in Chapter 8, "Claims and Dispute Resolution," is designed to keep the consumer and landscape contracting business out of the costly court system.

Customer Relations and Expectations

Contracts and liens pertain to customer relations. Good customer relations and management practices can prevent problems that can lead to having claims filed against the business or liens filed against the homeowner. The following checklists are provided to help the landscape contracting business manage customer relations.

Pre-contract Phase Checklist

1. Determine customer objectives.
2. Determine customer budget.
3. Prepare plans for the work.
4. Determine your capacity to handle the job (skill and manpower needed).
5. Discuss the following with the customer:
 - ◆ Time expectations;
 - ◆ Payment;
 - ◆ Project management;
 - ◆ Customer-landscape contracting business communication;
 - ◆ Quality of work;
 - ◆ Post installation maintenance;
 - ◆ Determine the availability of materials and supplies;
 - ◆ Make sure you have accurate take-offs; and
 - ◆ Contact subcontractors and get firm quotes if appropriate.

Contract Phase Checklist

1. Use a written contract (not having a written contract means the landscape contracting business may not get paid and a civil penalty by the LCB will be assessed).
2. Review material terms with the customer.
3. Explain the change order process.
4. Explain maintenance obligations.
5. Get a down payment on the contract price.
6. Introduce the licensed supervisor for the work.
7. Review the plans.
8. Confirm time expectations.
9. Firm up subcontracts.
10. Confirm warranty terms.

Performance Phase Checklist

1. Obtain all required permits.
2. Schedule work.
3. Order materials and supplies.
4. Staff up.
5. Coordinate all subcontractors.
6. Review plans with foreman and crew.
7. Lay out job; review with customer.
8. Review plant material with customer on site.
9. Review any other major materials such as brick, wood, rock, if selected by the customer.
10. Monitor daily work, both quality and progress.
11. Address unknowns immediately after discovery and inform the customer.
12. Follow plans strictly.
13. Obtain change orders BEFORE new work starts.
14. Send progress statements or billings.
15. Meet time expectations.

16. Train customer for maintenance.

17. Manage the site.

Follow-through Phase Checklist

1. Do final inspection with customer.
2. Perform necessary tests.
3. Prepare and deliver written maintenance instructions to customer.
4. Have customer sign acceptance and completion statement.
5. Collect unpaid fees.
6. Visit site a week after completion.
7. Follow up with maintenance proposal.
8. Perform all warranty or guaranty obligations.
9. Ask for customer feed-back (prepare a form in advance).

Chapter 4:

Supervision & Leadership

What this chapter covers:

- The requirements for supervising employees
- Leadership styles
- Communications styles

Supervision Requirements



The supervision requirement in Oregon law is the element that provides some assurance to the consumer that the person who has demonstrated competence through testing and experience in performing landscaping work is directly involved in the project being performed by the landscape contracting business.

As a managing owner or managing employee of a landscape contracting business there are some requirements for supervision of the technical aspects of the business by a licensed landscape construction professional that you need to understand. This knowledge will help prevent unlicensed employees being in violation of the landscape laws and subject to civil penalties. ***Failure to require proper direct supervision of unlicensed employees has severe consequences for the landscape contracting business and the employees of the business!***

If an individual employee is licensed, then the person can perform work within the phase of license that he or she is licensed, provided that the person is an owner of, or is employed by, a licensed landscape contracting business. *Performing work outside the phase of the individual license requires another individual licensed landscape construction professional holding a license in that phase of license to directly supervise the individual performing the work.* Just because a person is licensed in one phase of landscaping, doesn't allow this person to perform work in another phase without being directly supervised by a properly licensed landscape construction professional.

If an individual employee is not licensed, then all landscaping work performed by this person must be done while employed by a licensed landscape contracting business and *under the direct supervision of an*

Failure to comply with these requirements can result in maximum civil penalties for the individual performing the work and serious consequences for the business that allowed the situation to happen.

individual landscape construction professional licensed in the phase of work being performed that is an owner of or employed by the landscape contracting business.

What is Direct Supervision?

The word "direct" has implications that are not easily adhered to in the landscape construction industry. The Board's definition, as stated in OAR 808-002-0328, is:

"Direct supervision" as used in ORS 671.540 (1) means that a licensed landscape construction professional supervises any unlicensed employee who performs landscaping work such that the employee:

- has had instruction on the project from the landscape construction professional, verbally or in writing;
- knows the landscape construction professional by name;
- knows how to contact the landscape construction professional; and
- can communicate with the landscape construction professional within an hour, and, if unavailable, that landscape construction professional will return the call by end of the day to the employee.

Failure of a landscape contracting business to require this type of supervision will result in monetary penalties for the business and can also result in additional penalties for the unsuspecting employee for not meeting the exemption in ORS 671.540.

Effective Leadership

As a leader, you must know yourself and seek improvement. Four major factors in leadership are:

- **Styles.** Different people require different styles of leadership. For example, a new hire requires more supervision than an experienced employee. A person who lacks motivation requires a different approach than one with a high degree of motivation. You must know your people! The fundamental starting point is having a good understanding of human nature, such as needs, emotions, and motivation.
- **Understanding.** You must have an honest understanding of who you are, what you know, and what you can do. Also, note that it is the followers, not the leader who determines if a leader is successful. If they do not trust or lack confidence in their leader, then they will be uninspired. To be successful you have to convince your followers, not yourself or your superiors, that you are worthy of being followed. If you are a leader who can be trusted, then those around you will grow to respect you.

- **Communication.** You lead through two-way communication. Much of it is nonverbal. For instance, when you "set the example," that communicates to your people that you would not ask them to perform anything that you would not be willing to do. What and how you communicate either builds or harms the relationship between you and your employees.
- **Situations.** All situations are different. What you do in one situation will not always work in another. You must use your judgment to decide the best course of action and the leadership style needed for each situation. For example, you may need to confront an employee for inappropriate behavior, but if the confrontation is too late or too early, too harsh or too weak, then the results may prove ineffective. Various forces will affect these factors. Examples of these forces are your relationship with your seniors, the skill of your people, the informal leaders within your organization, and how your company is organized.

Leadership Styles

In the past several decades, management experts have undergone a revolution in how they define leadership and what their attitudes are toward it. Through it all it was determined that not everything old was bad and not everything new was good; rather different styles were needed for different situations and each leader needed to know when to exhibit a particular approach.

Autocratic Leadership Style

Autocratic leadership is often considered the classical approach. It is one in which the manager retains as much power and decision-making authority as possible. The manager does not consult employees, nor are they allowed to give any input. Employees are expected to obey orders without receiving any explanations. The motivation environment is produced by creating a structured set of rewards and punishments.

This leadership style has been greatly criticized during the past 50 years. Some studies say that organizations with many autocratic leaders have higher turnover and absenteeism than other organizations. Certainly Gen X employees have proven to be highly resistant to this management style. These studies show that autocratic leaders:

- rely on threats and punishment to influence employees.
- do not trust employees.
- do not allow for employee input.

However, autocratic leadership is not all bad. Sometimes it is the most effective style to use. These situations can include:

- New, untrained employees who do not know which tasks to perform or which procedures to follow.
- Effective supervision can be provided only through detailed orders and instructions.
- Employees do not respond to any other leadership style.
- There are high-volume production needs on a daily basis.
- There is limited time in which to make a decision.
- A manager's power is challenged by an employee.
- The area was poorly managed.
- Work needs to be coordinated with another department or organization.

You should not use the autocratic leadership style when:

- Employees become tense, fearful, or resentful.
- Employees expect to have their opinions heard.
- Employees begin depending on their manager to make all their decisions.
- There is low employee morale, high turnover and absenteeism and work stoppage.

Bureaucratic Leadership Style

Bureaucratic leadership is where the manager manages "by the book" and everything must be done according to procedure or policy. If it isn't covered by the book, the manager refers to the next level above him or her. This manager is really more of a police officer than a leader. He or she enforces the rules. This style can be effective when:

- Employees are performing routine tasks over and over.
- Employees need to understand certain standards or procedures.
- Employees are working with dangerous or delicate equipment that requires a definite set of procedures to operate.
- Safety or security training is being conducted.
- Employees are performing tasks that require handling cash.

This style is ineffective when:

- Work habits form that are hard to break, especially if they are no longer useful.
- Employees lose their interest in their jobs and in their fellow workers.

- Employees do only what is expected of them and no more.

Democratic Leadership Style

Democratic leadership is also called the participative style as it encourages employees to be a part of the decision making. The democratic manager keeps his or her employees informed about everything that affects their work and shares decision making and problem solving responsibilities. This style requires the leader to be a coach who has the final say, but gathers information from staff members before making a decision.

Democratic leadership can produce high quality and high quantity work for long periods of time. Many employees like the trust they receive and respond with cooperation, team spirit, and high morale. Typically the democratic leader:

- develops plans to help employees evaluate their own performance.
- allows employees to establish goals.
- encourages employees to grow on the job and be promoted.
- recognizes and encourages achievement.

Like the other styles, the democratic style is not always appropriate. It is most successful when used with highly skilled or experienced employees or when implementing operational changes or resolving individual or group problems. The democratic leadership style is most effective when:

- The leader wants to keep employees informed about matters that affect them.
- The leader wants employees to share in decision-making and problem-solving duties.
- The leader wants to provide opportunities for employees to develop a high sense of personal growth and job satisfaction.
- There is a large or complex problem that requires lots of input to solve.
- Changes must be made or problems solved that affect employees or groups of employees.
- You want to encourage team building and participation.

Democratic leadership should not be used when:

- There is not enough time to get everyone's input.
- It's easier and more cost-effective for the manager to make the decision.
- The business can't afford mistakes.

- The manager feels threatened by this type of leadership.
- Employee safety is a critical concern.

Laissez-Faire Leadership Style

Laissez-faire leadership is also known as the "hands-off" style. It is one in which the manager provides little or no direction and gives employees as much freedom as possible. All authority or power is given to the employees and they must determine goals, make decisions, and resolve problems on their own. This is an effective style to use when:

- Employees are highly skilled, experienced, and educated.
- Employees have pride in their work and the drive to do it successfully on their own.
- Outside experts, such as staff specialists or consultants are being used.
- Employees are trustworthy and experienced.

This style should not be used when:

- It makes employees feel insecure at the unavailability of a manager.
- The manager cannot provide regular feedback to let employees know how well they are doing.
- Managers are unable to thank employees for their good work.
- The manager doesn't understand his or her responsibilities and is hoping the employees can cover for him or her.

Varying Leadership Style

There's no one right way to lead or manage that fits all situations. Good leaders often switch instinctively between styles, based upon the people they lead and the work that needs to be done.

Establishing trust is the basis of all good leadership.

Remember to balance the needs of the business against the needs of the team. While the proper leadership style depends on the situation, there

are three other factors that also influence which leadership style to use.

The first factor is the manager's personal background. What personality, knowledge, values, ethics, and experiences does the manager have? What does he or she think will work?

The second factor is the employees being supervised. The employees are individuals with different personalities and backgrounds. The leadership style that managers use varies depending upon the individual employee and what he or she will respond best to.

The third factor is the company. The traditions, values, philosophy, and concerns of the company will influence how a manager acts.

Effective leadership is not simply based on a set of attributes, behaviors, or influences. You must have a wide range of abilities and approaches that you can draw upon.

A great leader:

- has integrity
- sets clear goals
- clearly communicates a vision
- sets a good example
- expects the best from the team
- encourages
- supports
- recognizes good work and people
- provides stimulating work
- helps people see beyond their self-interests and focus more on team interests and needs
- inspires

If you resolve to always tell your employees the truth and be willing to get in and do any job with them, you're more than halfway there as a great leader.

Effective leaders are exceptionally motivating, and they're trusted. When your team trusts you, and is really fired up by the way you lead, you can achieve great things!

Communication Styles

Effective communication with employees can be the result of your personality characteristic matching that of your employee. There are four basic communication styles:

- Director (Doer)
- Socializer (Talker)
- Analyzer (Controller)
- Supporter (Advocate)

Directors are quick decision makers, self assured and leaders. They value results, are confident, in control, and ask direct questions. Their style will demand direct answers, they know what they want and they want their opinion to count.

Directors want direct answers.

Socializers are influential, intuitive, inspirational, emotional, and love a crowd. Their style is to be an animated story teller, approachable, friendly/outgoing and non-judgmental.

Socializers want approval.

The characteristics of the Analyzer are conscientious, conservative, logical, unemotional, and they are perfectionists. They want the facts, are rational and not swayed by enthusiasm. Their style is they thrive on facts and systems. They like to re-check details, are reserved, and like to control their surroundings. Facts control their decisions.

Analyzers want facts and figures.

A Supporter is loyal, steady, easygoing, detail minded, will support decisions, craves stability and security. Their style is steady, consistent, and conflict is uncomfortable for them. There are fearful of losing security and are soft spoken.

Supporters resist change.

It is important for a supervisor to know their personality characteristics and that of the employee(s) in order to have effective communication. Many times personality styles can conflict or be totally ineffective when information must be understood or acted on.

How the supervisor personality deals with the employee personality needs to change to suit the employee's individual style.

A Director working with:

- A Supporter: be careful to not go to fast and should deal with the employee in a relaxed manner.
- A Director: let the employee feel in control.
- An Analyzer: provide details and slow down in their approach.
- A Socializer: the Director will have trouble communicating with this type of employee.

A Socializer working with:

- A Supporter: stay calm, slow down, and provide reassurance.
- A Director: minimize self-expression and stick with the facts.
- An Analyzer: the Socializer employee will have trouble communicating with this employer. Go slow and provide details.
- A Socializer: stay on track or little work will be accomplished.

A Supporter working with:

- A Supporter: be decisive to save time.
- A Director: give quick and to-the-point answers.
- An Analyzer: give factual information and pay attention to details.

- A Socializer: go slow, as the employee will be uncomfortable with a flamboyant fast pace.

An Analyzer working with:

- A Supporter: don't overcome the employee with too much information.
- A Director: give quick answers even if it is uncomfortable.
- An Analyzer: stay with an agenda and don't linger over minute details.
- A Socializer: go slow, as the employee can be annoyed with a fast pace and enthusiasm.

For a simple self-awareness exercise, try having everyone in your company fill out the following chart. Each person checks the characteristics that describe them.

<input type="checkbox"/> cautious	<input type="checkbox"/> crave stability and security
<input type="checkbox"/> detail minded	<input type="checkbox"/> easygoing and steady
<input type="checkbox"/> easy to approach	<input type="checkbox"/> friendly and outgoing
<input type="checkbox"/> inspirational	<input type="checkbox"/> logical and unemotional
<input type="checkbox"/> loyal	<input type="checkbox"/> nonjudgmental
<input type="checkbox"/> not swayed by enthusiasm	<input type="checkbox"/> quick decision maker
<input type="checkbox"/> reserved	<input type="checkbox"/> self-assured/leader
<input type="checkbox"/> stable	<input type="checkbox"/> value results
<input type="checkbox"/> want direct answers	<input type="checkbox"/> want opinions to count
<input type="checkbox"/> wants facts and rational	<input type="checkbox"/> work with people they like

When everyone has filled out the chart, match up the selected characteristics to the second chart to get a basic idea of their working styles. People are rarely going to be all one thing, but they'll frequently have a style preference.

<p>Director/Doer</p> <p>_____ Quick decision maker</p> <p>_____ Self-assured/leader</p> <p>_____ Value results</p> <p>_____ Want opinions to count</p> <p>_____ Want direct answers</p> <p>_____ Total</p>	<p>Analyzer/Controller</p> <p>_____ Logical and unemotional</p> <p>_____ Reserved</p> <p>_____ Cautious</p> <p>_____ Not swayed by enthusiasm</p> <p>_____ Wants facts and rational</p> <p>_____ Total</p>
<p>Socializer/Talker</p> <p>_____ Friendly and outgoing</p> <p>_____ Easy to approach</p> <p>_____ Inspirational</p> <p>_____ Work with people they like</p> <p>_____ Nonjudgmental</p> <p>_____ Total</p>	<p>Supporter/Advocate</p> <p>_____ Easygoing and steady</p> <p>_____ Detail minded</p> <p>_____ Loyal</p> <p>_____ Stable</p> <p>_____ Crave stability and security</p> <p>_____ Total</p>

Leadership is learned and comes with practice. How you, as a managing owner or managing owner lead your business is your decision, but researching how others before you have led successfully and incorporating their wisdom and expertise into your business can have significant impact on how profitable and efficient your landscape contracting business will be!

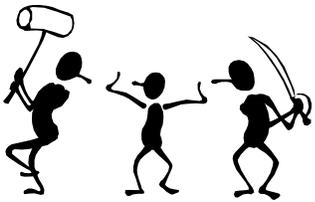
Chapter 5:

Claims and Dispute Resolution

What this chapter covers:

- What is the LCB dispute resolution program.
- Understanding surety bonds.
- The types of claims and the claim process.

LCB Dispute Resolution Program



As part of the services offered by the LCB for consumer protection, the Board provides a unique process for resolving disputes between licensed landscape contracting businesses and consumers. This process is free to the consumer and is paid from the application and licensing fees collected by the Board. There are a set of laws that govern this process, which are found in ORS 671.690 through 671.760 and further clarified in Administrative Rules in OAR 808-division 4 and 8.

A full understanding of this process is vital to the landscape contracting business and to the licensed individual landscape construction professional who supervises the landscape activities of the business. Informing clients that this process is available to them as a method to hold landscape contracting businesses accountable and both parties out of court is a significant advantage for the consumer to contract with licensed businesses instead of unlicensed businesses.

Every licensed landscape contracting business must have on file with the Board a surety bond, irrevocable letter of credit, or assignment of savings. Access to the bond is administered by the Board in case the business breaches a contract, performs negligent work, fails to pay taxes, fails to pay employees or fails to pay a supplier of materials or labor. The consumer (person who entered into the contract with the landscape contracting business) can file a claim with the Board, which then starts a legal dispute resolution process to resolve the problem. The Board can use different forms of dispute resolution from mediation to binding arbitration to help resolve complaints without compelling the parties to go to court, though the court process still remains an option for all parties to the dispute.

Bonds

All licensed landscaping businesses must file a surety bond, assignment of savings, or irrevocable letter of credit with the LCB. The bonding requirements are based upon the charges per landscape job, as follows:

- \$3,000 if the business performs landscaping work on any one project up to \$10,000.
- \$10,000 if the business performs landscaping work on any one project up to \$25,000 or if hardscaping work will be done without other landscaping work.
- \$15,000 if the business performs landscaping work on any one project above \$25,000, but less than \$50,000.
- \$20,000 if the business performs landscaping work on any one project that is \$50,000 or greater.

When a landscaping project exceeds the limitations of the current bond, it is the business's responsibility to obtain the increased surety amount before work continues on that project. The business must obtain the correct bond amount before bidding on a project that will exceed their current bonding restrictions.

Types of Claims

There are several types of claim that can be filed against a landscaping business:

- **Breach of Contract Claim:** A claim for amounts due from a landscape contracting business as a result of a breach of contract in performing landscape contracting work.
- **Material or Equipment Claims:** A claim for unpaid materials for or rental of equipment to a landscape contracting business.
- **Employee Claims:** A claim for unpaid wages or benefits filed by an employee of a landscape contracting business for work performed by the employee relating to the business' operation as a landscape contracting business.
- **Negligent or Improper Work Claims:** A claim as a result of negligent or improper landscape contracting work.
- **State Tax and Contribution Claims:** A claim filed by the State of Oregon for amounts due for taxes and contributions due to the State of Oregon from a landscape contracting business.
- **Subcontractor Claims:** A claim arising out of a contract between the subcontractor and the landscape contracting business.

- **Lien Claims:** A claim filed by a property owners to discharge or to recoup funds expended in discharging a construction lien.

Breach of contract and negligent or improper work claims must be filed within one year following the date the work was completed (the date when all the provisions of the contract were substantially fulfilled, excluding warranty work; or the date the landscape contracting business ceased work, if the business failed to substantially fulfill the provision of the contract).

Material, equipment rental and employee claims must be filed with the LCB within one year after the delivery date of the material, equipment or labor.

State tax and contributions claims must be filed within one year of the due date of the tax or contribution.

Claim Process

A consumer (claimant) must fill out a Statement of Claim form) that contains all the required information. This includes the claim items, date work started, date of completion of work, and a signature by claimant. All written contract between the parties must also be submitted. This claim will be reviewed to determine if the Board has jurisdiction. Sometimes claims can be suspended due to bankruptcy or court issues, but once those issues are settled the claim process will continue. A claim can sometimes remain open for years!

The claim form is on the web or will be sent directly to the claimant upon request.

Where to File a Claim

The first thing a consumer should do is to properly classify their complaint (breach of contract, negligent or improper work, etc); the second is to know where to take it.

For complaints about landscape construction work performed by unlicensed persons, the consumer may want to contact the Landscape Contractors Board for help in dealing with this issue because the unlicensed will not have a bond to file against.

Conditions for Acceptance of Claims by the LCB

There are several conditions for a claim to be accepted by the LCB. The statutes and rules state:

- A bond shall not be used to satisfy claims filed more than one year following the date the work was completed.
- The LCB will only process a claim that is filed for negligent or improper work within one year following the date the work was completed.

- "Date work completed" is the date when all the provisions of the contract were substantially fulfilled, excluding warranty work; or the date the landscape contracting business ceased work, if the business failed to substantially fulfill the provisions of the contract.
- The landscape contracting business against which the claim is filed must have been licensed during all or part of the work period.
- For claims relating specifically to landscape contracting work, the work must have been performed within the boundaries of the State of Oregon, or be for materials or equipment supplied for installation or use on property for landscaping work located within the boundaries of the state of Oregon. Material or equipment claims may not include non-payment for tools or equipment sold to a landscape contracting business that is not incorporated into the job site, for interest or service charges on an account or for materials purchased as stock items.
- The work has to be work subject to ORS 671.510 through ORS 671.760, which only deals with landscape construction, not landscape maintenance.
- State Tax and contribution claims, where the tax and contribution liability arose while the business was licensed.
- Material claims, where one or more invoices involve material delivered in Oregon while the business was licensed. (Damages will be awarded only for material delivered within the period time that the business was actively licensed.)
- Lien claim where the property owner paid to discharge a lien.

What the LCB Does When It Receives a Claim

Once the LCB has r a claim, it examines the claim to make sure that the LCB has jurisdiction over the claim based on the information in the previous section and information provided by the claimant. If the LCB determines they do not have jurisdiction, the LCB does not accept the claim. If the LCB determines they do have jurisdiction, the LCB furnishes the landscape contracting business with a copy of the claim and requests both parties submit a written agreement to mediation or not. The landscape contracting business is also requested to respond to the items stated in the claim so both sides of the story can be heard by the Board.

Contractual Elements that Affect the Processing of a Claim

Conditions in the contract can affect how the LCB proceeds with a claim. For example, if the contract contains an agreement to mediate or arbitrate disputes arising out of the contract, the terms of the agreement supersede

LCB rules. In such a case, the LCB informs both parties that the LCB will close the claim in 60 days unless a written waiver of mediation or arbitration is signed by both parties or receives evidence that mediation or arbitration have been initiated.

After notifying the parties, if mediation or arbitration is initiated by either party the LCB will suspend processing of the claim until the mediation or arbitration is complete. If the claimant does not respond and mediation or arbitration is not initiated, the LCB will close the claim. If the landscape contracting business does not respond, the LCB will continue to process the claim.

The LCB may schedule an on-site meeting to mediate the dispute at the job site. The claimant or an agent of the claimant must attend this meeting. If an agent attends, they must have the authority to enter into a settlement.

The claimant must allow access to the property that is the subject of the claim and allow the landscape contracting business to be present or the claim will be closed.

If both parties agree to a settlement, the mediator/investigator prepares the settlement for both signatures on site.

If an authorized representative from the licensed landscape contracting business does not attend the on-site meeting or a settlement agreement by both parties is not reached, or either parties does not agree to mediation, the mediator/investigator will review the claim items and write a report for the Board.

A Proposed Order for Damages

The claimant must submit one or more estimates from a licensed landscape contracting business for the cost of correction of each claim item and a Monetary Damages Sought form listing each item.

The LCB may issue a default order proposing dismissal for the claim if the claimant did not permit the landscape contracting business to comply with the agency recommendations or the monetary value of the damages sustained is less than an amount due to the respondent from the claimant under the of the contract

The LCB may issue a proposed default order for payment if the LCB determines the claimant suffered damages caused by respondent and the monetary value of those damages is substantiated on the record.

The LCB may also refer the claim to the Office of Administrative Hearings for a hearing to determine the validity of the claim and whether the amount claimed is proper.

The Office of Administrative Hearings/Hearing Requests

The LCB may refer a file to the Office of Administrative Hearings (OAH) where the claim process is transferred to the OAH.

Either party to the claim may request a hearing within certain time limits (21 days after the proposed order is issued).

Final Order for Damages

Once a determination is made and the time to request a hearing has passed, the order becomes final and the landscape contracting business has 30 days to pay the claimant the amount due.

If the amount due is not paid by the landscape contracting business, the LCB will request the amount be paid by the bond company.

Determining how the bond company pays for multiple claims against the same business within 90 day increments is a process the bonding company deals with when distributing the bond to the claimants.

Chapter 6:

Lien Law

What this chapter covers:

- Liens and what they cover.
- How to file and enforce a lien.
- Who is entitled to file a lien.



CAUTION!

The material in this chapter is **provided as a resource for study for the LCB exam and is for informational purposes only**. It should not be considered to be legal advice. The LCB **strongly** advises you to consult an attorney for specific legal advice on filing or enforcing liens.

Liens



In general terms, a construction lien is nothing more than a security interest in real property which is considered land and improvements. A construction lien secures payment of a debt. Liens can be filed to cover a debt due to a person who provides labor, materials, equipment, or services that were used or consumed in the construction of the improvement, which is located on real property, such as the following:

- materials and supplies, whether upon delivery to the site, consumed or destroyed during construction, or materials that have become a permanent part of the improvement
- equipment (rental)
- plans, drawings and specifications used for landscaping or preparation of land

The construction lien claims a security interest against the real property. Real property is land and improvements. Under this law, contractors have the right to secure the debt that is owed to them for work on real property by recording a construction lien.

Debts arising from construction projects are not automatically secured. Suppliers and contractors must follow required steps to properly exercise their lien rights.

If you wait until your work is done on a project before evaluating your

A construction lien is a claim upon property for money owed to a contractor, material supplier or anyone who supplied labor or materials for improvements to the property.

construction lien rights, it may be too late for an attorney to perform some of the steps required to perfect your lien claim in a timely manner. The time to evaluate your construction lien rights is

before you submit a bid or begin work on a project.

One of the ways a business in Oregon can create some assurance for collecting money owed for the performance of work on a consumers property is to perfect (file) a lien on the property. To do this, the business must follow some very specific and exact steps; otherwise the lien is not legal and the business's efforts will be in vain.

The statute that governs liens for construction work is ORS 87 and the

The administration of the lien process is shouldered by the Construction Contractors Board and forms for information and notification for consumers are found on their website, www.oregon.gov/ccb.

procedures and notices for the lien process are monitored and governed by the Construction Contractors Board (CCB) and their forms must be used. The State Landscape Contractors Board is not mentioned in the statute and has

no jurisdiction or authority over the filing of a lien; however, if a landscape contracting business wants to have lien rights, there are strict requirements that need to be met.

Note: Although the Landscape Contractors Board does not have statutory authority over landscape contracting businesses in how a lien is filed, ORS 87 has definite requirements if any business wants to file a lien for work performed. It is with this understanding the following information is presented.

Lien Considerations

There can be more than one owner or mortgagee on any given property. Your landscape contracting business may have a contract with one owner and not another, so as the owner/managing employee you may have to look at the "when to send" chart on page 92 two or three times, depending on the number of owners! The term "owner" may include lessees. See ORS 87.005(8)(c).

If your landscape contracting business contracts directly with any owner, the business may or may not have to provide the Notice of Right to a Lien to the owners, but the business may be required to provide the "Information Notice to Owner." See ORS 87.093.

The "when to send" chart on page 92 does not discuss "services." Services may include architectural, engineering, and land surveying services.

Consider whether to provide the notice in order to start the time periods for a notice of non-responsibility. The Court of Appeals noted that the improvement must be built with owner's actual or imputed knowledge.

The Notice of Right to a Lien may be given at any time during the progress of the improvement, but the notice only protects the right to perfect a claim of lien for materials, equipment, labor or services provided eight (8) days, not including Saturdays, Sundays and other holidays as defined in ORS 187.010, before the notice is delivered or mailed.

Generally, persons or entities are entitled to perfect a lien only if they perform labor upon, furnish materials to, or rent equipment to be used in the preparation of the land or the construction of the improvement at the request of an owner of the improvement or an owner's construction agent and the labor, materials or equipment were used or consumed in the construction of the improvement. Thus, to determine whether your business is entitled to claim a construction lien, you must first ask if the landscape contracting business contract is with an owner or with an owner's construction agent. "Owner" is defined at ORS 87.005(5) and "Construction Agent" is defined at ORS 87.005(3). A construction agent can be a contractor or an "other person having charge of construction or preparation." "Contractor" is defined at ORS 87.005(4); the courts have tried to define "other person."

Oregon's construction lien law requires that certain notices be given before a business or any other claimant may perfect a claim of lien. For instance, the Notice of Right to a Lien must be in writing, delivered in person or delivered by registered or certified mail. The "Information Notice to Owner" may also be proved by a United States Postal Service Certificate of Mailing.

The Oregon Construction Contractors Board (CCB) publishes the form called the "Information Notice to Owner." Because ORS 87.093 refers to the CCB's form for this notice, it is suggested that this form must be used in order to comply with the statute. While the statute does not require that the owner sign this form, the CCB's form includes a signature line for the owner. Thus, it is suggested that a contractor obtain the owner's signature and keep a copy of the form signed by the owner.

A lien can be for the amount of the contract price or for the amount for use of equipment that is equal to the reasonable rental value.

Filing a Lien

A lien must be filed within 75 days after the claimant either completes construction or ceases to provide labor or equipment or to furnish supplies. (The Notice of Completion begins the 75-day period.) A lien cannot be modified or corrected after the 75-day period lapses. Liens are filed following

a statutory lien format. Liens are filed with the recording officer of the county where the improvement is located.

The 75-day lien period is not extended by performing insubstantial or substandard work following notice of completion. This includes warranty work.

Who Is Entitled to a Construction Lien?

The following persons are entitled to assert a construction lien:

Remember, LCB law requires a written contract for all landscaping work over \$2,000 if the contract is to be enforced by the landscape contracting business in Oregon.

- Licensed contractors who properly and substantially perform their work with the consent of the property owner or the owner's agent.
- Persons who perform work or provide materials or equipment as described by the construction lien law, including:
 - ◆ Performing labor, transportation, or furnishing any materials used in constructing the improvement or rental equipment used in the construction of the improvement.
 - ◆ Preparing a lot or parcel of land, or improving an adjoining street or road, or leasing or renting equipment for such land preparation or improvements.
- Trustees of employee benefit plans that have contributions allocated by labor performed on an improvement.
- Certain persons performing work related to construction activity such as: architects, landscape architects, land surveyors, and registered engineers who prepare plans, drawings, or specifications for construction of an improvement, or who supervise the construction.
- Landscape architects, land surveyors, or other persons who prepare plans, drawings, surveys or specifications for landscaping, or preparation of a lot or parcel, or who supervise the landscaping or preparation.

A valid construction lien secures the contractor's right as a creditor to receive payment. The lien is recorded (filed) in the county recorder's office of the county where the project is located. The recording, also known as "perfecting the lien," is required for the lien to be effective.

Construction liens secure payment to the contractor.

There are two types of pre-claim construction notices in Oregon: *Information Notice to Owner about Construction Liens* and *Notice of Right to a Lien*

Giving these pre-claim notices is an important step in protecting the lien rights of the owner and contractor in a construction contract. The notices are needed in preserving the contractor's rights for when the next step is taken in exercising lien rights. For the owner, the notices inform them of legal rights in protecting their real property interests.

Certain pre-claim notices typically need to be given.

If you contract with an owner, you are an "original contractor." If you do not have a contract with the owner, you are a subcontractor. For lien law purposes, the term "general contractor" is not used. For purposes of pre-claim notices, you are an original contractor when you have a contract directly with the owner.

Determine the need for pre-claim notices.

What Notices Are Required?

The notification requirements differ depending on the type of lien being filed.

Type of Notice	Requirements
Information Notice to Owner about Construction Liens	This notice applies to the original owner. This notice also applies to the first purchaser of the property if it is sold before or within the 75-day period following completion
Notice of Right to Lien	This is a statutory form for giving notice of the right to lien Notice can be given at any time during the progress of the work The notice protects lien rights for work provided up to 8 days before the notice is given Notice is required for all residential work Notice is required only for material suppliers on commercial work
Notice to Mortgagee	Mortgagees also receive notice of the right to lien
Notice of Filing	Notice of filing is given to the owner and all mortgagees Notice of filing is given within 20 days after filing Notice includes the loss of costs, disbursements and attorney fees
Notice of Intent to Foreclose	Such notice is given to the owner and all mortgagees Such notice is given at least 10 days before a suit is filed

Notice of Right to a Lien

The *Notice of Right to a Lien* is a written form as described by statute. It is available through the CCB. It is usually mailed by certified mail, return receipt requested, to the owner of the project. There are lien services that

provide this form and with whom you can contract to provide and deliver the *Notice of Right to a Lien*. Subcontractors or material suppliers do not always have to give the *Notice of Right to a Lien*; however, if the subcontractor or supplier chooses not to give the notice, they may give up their right to claim a lien.

This notice:

- gives the owner the name of the person who requested the subcontractor or supplier to provide services or materials
- identifies the subcontractor or supplier
- describes the work to be performed

If the notice is delivered during the progress of work and no later than eight working days from the date the subcontractor or supplier began to provide labor, material, equipment or services (not including Saturdays, Sundays, and holidays), the notice will allow the subcontractor or supplier to file a lien for all of its labor or materials.

Subcontractors on commercial projects may not have to provide this notice in order to preserve their lien rights. Since commercial improvements are more complex than residential improvements, it is advisable for contractors to seek legal advice in preserving and perfecting their lien rights against commercial property.

However, when a subcontractor provides material and labor to an improvement, the notice must be delivered to the mortgagees (lenders with a recorded interest in the property). This preserves the subcontractor's rights for payment of the materials portion of his or her lien claim. Suppliers must always deliver a notice to mortgagees to preserve their lien rights.

Information Notice to Owner about Construction Liens

The Information Notice to Owner about Construction Liens is given to the property owner. It defines lien law in non-technical terms and describes the rights and responsibilities of the owner and original contractor. You can get a copy of the form from the CCB website. It is only required by original contractors on residential projects when the contract price exceeds \$1,000 and the residential project is a residential construction or improvement. The original contractor must give this notice even if they do not intend to record a construction lien. If the Information Notice to Owner about Construction Liens is not given when required, the original contractor cannot claim a lien.

In addition, the original contractor may be asked for written proof of delivery of this notice, which is normally done by providing the Information Notice to Owner about Construction Liens as signed by the property owner. It does not make a difference if the contractor delivers the Notice in person or by registered or certified mail. It is recommended that the property owner sign

and date the Notice, even though it is not required, and the contractor retains a copy as proof of proper delivery.

Each original contractor gives an Information Notice to Owner about Construction Liens to:

- The first purchaser of residential property constructed by the contractor and sold within 75 days following the completion of construction.
- The owner at the time a contract is signed, or within five (5) days of a verbal agreement for a residential construction or improvement that exceeds a contract price of \$1,000.
- The owner within five working days after the contractor determines, or should reasonably be able to determine, that the contract price on residential construction or improvement will exceed \$1,000.

An Information Notice to Owner about Construction Liens need not be given when:

- The property owner is a contractor licensed with the CCB.
- The aggregate (total) contract price is \$1,000 or less.

Original contractors should keep proof that the required Information Notice to Owner about Construction Liens was given. Make the notice part of the contract, or request that the owner sign a copy for your records. If you cannot prove the notice was given, and the owner denies receiving the notice, you may lose your lien rights and you may be subject to a fine or have your license suspended.

The following chart outlines when to send a notice of right to a lien to owners and mortgagees/lenders.

If you provide	And your contract is with all owners		And you do not have a contract with all owners	
	Send notice to owners?	Send notice to lenders?	Send notice to owners?	Send notice to lenders?
Residential				
Material only	No	Yes	Yes	Yes
Onsite labor and material	No [†]	Yes [‡]	Yes	Yes [‡]
Onsite labor only	No [†]	No	Yes	No
Rental equipment	No	No	No	No
Commercial				
Material only	No	Yes	Yes	Yes
Onsite labor and material	No	Yes [‡]	No	Yes [‡]
Onsite labor only	No	No	Yes	No
Rental equipment	No	No	No	No

[†] Information Notice to Owners may be required

[‡] Notice is given to protect material portion of claim. See ORS 87.025.

After receiving the Notice of Right to a Lien, the owner may make a written demand for:

- a list of materials and supplies with the amount of costs incurred to date;
- a description of the labor or services supplied; or
- a statement of the contractual basis for supplying the materials, services or labor, including the percentage of the contract completed, and the costs incurred to the date of the demand.

The list or statement must be delivered by certified mail, return receipt requested, to the owner within 15 working days of receiving the owner's demand. If the information is not delivered within 15 working days from the date of the demand, your lien rights to recover attorney's fees and costs will be lost.

Required Pre-Claim Construction Notices

	Who gives it?	Who gets it?	When is it given?	How is it given?	Consequences for not giving notice?
Notice of Right to a Lien – Commercial Projects	Persons or entities who furnish materials only for commercial improvement and who do not have a contract with the owner must give notice to all owners, mortgagees, and lenders. Those who provide on-site labor and material for commercial improvement and who do not have a contract with the owner should give notice to mortgagees or lenders.	All owners of the commercial improvement. In addition, those persons or entities providing materials only or on-site labor and material must give the notice to all mortgagees or lenders to maintain priority and preserve the material portion of their claim.	This notice may be given at any time during progress of the improvement but only preserves the right to perfect a lien for those materials provided within a date that is not more than eight working days prior to providing the notice.	Registered or certified mail, return receipt requested, as proof that the notice was properly delivered. Also, this notice can be delivered in person.	Materials-only providers who fail to give this notice may lose their lien rights, even on commercial projects.
Information Notice To Owner About Construction Liens	Original contractors who contract directly with the owner or first purchaser of a <i>residential construction or improvement</i> . Original contractors need not provide this notice to an owner who is a licensed contractor.	The owner or first purchaser of the residential construction or improvement constructed by the contractor and sold before or within 75 days following the completion of construction.	At the time the written contract is signed for more than \$1,000 to perform residential construction or improvements, including all labor, services, and materials furnished under the contract. If it is an oral agreement, the notice is delivered no later than five working days after the oral agreement is formed.	The notice may be hand-delivered or mailed, registered or certified with return receipt requested. With either, the contractor must maintain proof of delivery for a period of two years.	If not given when required contractor will lose lien rights and could face suspension of license or a civil penalty.

<p>Notice of Right to a Lien – Residential Projects</p>	<p>Persons or entities who provide materials only, on-site labor and material, on-site labor only or rental equipment on <i>residential buildings</i> and who do not have a contract directly with the owner.</p>	<p>All owners of the residential building or structure that contains not more than four units capable of being used or occupied by the owner as a residence. Those who supply materials only or on-site labor and materials must give the notice to all mortgagees to maintain priority and preserve rights to the material portion of a claim.</p>	<p>This notice may be given at any time during progress of the building or structure, but only preserves the right to perfect a lien for those materials, equipment, services or labor that was provided within a date that is not more than eight working days prior to providing the notice.</p>	<p>Registered or certified mail, return receipt requested, as proof that the notice was properly delivered. Also, this notice can be delivered in person.</p>	<p>Persons or entities lose their lien rights for debt from performance on residential building or structure.</p>
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The Notice of Right to a Lien preserves rights on commercial improvements and residential buildings that fall within the following definitions. Note that the definition of "residential building" for purposes of the Notice of Right to a Lien is different than the definition of "residential construction or improvement" for purposes of the Information Notice to Owner about Construction Liens.

Pre-Claim notice requirements are different for commercial and residential projects.

- **Commercial improvement** means any structure or building not used or intended to be used as a residential building, or other improvements to a site on which such a structure or building is to be located.
- **Residential building** means a building or structure that is or will be occupied by the owner as a residence and that contains not more than four units.

Following these definitions, a business that performs labor upon a commercial improvement, provides labor and material for a commercial improvement, or rents equipment used in a commercial improvement, need not give the Notice of Right to a Lien in order to perfect a lien. However, a Notice of Right to a Lien must be delivered to mortgagees (lenders with recorded interest) when materials are provided. This delivery of Notice preserves priority of the material portion of a potential lien claim over the mortgagee's recorded interest.

For purposes of the Information Notice to Owner about Construction Liens, residential construction or improvement is defined as follows: "Residential construction or improvement" means the original construction of residential property and constructing, repairing, remodeling, or altering residential property and includes, but is not limited to, the construction, repair, replacement, or improvement of driveways, swimming pools, terraces, patios, fences, porches, garages, basements, and other structures or land adjacent to a residential dwelling.

Recording a Claim of Lien

If payment of a debt is due to you and you've given the required pre-claim notices, your next step in recovering payment is to file a construction lien claim. The Claim of Lien must be recorded within 75 calendar days after the last substantial performance of labor, delivery of materials, or rental of equipment, or 75 days after the completion of construction, whichever is earlier.

A small amount of work or repairs on work that you previously performed incorrectly may not count as valid "last days." The requirements for the 75-day time period are the same for commercial and residential projects and are the same for original contractors and subcontractors. If the 75-day time period concludes on a day that the county recorder is closed, such as a

weekend or a holiday, a Claim of Lien must be filed before the weekend or holiday and before the time period expires.

Consequently, tracking the progress of work is critical, so you know when the 75-day period occurs. Others, like trustees of employee benefit plans, architects, engineers and other design professionals, must also file their liens within 75 days of when construction is substantially complete.

Types of Post-Claim Notices

There are two types of post-claim notices in Oregon: Notice of Filing a Claim of Lien and Notice of Intent to Foreclose.

Everyone who records a Claim of Lien must give these notices. The notices are

After a lien is recorded, you are required to give post-claim notices.
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typically given to the owner of the property, as well as any lender who may have legal interest in the property (such as a mortgage). These rules are the same, whether the project is a commercial or residential project, and whether the lien claimant is an original contractor or subcontractor.

Generally, claimants can include the Notice of Filing a Claim of Lien and Notice of Intent to Foreclose into one written notice. If the contractor does not deliver these notices, the lien may be valid but other rights will be lost, such as the right to recover attorney fees, costs, or disbursements.

Notice of Filing a Claim of Lien

A person filing a Claim of Lien must mail a written notice that the claim has been filed, no later than 20 days after the date of recording to the owner as well as to the mortgagee (bank or an individual who lends money). A copy of the Claim of Lien must be attached to the notice. A notice should be mailed to the owner who received the Notice of Right to a Lien unless the person giving notice knows that ownership of the property has changed. Likewise, a notice should be mailed to the mortgagee who received the Notice of Right to a Lien, unless the person giving the notice knows that the mortgagee for the property has changed.

Notice of Intent to Foreclose

A person intending to foreclose a lien must send a notice in writing, no later than 10 days before beginning the foreclosure action, to the owner of the property upon which the lien is claimed. The notice must state the intention to begin foreclosure of the lien. Notice must also be delivered to the mortgagee, unless the person giving notice knows the mortgagee has changed.

Information You Must Provide

After you send the Notice of Intent to Foreclose, the owner may demand a list of materials and supplies with the costs incurred to date, or a statement

of the contractual basis for the owner's obligation, for which a claim will be made by the contractor in foreclosure. If you do not deliver that list or statement within five calendar days from the date the owner demands it, you will lose your lien rights to recover attorney fees and costs.

Construction liens do not last forever. If the lien is not paid, you will need to begin foreclosure. A lien is foreclosed by filing a lawsuit.

Liens must be foreclosed within a short time period.

The lawsuit to foreclose a lien must be filed within 120 days after the lien is recorded. Attorneys need some time to evaluate your information and prepare the lawsuit. So, if you are not paid within 90 days of when your lien was recorded, you should seek legal advice to ensure you do not miss the deadline for filing your lawsuit to foreclose the lien.

The time periods in Oregon's Construction Lien Law were established by the legislature. Foreclosure must occur within the time period, and typically cannot be changed or extended even if the owner and lien claimant agree to do so.

There are consequences to not following lien law procedures.

If you do not give an Information Notice To

Owner About Construction Liens:

- You lose your rights to pursue a lien claim.
- Your license can be suspended for a discretionary period of time
- You can be assessed a civil penalty for each offense if you are the original contractor.

Tips for Filing Liens

This following table provides information on some but not all of the steps and precautions that must be taken so that your claim of lien may be valid and may be enforced, if necessary. The Oregon Construction Lien Law is complicated, and the LCB advises that all procedures and follow-through on the preparation of any lien should be checked by an attorney. Also, construction lien statutes are amended on a regular basis by the Oregon Legislature and, as such, the general information contained in this summary may be dated. In addition, all contractors should make sure that they are licensed.

Note: As with all the information in this guide, this is for general information only, and **must not be construed as legal advice.**

PRE-CLAIM NOTICES		
When	Who	Action Required
Before performing work	All original contractors who perform work for the owner of a " <i>residential structure</i> " or " <i>zero-lot-line dwelling</i> " if the aggregate contract price exceeds \$2,000 (If original contract does not exceed \$2,000 but subsequent negotiations result in contract being amended to exceed \$2,000, original contractor must then deliver written contract).	Have a written contract required by ORS 87.037 (2007) (effective 1/1/08). See also ORS 701.005 definitions.
On date contract is signed (or within 5 days of agreement)	All original contractors engaged in residential construction that exceeds \$1,000. (If original contract does not exceed \$1,000, but subsequent negotiations result in contract being amended to exceed \$1,000, original contractor must then send notice.) Original Contractor is defined at ORS 87.005(7).	Provide Information Notice to Owner to all owners. Must use the form provided by the Oregon Construction Contractors Board. (ORS 87.093)

Should be sent within 8 business days of first delivery of material or performance of labor.	All original contractors, subcontractors, and suppliers who are required to give this notice.	Provide Notice of Right to a Lien to all owners (ORS87.021) and mortgagees (ORS 87.025).
Within 15 business days after receipt of written demand from owner or mortgagee (for demands received before claim of lien is recorded).	All original contractors, subcontractors, and suppliers.	Send to owner or mortgagee a list of materials or labor, etc. with statement of charges and unpaid balance. The owner may, in the alternative, be provided with a statement of the contractual basis for supplying the materials, equipment, services or labor, including the percentage of the contract completed, and the charge therefore to the date of the demand. (ORS 87.027 (owners) & ORS 87.025 (mortgagees))
THE CLAIM		
When	Who	Action Required
Within 75 days after last substantial performance of labor, delivery of materials, or rental of equipment or 75 days after completion of construction, whichever is earlier.	All original contractors, subcontractors, and suppliers.	Record Claim of Lien in county where real property is located.(ORS 87.035)

POST-CLAIM NOTICES		
When	Who	Action Required
Within 20 days after the Claim of Lien is recorded.	All original contractors, subcontractors, and suppliers who have recorded a Claim of Lien.	Provide a Notice of Filing Claim of Lien to all owners and mortgagees with a copy of recorded Claim of Lien attached. (ORS 87.039)
Within 5 days after receipt of written demand from owner (for demands received after Claim of Lien is recorded.	All original contractors, subcontractors, and suppliers who have recorded a Claim of Lien.	Provide to owner a list of the materials and supplies with the charge therefore, or a statement of a contractual basis for the owner's obligation, with statement of charges and unpaid balance.(ORS 87.057)
Not less than 10 days before filing suit to foreclose Claim of Lien.	All original contractors, subcontractors, and suppliers who have recorded a Claim of Lien.	Provide Notice of Intent to Foreclose Claim of Lien to all owners and mortgagees. (ORS 87.057)
THE ACTION		
When	Who	Action Required
Within 120 days after Claim of Lien is Recorded.	All original contractors, subcontractors, and suppliers who have recorded a Claim of Lien.	File suit to foreclose lien. (ORS 87.055)

Chapter 7:

Building Codes and Permits

What this chapter covers:

- What the Building Codes Division is.
- The process for making changes to Oregon building codes.
- Information about the codes used in Oregon.

The Building Codes Division



The Building Code Division (BCD) is part of the Oregon Department of Consumer and Business Services. The mission of the BCD is to work with Oregonians to ensure safe building construction while promoting a positive business climate within the state of Oregon. The BCD, in conjunction with its seven advisory boards, develops the statewide building code. The BCD also administers exams for specialty trade licenses and inspector certifications. Most permit and inspection services are provided by local city or county building departments. These services are essential in building safe and effective structures in Oregon.

The BCD does not administer codes for landscape construction in Oregon; however, when landscape contracting businesses perform construction work subject to the BCD, the codes must be adhered to. This is accomplished by:

- administering a uniform statewide building code that sets standards for construction
- providing code interpretation
- investigating license violations
- certifying inspectors and licensing trade professionals
- issuing certain construction and operating permits
- ensuring that cities and counties conduct plan reviews, issue permits and provide inspections according to the statutes, rules, and codes that govern these processes

The BCD has statutory authority for the enforcement and administration of the state building code. The BCD provides the following services:

- **Code development and interpretation.** BCD develops and maintains Oregon's construction codes and rules for use by state and local jurisdictions. BCD helps local building officials, contractors, and those who need authoritative interpretation of various specialty codes.

- **Compliance.** Services are provided to local jurisdictions, contractors, and the public to ensure compliance with the appropriate laws, including licensing, permitting and code requirements.
- **Licensing and certification.** BCD administers exams and issues licenses required for plumbing; electrical; elevator installation and repairs; boiler installation, maintenance and repair; and manufactured dwelling installation. BCD also processes and issues inspector certifications. BCD records continuing education credits for licensed and certified professionals.
- **Permits and inspections.** The BCD issues permits and administers the building code in a few smaller jurisdictions and for the elevator and boiler programs. The permit process includes the review of plans for construction. State inspection services are provided to manufacturers and dealers of prefabricated structures and components.

The BCD is assisted by seven advisory boards in adopting and amending the specialty codes. These boards also have varying levels of responsibility for specialty trade licensing, enforcement and code appeals. The following boards are comprised of industry and public representatives:

- Building Codes Structures Board
- Electrical and Elevator Board
- Oregon State Plumbing Board
- Mechanical Board
- Residential Structures Board
- Board of Boiler Rules
- Manufactured Structures and Parks Board

Process for Adopting and Revising Oregon Building Codes

The BCD is authorized by statutes to adopt uniform building codes in Oregon. The national model codes are amended and adopted in the state as Oregon specialty codes. Any individual can submit a code amendment proposal during the code adoption process. Codes are generally adopted every three years. Between national code adoptions, the Oregon specialty codes can be amended as allowed by the appropriate statutes. Since codes can change, contractors should consult with the jurisdiction that governs the site where the project is located. In preparing an estimate, the contractor should verify project code requirements, plan review requirements, the process for obtaining permits, and when to call for inspections.

Codes Used in Oregon

The following is a list of the codes used in Oregon. Refer to BCD’s website at www.bcd.oregon.gov for information and recent changes. Changes made to the national model code are identified by a special mark, and for clarity, are generally printed on colored paper.

Code	Description
2008 Oregon Residential Specialty Code	<p>Oregon adopted the <i>2008 Oregon Residential Specialty Code</i> effective April 1 of 2008. It is based on the 2006 edition of the ICC <i>International Residential Code</i>. The plumbing and electrical chapters of the International Code are not used in Oregon. The <i>Oregon State Plumbing Code</i> and the <i>Oregon State Electrical Code</i> apply in Oregon.</p> <p>The scope of this code has been expanded to include multifamily units and includes—with limitations—townhouses, apartments, and row houses including their accessory structures. (Row houses are covered in Appendix O of the <i>Oregon Residential Specialty Code</i>.) Low-rise multiple-family dwellings covered in Appendix N of the <i>2005 Oregon Residential Specialty Code</i> are now covered under the <i>Oregon Structural Specialty Code</i>.</p>
2007 Oregon Structural Specialty Code (OSSC)	<p>The OSSC consists of the 2006 edition of the <i>International Building Code with Oregon amendments</i>, which was adopted on April 1 of 2007. This code applies to all structures not regulated under the <i>Oregon Residential Specialty Code</i>, including:</p> <ul style="list-style-type: none"> • Commercial structures • Transient lodging, such as hotels and motels • Certain residential structures subject to licensure by the Oregon Department of Human Services • Low-rise multiple family dwellings

<p>2007 Oregon Mechanical Specialty Code (OMSC)</p>	<p>Oregon adopted the <i>2007 Oregon Mechanical Specialty Code (OMSC)</i>, which is based on the <i>2006 International Mechanical Code</i>, Oregon amendments and the <i>2006 International Fuel Gas Code</i>, as an appendix, effective April 1 of 2007. The OMSC applies to all structures not covered under the <i>Oregon Residential Specialty Code</i>.</p>
<p>2008 Oregon Plumbing Specialty Code (OPSC)</p>	<p>Oregon adopted the <i>2008 Oregon Plumbing Specialty Code</i> effective April 1 of 2008. It is based on the 2006 edition of the <i>Uniform Plumbing Code</i>.</p>
<p>2008 Oregon Electrical Specialty Code (OESC)</p>	<p>Oregon adopted the <i>2008 Oregon Electrical Specialty Code</i> effective April 1 of 2008, which is based on the 2008 edition of the <i>National Electrical Code</i>. This code contains requirements for electrical installations.</p>
<p>2002 Oregon Manufactured Dwelling and Park Specialty Code</p>	<p>National standards are the <i>Manufactured Home Construction and Safety Standards</i>, the <i>Manufactured Home Procedural and Enforcement Regulations</i>, and the <i>1999 National Electrical Code</i>. Instructions for installations, alterations, and additions to manufactured dwellings in Oregon are found in the <i>2002 Oregon Manufactured Dwelling and Park Specialty Code</i>.</p>
<p>2007 Oregon Fire Code</p>	<p>The <i>2007 Oregon Fire Code</i> is based on the <i>2006 ICC International Fire Code</i> with Oregon amendments.</p>

How to Use Appropriate Building Code Books

Although all the codes differ somewhat in their specific requirements, each code is arranged in a similar manner.

It is quite easy to use a code book. First, determine the term or subject area for which you need information. This is called the key word. Then look up that item in the index.

Statutes and Rules

The statewide building code covers the technical requirements of construction projects, while statutes and rules dictate licensing, permitting, and other administrative processes. The statutes and rules that govern BCD's activities can be found on its website at: www.bcd.oregon.gov.

Permits

Permits are required for most new construction and alterations or additions to existing buildings, including structural, plumbing, mechanical, and electrical work. Individual city and county jurisdictions may have additional permit requirements based on local geographic, seismic, and climatic conditions. As a landscape contracting business owner or managing employee, you must make sure to obtain the required permits before the work is performed and to have the work inspected after the work is completed. Some of the required permits are:

- **Backflow Assemblies.** Backflow assemblies are for irrigation systems and water features. These plumbing fixtures may be required to be tested after installation and inspection before the permit is finalized.
- **Retaining Walls.** Depending on the requirements of the jurisdiction the business is performing work in, a retaining wall above a certain height (measured from the bottom of the base to the top of the wall) may require a permit, engineering, and inspection.
- **Driveways.** A driveway, for entering from a street onto a property, may require a permit.
- **Decks.** Decks that are a certain height off the ground or attached to a structure may require a permit.
- **Low Voltage.** Low voltage wiring for irrigation systems and low voltage lighting is a state mandate and may require a permit in many local areas.



CAUTION!

Never assume that you don't need a permit! Always check with the local building codes official BEFORE installing any of these items in a landscape. Failure to comply with permit requirements may result in civil penalties, loss of revenue and revocation of the Landscape Construction Professional and Landscape Contracting Business license.

There may be property owners who do not want a landscape contracting business to obtain a building permit even though they want the landscape contracting business to perform work. If a licensed landscape contracting business works without a required permit, the LCB may revoke or suspend the landscape contracting business license and assess a penalty.

In addition, BCD Compliance will take action against the landscape contracting business, which must comply with permit and building code requirements, since the person responsible for performing the work is responsible for obtaining permits.

Applying for a Permit

Landscape contracting business must apply for a required permit at the building department that has jurisdiction in the area where the landscape construction work will be performed. To find the appropriate building department, call the nearest city hall, give the address of the construction project or installation, and ask for contact information of the building jurisdiction that issues the permit. Be sure to provide the job site address and the type of work being performed. Contact the building official in the local jurisdiction if there are code or permit questions. There is a list of local building departments on the BCD's website: www.bcd.oregon.gov.

To apply for a permit, information about the project must be prepared before a plan review. If the jurisdiction does not require a plan review, the information needs to be presented when the permit application is submitted. Generally, the following project information is prepared and submitted in applying for a permit:

- address or directions to the job site where inspections will be conducted.
- local government or jurisdictional approvals, if needed, such as:
 - ◆ land-use actions completed
 - ◆ zoning approvals
 - ◆ sanitation verification and approval

- ◆ fire district approval
- ◆ septic system or sewer permit
- ◆ water district approval
- ◆ soils report
- ◆ erosion control plan and required permit
- complete sets of legible plans, which include:
 - ◆ site or plot plan drawn to scale
 - ◆ foundation plan
 - ◆ basement and retaining walls
 - ◆ floor plans
 - ◆ cross section(s) and details
 - ◆ elevation views
 - ◆ wall bracing or lateral analysis plans
 - ◆ floor and roof framing assemblies
 - ◆ beam calculations
 - ◆ manufactured floor and roof truss design details
- energy code compliance
- engineer's calculations, if required

Note: Refer to applicable state and local building codes and to other local ordinances to find requirements for submitting drawings for a permit.

To obtain a permit, there must be a completed application and plans attached for review along with the appropriate payment for the permit. Fee schedules and valuation tables are available to help determine permit fees. The fee tables vary from jurisdiction to jurisdiction. Contact the jurisdiction in your area.

Online Permit Services

With the support and cooperation of local government and the construction industry, the BCD has established, and continues to expand, online permit services. On line Permits allows contractors to apply and pay for multiple non-plan review permits from multiple building departments from a single online location at buildingpermits.oregon.gov.

This system will provide online building department services for any location in the state through a one-stop website. Services will include:

- application, payment, and receipt of trade and building permits
- intake, review, and tracking of plans
- scheduling, tracking, and reporting of inspections
- tracking of construction and permit activity from plan review through final sign-off

Specialty Licenses

Generally, any person who installs, alters, or repairs another person's property involving selected specialty trade practices is required to be licensed with the BCD. Contractors or businesses with two or more specialty licenses in electrical, elevator, boilermaker, or plumbing trades may combine licenses and renew them at the same time.

Certain specialty trades must be licensed with the BCD, including:

- boiler or pressure vessel licensees Classes 1-6
- electrical journeymen in various classifications
- elevator journeymen
- manufactured dwelling installers
- plumbing journeymen in various classifications

Contact the BCD for a complete list of specialty trades that must be licensed or refer to the BCD website at www.bcd.oregon.gov.

Besides having a boiler, electrical, elevator, and/or plumbing license, businesses must also be licensed as contractors with the CCB.

In addition to any other sanction or penalty, the appropriate Board may suspend or revoke a license if the contractor does not comply with the requirements of that license, or engages in an act that causes the CCB or LCB to impose a sanction.

Penalties for working without a specialty license are established by the appropriate boards of the BCD. The BCD charges a penalty between \$1,000 and \$5000 for failure to obtain a permit, for working without the proper license, or for allowing others to work without the proper license.

Inspection Requirements

The permit holder requests inspections when each phase of the construction is ready. Usually, inspections are made within 48 hours of the request. If, however, the inspection is not made, the portion of construction requiring inspection must remain open until the inspector gives approval.

Type of Inspection	Description
Footing or foundation	Footing or foundation inspections are made after forms are set and steel is in place, but before concrete is placed.
Concrete slab or under-floor	Concrete slab or under-floor inspections are to be made after all in-slab or under-floor building services are installed, and plumbing and mechanical systems are installed, but before the concrete is poured or the deck or subfloor is installed.
Plumbing, mechanical, and electrical systems rough	Rough installations are required to be inspected and approved prior to the framing inspection. Some jurisdictions have multi-certified inspectors who can inspect these systems at the same time the framing inspection is done. Backflow installation inspections are normally done after the backflow has been installed.
Framing and masonry	Framing and masonry inspections are made after all mechanical, plumbing, and electrical systems are inspected, framing is completed, and fire-stopping is installed, but before the insulation is installed.
Insulation and vapor barrier	Insulation and vapor barrier inspections are made after all insulation and required vapor barriers are installed and before wall coverings are installed. (Attic and under-floor insulation visible at the time of the final inspection can be inspected at that time.)
Final inspection and the Certificate of Occupancy	Final inspections are made after the successful completion of all required inspections and before the structure is ready for occupancy. The final inspection ensures that there is no fire, life, safety, or health issues, and that the structure is code compliant for occupancy. After successful completion of final inspection, single residential or one-and two-family dwellings can be occupied. Other structures are issued a Certificate of Occupancy before occupancy is allowed. Contact the local jurisdiction to prepare for final inspection.

How to Help Inspections Go Smoothly

If you have questions about code or compliance for a project, call the local building jurisdiction before beginning work. It shows your intent to do proper work that passes inspections the first time. Here are several steps you can take to make sure the inspection goes smoothly:

- Make sure the project is ready for inspection.
- Put the Inspection Record Card in a weatherproof cover and post in an accessible and conspicuous place to allow the building official to make required entries, if required.
- Know the code and make sure your project is compliant with it.
- Relate to inspectors in a businesslike manner.

If you are not sure whether your project complies with code, check with the local building jurisdiction. The local building official would prefer to help before the project is finished than see incorrect work and have to re-inspect the project.

A landscape contracting business is responsible for knowing when work must be inspected, making timely requests for inspections, providing information for job-site inspections, and code compliance. Landscape contracting businesses have the right to appeal the decision of any inspector or local building official when they disagree with the application of the code. They can also propose code changes through the code adoption process.

The local building official has authority to interpret the code in applying it to a project. These interpretations must conform to, or be consistent with, the intent and purpose of the code.

The local building official is permitted to enter, at reasonable times, any building, structure, or premises to perform duties authorized by the code. This authority includes entry for cause of a possible violation, or for unsafe, dangerous, or hazardous conditions.

In addition to code-stimulated inspections, building officials in your jurisdiction may require other inspections to ensure compliance with special code requirements. Check with your local jurisdiction, for additional inspection requirements in the following categories: Mechanical, Plumbing, Electrical, and Manufactured Dwellings. Boilers and pressure vessels and elevators are inspected by the state.

Stop Work Orders

Local building officials have the right to issue a stop work order if they feel that work is unsafe, not covered by permits, or is otherwise not in compliance with the building codes. It requires the work listed in the stop work order to stop immediately.

To avoid getting a stop work order, do the following:

- make sure a valid permit is obtained
- make sure the inspector is informed about any corrections or violation notices
- execute the work in compliance with code provisions, approved plans or drawings, and other applicable laws

If a stop work order is posted on a job site, it is essential that you communicate with the person who posted it. The stop work order specifies what work must be stopped and as well as the conditions under which work may be resumed. The building official is not required to give notice before stopping the work.

Failure to comply with a stop work order can have very serious consequences, including civil penalties, permit or license revocation, or court action. In addition, an industrial accident that occurs after a stop work order can result in additional civil and even criminal liability.

It is not uncommon for a stop work inspection to be issued for safety or code violations during a surprise inspection.

Sources of Building Codes

To purchase code books, contact any of the following:

- Building Tech Bookstore, Inc. (800-ASK-BOOK)
- www.buildingtechbooks.com
- University of Oregon Bookstore (541-346-4331)
www.uobookstore.com
- Chemeketa Community College Bookstore (503-399-5131)
- bookstore.chemeketa.edu
- Oregon Building Officials Association (503-873-1157)
www.oboaonline.org
www.cbs.state.or.us/external/bcd/codestandards.html
- International Code Council (888-422-7233), www.iccsafe.org.

The following is a list of places to check if you wish to view code books without purchasing:

- most public and university libraries
- city and county building departments (see contact information in Appendix A)
- Building Codes Division www.bcd.oregon.gov (ICC codes are available for viewing on the BCD's website)

Chapter 8:

Safety and Hazard Communication

What this chapter covers:

- What the Oregon Safe Employment Act is.
- Safety guidelines for specific types of landscape construction activities.
- What OR-OSHA is.
- Requirements for hazard communications.

Oregon Safe Employment Act



Oregon law requires that anyone in Oregon who advertises, operates as, or uses the title of a landscape contractor; landscape construction professional, or landscape contracting business must be licensed with the Landscape Contractors Board (LCB).

Before a license is issued, landscape construction professionals must take a comprehensive exam administered by the LCB. The exam includes questions about Oregon OSHA's workplace safety and health rules. This guide acquaints those who plan to take the exam with Oregon OSHA's requirements. Though some of the following information relates directly to landscape construction work, there are other safety regulations included below that may require additional licensing before a person can perform those functions.

The purpose of the Oregon Safe Employment Act (OSEA) is to ensure safe and healthful working conditions for every working person in Oregon. The Oregon Safe Employment Act says:

"Every employer shall furnish employment and a place of employment that are safe and healthful for employees therein, and shall furnish and use such devices and safeguards and adopt and use such practices, means, methods, operations, and processes as are reasonably necessary to render such employment and place of employment safe and healthful, and shall do every other thing reasonably necessary to protect the life, safety and health of such employees."

The Oregon Safe Employment Act defines an employee as anybody who works for pay (financial or anything of value) and is under the direction and control of an employer or anybody covered by workers' compensation insurance as a subject worker under ORS 656.

The Oregon Safe Employment Act defines an employer as any person who has one or more employees, or any sole proprietor or member of a partnership who elects workers' compensation coverage as a subject worker pursuant to ORS 656.128.

Rules for All Workplaces

The following are general rules that apply to all Oregon workplaces.

Employers must make a reasonable effort to ensure that employees do the following:

- work and act in a safe and healthful manner
- conduct their work in compliance with all applicable safety and health rules
- use all necessary means and methods to safely accomplish work
- not remove, displace, damage, or destroy safety devices or guards

Employers must investigate every employee lost-time injury.

Employers must ensure that their employees receive proper supervision and training.

Use of alcohol or illegal drugs on the job is not permitted; use of prescriptions drugs or medications that impair an employee's ability to work safely are also prohibited.

Recordkeeping and Reporting

Businesses that had more than 10 employees at any time during the last calendar year must keep Oregon OSHA injury and illness records.

Oregon OSHA's forms for recording and reporting workplace injuries and illnesses include the OSHA 300, 300-A, and DCBS Form 801.

- The OSHA 300 form is the Log of Work-Related Injuries and Illnesses.
- The OSHA 300-A is the Summary of Work-Related Injuries and Illnesses. Post the OSHA 300-A each Feb. 1st and keep it posted until April 30.
- The Department of Consumer Business Services (DCBS) Form 801 is the Workers and Employers Report of Occupational Injury or Disease.

Keep the OSHA 300 Log, OSHA 300-A, and the DCBS Form 801 for five years following the end of the calendar year that they cover.

You must report all fatalities and hospitalizations to Oregon OSHA: (800) 922-2689 or (503) 378-3272. Employee fatalities must be reported not more than eight hours after the occurrence or employer knowledge thereof, whichever comes first. Overnight hospitalization for medical

treatment must be reported no more than 24 hours after occurrence or employer knowledge thereof, whichever comes first.

Note: Other Oregon OSHA rules may also require additional written records. Find out about these requirements in the guide, "Put It In Writing: The complete guide to Oregon OSHA's written requirements for the workplace." The guide is available on the Oregon OSHA Web site, www.orosha.org, under "Publications."

Safety Committees

Employers with 11 or more employees must have safety committees. Employers with 10 or fewer employees must also have safety committees if any of the following applies:

- The employer has had one or more employees lose time from work or on restricted work due to a work-related injury.
- The employer has a 0042, Landscaping, NCCI classification. (If you don't know your NCCI classification, check your workers' compensation insurance documents or ask your insurance carrier.)

Safety committees must have an equal numbers of employer and employee representatives. Businesses with 20 or fewer employees must have at least two safety committee representatives. Businesses with more than 20 employees must have least four safety committee representatives.

If your workplace has 10 or fewer employees—including part-time and seasonal employees—you can start a safety committee that meets the needs of your small business. Paperwork is minimal and the meetings are less formal than traditional safety committee meetings. Rules and procedures are in the booklet, "Safety Committees for workplaces with 10 or fewer employees." The guide is available on the Oregon OSHA Web site, www.orosha.org, under "Publications."

Safety Guidelines

This section lists safety guidelines for a number of activities and types of work.

Electrical Safety Guidelines

The following safety guidelines are for electrical wiring and equipment.

- Employers must ensure that electrical equipment is free from hazards that are likely to injure employees.
- The path to ground from circuits and equipment must be permanent and continuous.

- All lights for general illumination must have protection from accidental contact or breakage.
- Temporary lights must not be suspended by their electric cords.
- Flexible cords and cables must be protected from damage.
- Flexible cords and cables may not pass through doorways or other pinch points.
- Extension-cord sets used with portable electric tools and appliances must be the three-wire type and designed for hard or extra-hard use.
- Flexible cords must be used only in continuous lengths without splices or taps.
- There must be strain relief when flexible cords connect to devices and fittings.
- Flexible cords, extension cords, and cables must not be used as substitutes for fixed wiring, run through doorways or windows, be attached to building surfaces, or concealed behind walls or in ceilings or floors.

Ground-fault-circuit interrupters (GFCI) are life-saving devices that protect people from electrocution. Under normal conditions, electrical current moving through a circuit flows at the same rate (amperage) all along the circuit; amperage flowing away from the electrical source should be the same amperage returning to the source. GFCIs sense imbalances or differences along the electrical circuit and shut it down when needed.

Employers must use approved GFCIs with all 125-volt, single-phase, 15-, 20-, and 30-ampere receptacles for temporary power and make them available for use by employees on construction sites. GFCI protection must be at the outlet end of the circuit. Extension cords or other devices with listed GFCI protection identified as portable are acceptable.

Ladders

The following safety guidelines are for ladders.

- Inspect ladders and remove them from service if they are defective.
- There can be no dents, breaks, or bends in the side rails or rungs.
- Portable ladders must have non-slip bases.
- Use ladders only for purposes approved or recommended by the manufacturer.
- Do not load ladders beyond their working load rating.
- Train employees in the safe use of ladders.

- Do not use ladders on boxes, barrels, or other unstable bases.
- Do not use ladders with broken or missing steps, rungs, cleats, or broken side rails.
- A ladder for access to a roof must extend at least 3 feet above the access point.
- The climber must face the ladder and have free use of both hands when climbing up or down.
- There must be only one person at a time on a ladder unless its labeling says otherwise.
- Do not use stepladders more than 20 feet long.
- Do not climb on the back section of the ladder unless it has steps meant for climbing.
- Do not stand on the top step or top cap of a stepladder.
- Do not use stepladders in freestanding positions when not fully open.
- Ladder repairs must restore the ladder to its original design criteria.
- Face the ladder when climbing or descending.

Noise Exposure

Employers whose employees are exposed to noise levels that are equal to or greater than 85 dBA averaged over an eight-hour period must have hearing-conservation programs. The program must include audiometric testing, employee training, and personal hearing protection.

Flammable and Combustible Liquids (Gas and Diesel Fuel)

Flammable and combustible liquids are classified according to their flashpoints. Flammable liquids have a flashpoint below 100°F and are Class IA, Class IB, or Class IC. Combustible liquids have a flashpoint at or above 100°F and are Class II or Class III.

Storage Cans

Use storage cans that have been approved by the U.S. Department of Transportation (DOT) or a nationally recognized testing laboratory. They may be either metal or plastic and in quantities of 5 gallons or less.

Inside Buildings

Rules for storage of flammables and combustibles inside buildings vary depending on the class of liquid, the type of building, type of occupancy, protection systems (fire sprinklers), and types of containers.

Vehicle Transport

Gasoline and other low-flashpoint liquids carried on Class A, B, and D vehicles that transport workers must be in U.L.-approved closed safety containers that have a maximum 5-gallon capacity. Containers must be carried in a safe location outside the passenger compartment.

Medical Services and First Aid



Employers must furnish first-aid supplies for the types of injuries that could occur at their workplaces. First-aid supplies must be stored in unlocked protective containers that are readily accessible to all employees. Emergency medical services must be available for treating injured employees. If emergency medical services are not available, the workplace must have a qualified first-aid person.

Where employees handle substances that could injure them by getting into their eyes or onto their bodies, provide them with an eyewash, shower, or both based on the hazard. Employers must also have emergency medical plans that ensure medical services are readily available to employees with work-related illnesses or injuries.

If a physician or an ambulance with emergency medical technicians is readily available, the plan must include a phone number that will summon the responder; 911 is acceptable in areas where the service is available. If medical services are not readily available, the employer must have a plan for responding to serious employee injuries.

Commercial and Industrial Vehicles

The following safety guidelines are for commercial and industrial vehicles.

- Employees younger than 18 cannot operate commercial or industrial vehicles.
- Only trained and authorized employees are permitted to operate vehicles.
- Employees are prohibited from operating unsafe vehicles.
- No one but the operator may ride on a vehicle unless there is a safe place for passengers.
- Employees must not drive vehicles up to anyone standing in front of a stationary object.
- All vehicles that have windshields must have powered wipers.
- Damaged windshields and windows that impair the operator's vision must be replaced.

- All vehicles must have brakes that will control them when they are fully loaded on any grade on which they operate.
- Parking brakes must be capable of holding loaded vehicles on any grade on which they operate that is free of ice or snow.
- All vehicles must be checked at the beginning of each shift to ensure that they are safe and free of apparent damage that could cause failure.
- All vehicles must have an audible warning device that can be clearly heard above surrounding noise.
- Vehicles with obstructed views to the rear must have backup alarms that can be heard above surrounding noise.

Powered Industrial Trucks

In addition to the preceding general safety guidelines for vehicles, there are additional safety guidelines for using powered industrial trucks (forklifts).

- Employers must ensure that employees who operate powered industrial trucks are competent; operators' competency must be evaluated at least once every three years.
- Employee training must include a combination of formal instruction, practical training, and evaluation.
- Employers must certify that each operator has received training; certification must include the operator's name, the training date, the certification date, and the trainer's name.
- At the beginning of each shift, operators must check all vehicles' service brakes, including trailer brake connections, hand brakes, emergency stopping brakes, tires, horns, steering, coupling devices, seat belts, operating controls, and safety devices.
- Spinner knobs are not permitted on steering wheels unless the steering mechanism prevents road reaction from transmitting to the steering wheel.
- No one, other than the operator, is permitted to ride on a powered industrial truck.
- Raising employees with a lift truck or loader requires a special platform that has standard guardrails and a guard to prevent them from contacting the lifting mechanism.

Earthmoving Equipment

All earthmoving equipment with roll-over protective structures must have seat belts (except earthmoving equipment in which the operator stands).

Equipment with an obstructed view to the rear must have a working back-up alarm that is distinguishable from surrounding noise.

Fuel-Powered Tools

The following safety guidelines are for fuel-powered tools of all kinds.

- Stop all fuel-powered tools while refueling or servicing them.
- All portable, power-driven circular saws must have guards.
- Crosscut table saws and rip saws must have hood guards.
- Use all tools with shields, guards, and attachments as recommended by the manufacturer.

Chain saws are particularly dangerous. The following safety guidelines are specifically for chain saws.

- Employees who use chain saws must wear chaps or leg protectors that cover the leg from the upper thigh to mid-calf. Leg protectors must be made of material designed to resist cuts.

Safety counts: there is rarely a minor chain saw accident.

- All power chain saws must meet applicable requirements of ANSI B175.1-1985, Safety Code for Power Chain Saws.
- Inspect saws daily before use and keep in good repair at all times.
- Do not use saws with cracked or loose handlebars or defective parts.
- Stop chain-saw engines while refueling them.
- Chain saws must have an operable chain brake if originally designed and equipped with one.
- Chain brakes and other manufacturers' safety features must be maintained in proper working order.

Tree and Shrub Services

The Construction Contractors Board gives an exemption to LCB licensees to do tree work. Check with the Construction Contractor's Board regarding the exemption for maintenance businesses regarding tree work. This information is provided as a safety guide to those who are properly licensed to perform this work.

Tree and shrub services have a number of safety guidelines because of the additional inherent risks.

In addition to the general safety and first-aid procedures described earlier, tree and shrub services must do the following:

- Employees must be able to provide cardiopulmonary resuscitation (CPR) if necessary.

- Employees must be trained in tree-top rescue procedures.
- Employers must furnish first-aid supplies for the types of injuries that could occur at their workplaces.
- First-aid supplies must be stored in unlocked protective containers that are readily accessible to all employees.

Traffic control

Employers must control pedestrian and vehicular traffic at all job sites on or adjacent to highways, streets or railways. Traffic controls must conform to the American National Standards Institute (ANSI) D6.1e-1989, "Manual on Uniform Traffic Control Devices for Streets and Highways."

Tools

There are a number of safety guidelines for operating specific tools.

Sprayers

Sprayers and related equipment must have slip-resistant cover material on all walking and working surfaces. In addition, moving equipment on which workers stand and spray must have a guard railing around the work area that complies with the requirements in OAR 437, Subdivision D: Walking-Working Surfaces (1910.21 – 1910.32).

Stump Cutters

Stump cutters must have enclosures or guards that protect the operator. In addition, all operators and workers in the immediate area must wear eye protection.

Electric tools

All portable electric hand tools must have a three-wire cord with the ground wire permanently connected to the tool frame and a means for grounding the other end, or be double insulated.

Work procedures

The following guidelines apply to safety for specific work situations.

Climbing

Workers who climb in trees must always do the following:

- A tree worker must be tied in with an approved climbing rope and safety saddle when working 10 feet or more above the ground.
- The worker must use a climbing rope even when working from a ladder or scaffold.

- Climbers must inspect tree limbs while climbing.
- Climbers must secure themselves with the climbing line before starting the climb and must remain tied in until the work is done and they are back on the ground.

Pruning and Trimming

Workers who prune and trim trees must always do the following:

- Hang pole pruners and pole saws securely in a vertical position. Do not hang them on utility wires or cables or leave them in the tree overnight. Always hang pruners and saws so that the sharp edges are away from workers.
- Hook a scabbard or sheath to the climbing belt or safety saddle to carry a handsaw.
- Give warning before dropping a limb.
- Attach a line separate from the climbing line to limbs that cannot be dropped or that are too heavy.
- Remove cut branches or climbing ropes from trees overnight.
- Inspect ropes for cuts or abrasions before starting work; if any are found, discard the rope, use it for some other purpose, or cut the defective section off.
- Have a second worker nearby during all tree working operations.
- Be above large limbs when lowering them.
- Use guidelines, hand lines, or tag lines when conditions warrant.

Cabling

Workers using cables must always do the following:

- Branches must be brought together by using a block and tackle, a hand winch, a rope, or a rope with a come-along.
- No more than two workers may be in a tree during cabling installation.
- When releasing the block and tackle, workers in trees must be off to one side in case the lag hooks pull out. Ground workers must not stand under the tree while cable is installed.
- Workers should carry tools for cabling, bark tracing, and cavity work in a bag or belt designed for that purpose.

Tree-felling

Before felling trees, workers must develop a safety plan that ensures that:

- Consideration is given to the tree and the surrounding area for anything that may create a hazard when the tree falls, including the shape and lean of the tree, wind force and direction, decayed or weak spots, and the location of other employees or structures.
- There is a planned escape route and the work area is cleared to permit safe working conditions.
- All tree workers know exactly what to do during tree-falling.
- Workers not directly involved are at least two tree lengths away from the tree being felled.
- A notch and back-cut is used in felling trees more than 5 inches in diameter, breast height.
- Ripping or slicing cuts are not used to fall a tree.
- The depth of the notch is about one-third the diameter of the tree.
- The height of the notch is about 2 1/2 inches for each foot in diameter of the tree.
- The back-cut must be made higher than the apex of the notch to prevent kickback.
- An audible warning is given to those in the area just before the tree falls.
- Wedges, block and tackle, rope, or wire cable is used if there is a risk the tree could fall the wrong way or damage property (unless there is an electrical hazard).
- Limbs are removed so that the tree will fall clear of wires and other objects.
- Special precautions are taken to rope rotten or split trees to prevent them from falling in unexpected directions.
- The faller retreats to a safe location just before the tree falls.

Chippers

Chippers must meet the following safety criteria:

- Enclose rotating chipper components in a housing capable of retaining broken chipper knives or foreign material.
- Feed chutes and side members must prevent the operator from contacting rotating blades under normal operating conditions.
- Chippers that have mechanical infeed systems must have:
 - ◆ An infeed hopper that measures at least 85 inches from the blades or knives to ground level at the center line of the hopper

- ◆ A flexible anti-kickback device in the feed hopper that protects the operator and others from flying chips.
- A shut-off switch must be within convenient reach of the operator.
- Chippers that do not have mechanical infeed systems must have a quick-stop/reversing device on the infeed across the top and along each side of the hopper, as close to the feed end of the hopper as practicable. The device must be within convenient reach of the operator.

In addition, workers who operate or work near chippers must always do the following:

- Chipper operators must be familiar with the manufacturers' operating instructions, maintenance procedures, and safe work practices.
- Follow energy-control procedures in Subdivision 2/J, 19 10.147, (Control of hazardous energy) to prevent accidental restart of equipment during shutdown for service or maintenance.
- Guard exposed adjacent blades when replacing chipper blades.
- Close and secure all access panels before operating the chipper.
- When feeding the chipper, make sure that a coworker is nearby.
- Do not feed foreign objects into the chipper.
- Feed chippers from the side of the center line; turn away from the feed table as materials are drawn into the rotor. Feed chippers from curbside whenever practical.
- Ensure that feed and discharge chutes are in place to prevent contact with rotating blades when the chipper is operating.
- Trailer chippers must be chocked or otherwise secured when detached from trucks.
- Before towing a chipper, cross safety chains under the tongue of the chipper and attach them to the towing vehicle.
- Employees in the immediate area of an operating chipper must wear appropriate personal protective equipment.
- Employees feeding chippers must not wear loose clothing, gauntlet-type gloves, rings, or watches.

Storm Work and Emergencies

Only authorized representatives of the electric utility system operator may perform tree work in situations involving energized electrical power conductors.

In an emergency due to tree operations, suspend work and notify the system operator immediately.

Trenching

A trench is defined as a narrow excavation (the depth greater than the width) not more than 15 feet wide at the bottom. An excavation is any man-made cut, cavity, trench, or depression in the earth's surface formed by removing the earth.

- Before digging, determine the estimated location of utility installations (sewer, telephone, fuel, electric, water lines, or any other underground installations).
- Before employees begin work in an area exposed to public vehicular traffic, they must wear warning vests or other suitable garments marked with or made of high visibility material.
- A competent person must inspect excavations and adjacent areas at least daily for possible cave-ins, failures of protective systems and equipment, hazardous atmospheres, or other hazardous conditions. Remove exposed employees from hazardous areas until the areas are safe. Inspect excavations after heavy rains and activities such as drilling or blasting that may increase the potential for hazards.
- Protect employees who work in excavations more than 5 feet deep by sloping or benching the sides, shoring the sides, or placing a shield between the sides of the excavation and the work area.
- Do not excavate below the level of the base or footing of any foundation or retaining wall unless a support system is in place, the excavation is in stable rock, or a registered professional engineer determines that the force exerted by the weight of structure will not endanger employees working in the excavation.
- Do not excavate under sidewalks or pavement unless an appropriately designed support system is in place or equally effective method is used.

Storing Materials

Oregon OSHA prohibits storing anything in a way that creates a hazard. Piles and stacks must be stable and not a hazard to employees. **Always store chemicals according to the information on the labels or material safety data sheets.** Storage requirements for flammables and combustibles vary according to the type of material, the type of container, and the storage area.

OR-OSHA

OR-OSHA offers a wide variety of safety and health services to employers and employees:

Service	Description
Consultative Services	<p>Offers no-cost on-site safety and health assistance to help Oregon employers recognize and correct workplace safety and health problems.</p> <p>Provides consultations in the areas of safety, industrial hygiene, ergonomics, occupational safety and health programs, assistance to new businesses, the Safety and Health Achievement Recognition Program (SHARP), and the Voluntary Protection Program (VPP).</p>
Enforcement	<p>Offers pre-job conferences for mobile employers in industries such as logging and construction.</p> <p>Provides abatement assistance to employers who have received citations and provides compliance and technical assistance by phone.</p> <p>Inspects places of employment for occupational safety and health hazards and investigates workplace complaints and accidents.</p>
Appeals, Informal Conferences	<p>Provides the opportunity for employers to hold informal meetings with OR-OSHA on concerns about workplace safety and health.</p> <p>Discusses OR-OSHA's requirements and clarifies workplace safety or health violations.</p> <p>Discusses abatement dates and negotiates settlement agreements</p> <p>resolve disputed citations.</p>

<p>Standards & Technical Resources</p>	<p>Develops, interprets, and provides technical advice on safety and health standards.</p> <p>Provides copies of all OR-OSHA occupational safety and health standards.</p> <p>Publishes booklets, pamphlets, and other materials to assist in the implementation of safety and health standards and programs.</p> <p>Operates a Resource Center containing books, topical files, technical periodicals, a video and film lending library, and more than 200 databases.</p>
<p>Public Education & Conferences</p>	<p>Conducts conferences, seminars, workshops, and rule forums.</p> <p>Coordinates and provides technical training on topics such as confined space, ergonomics, lockout/tagout, and excavations.</p> <p>Provides workshops covering management of basic safety and health programs, safety committees, accident investigation, and job safety analysis.</p> <p>Manages the Safety and Health Education and Training Grant Program, which awards grants to industrial and labor groups to develop training materials in occupational safety and health for Oregon workers.</p>

For more information, contact the OR-OSHA office nearest you:

<http://www.orosha.org/contactus.html>

Safety

Safety is the responsibility of the employer. Though a business may think they have told their employees how to be safe, the employer's actions and enforcement procedures are vital in maintaining a safe work place and jobsite

Oregon OSHA governs workplace safety in Oregon and there are many areas of concern that a landscape contracting business must pay attention to in order to be in compliance with the laws that govern workplace safety. OR-OSHA has publicized a pamphlet entitled Information for the Landscaping Professional (which has been incorporated onto this manual) which outlines many of the rules for working in the landscape profession including construction and maintenance.

Some areas of safety the Board feels are vital are "briefly" covered in the publication and though your business is required to comply with all laws governing workplace safety, the Board has chosen to include some specific safety information in this manual.

First Aid

Medical Services and First Aid

(a) The employer shall insure the availability of medical personnel for advice and consultation on matters of occupational health.

(b) Provisions shall be made prior to commencement of the project for prompt medical attention in case of serious injury.

(c) In the absence of an infirmary, clinic, hospital, or physician, that is reasonably accessible in terms of time and distance to the worksite, which is available for the treatment of injured employees, a person who has a valid certificate in first aid training from the U.S. Bureau of Mines, the American Red Cross, or equivalent training that can be verified by documentary evidence, shall be available at the worksite to render first aid.

- First aid supplies shall be easily accessible when required.
- The contents of the first aid kit shall be placed in a weatherproof container with individual sealed packages for each type of item, and shall be checked by the employer before being sent out on each job and at least weekly on each job to ensure that the expended items are replaced.

(d) Proper equipment for prompt transportation of the injured person to a physician or hospital, or a communication system for contacting necessary ambulance service, shall be provided.

Noise

General Requirements

An employer must have in place an effective hearing conservation program whenever employee noise exposures equal or exceed an 8-hour Time Weighted Average (TWA) of 85 decibels measured on the A-scale (85 dBA). A TWA of 85 dBA corresponds to a noise dose of 50%, also called the action level.

Employers must provide protection against the harmful effects of noise when employees are exposed to excessive noise levels (exceeding a TWA of 85 dBA) on the job. If you must raise your voice or shout to be heard above the noise in the workplace, this rule may apply. The following is a summary of the major sections of the rules.

Noise Monitoring

Conduct noise monitoring; include all employees affected by noise exceeding 85 dBA, TWA. Noise dosimetry is a method used to measure noise exposure. Not all employees need to be sampled; however, the noise monitoring must be representative of each affected employee's job. The monitoring should be designed to identify employees for inclusion in a Hearing Conservation Program. All employees must be notified of noise monitoring results that exceed 85 dBA, TWA.

Noise Controls

If noise levels exceed a TWA of 90 dBA, all feasible measures must be taken to reduce the noise exposure of employees to below 90 dBA. Whenever feasible engineering, administrative, or work-practice controls can be instituted, although insufficient to reduce exposure below the PEL, they shall be required in conjunction with personal protective equipment (PPE) to reduce exposure to the lowest practical level.

A Hearing Conservation Program

A hearing conservation program must be implemented for all employees exposed to noise levels above a TWA of 85 dBA. These five basic components comprise an effective Hearing Conservation Program:

- Exposure Monitoring
- Audiometric Testing
- Hearing Protection

- Employee Training
- Recordkeeping

Audiometric Testing



Establish and maintain an annual testing program if results from the initial monitoring equal or exceed a TWA of 85 dBA.

Baseline audiograms are required within six months from the date of an employee's first exposure to noise above 85 dBA. Subsequent audiograms are compared to the baseline audiogram to determine hearing loss.

Audiometric tests must be performed and the audiogram evaluated by a licensed or certified audiologist, otolaryngologist, or other physician, or by a certified CAOHC technician.

Before testing employees, advise them to avoid activities that expose them to high levels of noise and to avoid non-occupational exposure (or use hearing protection) within the 14 hours prior to the test.

Compare the employee's annual audiogram to the baseline audiogram. If the comparison shows a standard threshold shift, the employer must either accept the results or retest the employee within 30 days.

Repeat the hearing test annually for all employee exposures over 85 dBA.

Follow-up Procedures

Within 21 days of receiving the report, notify, in writing, each employee whose audiogram shows a **standard threshold shift (STS)**. Employees with a documented hearing loss must be fitted with hearing protectors, trained in their use and care, and required to use them. Employees who were already using hearing protectors must be refitted and retrained. Some employees may need to be referred to a qualified specialist for additional evaluation.

Standard Threshold Shift (STS)

A STS is a change in hearing, or loss, compared to the baseline of an average of 10 dB or more at 2000, 3000, and 4000 Hertz in either ear.

Employees who show an STS and are exposed to a TWA of 85 dBA or above, and employees exposed above 90 dBA, must wear protectors on the job.

Recordkeeping and Reporting

See OAR 437-001-0700(11), Recordkeeping and Reporting, for occupational hearing loss recording criteria (OSHA 300 log).

Hearing Protectors

Provide a variety of hearing protectors at no cost to the employees. Ensure proper initial fitting and correct use of all hearing-protection devices.

Hearing Protector Attenuation

Hearing protectors must attenuate (reduce) noise levels to a TWA of 90 dBA, or to 85 dBA for employees who have had a STS.

Training Program

Annually train employees in the Hearing Conservation Program on the following:

1. The effects of noise on hearing.
2. The purpose of hearing protection.
3. The advantages and disadvantages of various types of hearing protection.
4. Selection, use, and care of hearing protection.
5. The purpose of audiometric testing.

Pesticide Safety

Employers must provide information to pesticide handlers that describe appropriate personal protective equipment, hazards, mixing and application procedures, and first aid for exposure.

Pesticide labels and material safety data sheets include important information such as personal protective equipment requirements, first aid, and proper handling methods.

Employers must consider weather conditions such as temperature and wind in determining if it is safe for handlers to apply pesticides.

Employees must clean up spills promptly to avoid future exposures.

Personal Protective Equipment

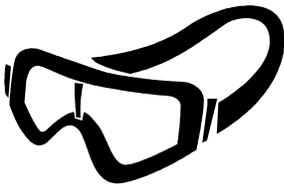
Employers must assess their workplaces to determine if there are hazards that require employees to use personal protective equipment (PPE). They must document, in writing, the date of the assessment and who performed it. Employers must provide their employees with the appropriate PPE and require them to use it.

Before they use their PPE, employees must be trained so that they know how to use and maintain it properly. Employers must also keep records of employees who received training that include the employee's name, the type of training, and the training date.

High-visibility Garments

Employees who work where they could be struck by motor vehicles must wear highly visible upper-body garments that contrast sufficiently with the surroundings so that they stand out. During the evening, employees must wear reflective material visible from all sides for 1,000 feet.

Eye and Face Protection



Employees must use eye or face protection when they are exposed to flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases, or vapors.

Employees who wear prescription lenses must use eye or face protection that can be worn over the lenses without disturbing the proper position of the lens.

Employees who use lasers must have laser safety goggles that protect them from the specific wavelength of the laser and the laser's energy.

Respiratory Protection

Employers whose employees are exposed to respiratory hazards that cannot be controlled with engineering controls must implement comprehensive written respiratory programs. Programs must include the following:

- procedures for selecting respirators
- medical evaluations for employees required to use respirators
- fit-testing procedures for tight-fitting respirators
- procedures for proper use of respirators in emergencies
- procedures and schedules for cleaning, disinfecting, storing, and inspecting respirators
- training employees in the proper use of respirators, including putting on, removing, and maintaining them

Employers must provide respirators, training, and medical evaluations at no cost to employees.

Head Protection

Employees must wear hardhats if they work in areas where they could be struck in the head from falling or flying objects. Hardhats must meet the specifications in American National Standards Institute, Z89.1-1969.

Foot Protection

Employees must use protective footwear when they work in areas where there is danger of a foot injury.

Hand Protection

Employees must use appropriate hand protection when they handle hazardous substances or work with materials that could cause severe cuts, burns, or abrasions.

Equipment

Rollover Protective Structures (ROPS) For Material Handling Equipment.

(a) Coverage.

(1) This section applies to the following types of material handling equipment: To all rubber-tired, self-propelled scrapers, rubber-tired front-end loaders, rubber-tired dozers, wheel-type agricultural and industrial tractors, crawler tractors, crawler-type loaders, and motor graders, with or without attachments, that are used in construction work. This requirement does not apply to side-boom pipe-laying tractors.

(2) The promulgation of specific standards for rollover protective structures for compactors and rubber-tired skid-steer equipment is reserved pending consideration of standards currently being developed.

(b) Equipment manufactured on or after September 1, 1972. Material handling machinery described in paragraph (a) of this section and manufactured on or after September 1, 1972, shall be equipped with rollover protective structures which meet the minimum performance standards prescribed in §§1926.1001 and 1926.1002, as applicable.

(c) Equipment manufactured before September 1, 1972.

(1) All material handling equipment described in paragraph (a) of this section and manufactured or placed in service (owned or operated by the employer) prior to September 1, 1972, shall be fitted with rollover protective structures no later than the dates listed below:

(i) Machines manufactured on or after January 1, 1972, shall be fitted no later than April 1, 1973.

(ii) Machines manufactured between July 1, 1971, and December 31, 1971, shall be fitted no later than July 1, 1973.

(iii) Machines manufactured between July 1, 1970, and June 30, 1971, shall be fitted no later than January 1, 1974.

(iv) Machines manufactured between July 1, 1969, and June 30, 1970,

shall be fitted no later than July 1, 1974.

(v) Machines manufactured before July 1, 1969: Reserved pending further study, development, and review.

(2) Rollover protective structures and supporting attachment shall meet the minimum performance criteria detailed in §§1926.1001 and 1926.1002, as applicable or shall be designed, fabricated, and installed in a manner which will support, based on the ultimate strength of the metal, at least two times the weight of the prime mover applied at the point of impact.

(i) The design objective shall be to minimize the likelihood of a complete overturn and thereby minimize the possibility of the operator being crushed as a result of a rollover or upset.

(ii) The design shall provide a vertical clearance of at least 52 inches from the work deck to the ROPS at the point of ingress or egress.

(d) Remounting. ROPS removed for any reason, shall be remounted with equal quality, or better, bolts or welding are required for the original mounting.

(e) Labeling. Each ROPS shall have the following information permanently affixed to the structure:

- (1) Manufacturer or fabricator's name and address;
- (2) ROPS model number, if any;
- (3) Machine make, model, or series number that the structure is designed to fit.

(f) Machines meeting certain existing governmental requirements. Any machine in use, equipped with rollover protective structures, shall be deemed in compliance with this section if it meets the rollover protective structure requirements of the State of California, the U.S. Army Corps of Engineers, or the Bureau of Reclamation of the U.S. Department of the Interior in effect on April 5, 1972. The requirements in effect are:

- State of California: Construction Safety Orders, issued by the Department of Industrial Relations pursuant to Division 5, Labor Code, §6312, State of California.
- U.S. Army Corps of Engineers: General Safety Requirements, EM-385-1-1 (March 1967).
- Bureau of Reclamation, U.S. Department of the Interior: Safety and Health Regulations for Construction. Part II (September 1971).

Hazard Communication

The use of chemicals and pesticides, which includes but is not limited to insecticides, miticides, fungicides, herbicides, and rodenticides, is a disputed topic in the landscape industry. Some choose to not use them, others do and their use continues to play a significant role in the preparation for, installation of and maintenance of landscaping work in Oregon. Whether the landscape contracting business uses fertilizers, low hazard chemicals, or those that are considered dangerous, it is vital that the business know how to properly use and store these chemicals. Training of employees and obtaining the proper Oregon license for the application of these chemicals is the responsibility of the business owner or management of the business.

The pesticide division of the Department of Agriculture along with the Occupational Safety and Health Administration regulates the use and application of chemicals for the landscape industry and other chemical users. If the landscape contracting business that you own or manage stores or applies pesticides make sure the proper licensing for pesticide application is obtained for the business through the Oregon Department of Agriculture: Pesticides Division 635 Capitol Street, Salem, OR 97301, pestx@oda.state.or.us.

What Is a Hazardous Chemical?

OR-OSHA's hazard communication rule, 1910.1200, defines a hazardous chemical as "any element, chemical compound, or mixture that is a physical hazard or a health hazard."

Chemicals that are physical hazards are unstable and, when handled improperly, can cause fires or explosions. A chemical that is a physical hazard has one of the following characteristics:

- It's a combustible liquid.
- It's a compressed gas.
- It's explosive.
- It's flammable.
- It's water-reactive.
- It starts or promotes combustion in other materials.
- It can ignite spontaneously in air.

Chemicals that are health hazards can damage an exposed person's tissue, vital organs, or internal systems. Generally, the higher the chemical's toxicity, the lower the amount or dose necessary for it to have harmful effects. The effects vary from person to person, ranging from temporary

discomfort to permanent damage, depending on the dose, the toxicity, and the duration of exposure to the chemical.

Health effects range from short-duration symptoms that often appear

Hazardous chemicals can have short-term and long-term effects.

immediately (acute effects) to persistent symptoms that usually appear after longer exposures (chronic effects). Health effects can

be classified by how they affect tissue, vital organs, or internal systems:

- Carcinogens cause cancer.
- Corrosives damage living tissue.
- Hematopoietic agents affect the blood system.
- Hepatotoxins cause liver damage.
- Irritants cause inflammation of living tissue.
- Nephrotoxins damage cells or tissues of the kidneys.
- Neurotoxins damage tissues of the nervous system.
- Reproductive toxins damage reproductive systems, endocrine systems or a developing fetus.
- Sensitizers cause allergic reactions.

A chemical is hazardous if it is listed in one of the following documents:

- OR-OSHA Division 2, Subdivision Z safety and health rules, *Toxic and Hazardous Substances*; Division 3, Subdivision Z, *Toxic and Hazardous Substances* (Construction); Division 4, Subdivision Z, *Chemical/Toxins* (Agriculture)
- *Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment* (latest edition). Published by the American Conference of Industrial Hygienists (ACGIH)
- *The Registry of Toxic Effects of Chemical Substances*, published by the National Institute for Occupational Safety and Health (NIOSH)

The key to handling a hazardous chemical safely is to know its properties and be able to answer questions like:

- Is it explosive or toxic?
- Under what conditions is it explosive?
- How is the chemical toxic?
- What are the symptoms of toxicity and how fast do they appear?
- What kinds of clothing or equipment can protect employees from it?
- What should employees do if it's on fire?

For comprehensive summaries about most hazardous substances, see www.atsdr.cdc.gov.¹⁰

The Essence of Hazard Communication

The essence of hazard communication is a warning. We use thousands of chemical products throughout our lives, at home and at work. But most of us would be hard-pressed to distinguish safe products from hazardous ones without a warning—the familiar skull and crossbones, for example. The warning tells us the product is hazardous, that it can harm us if we use it improperly.

In the workplace, hazard communication ensures that workers who may be exposed to hazardous chemicals know about the chemicals' hazards and understand how to protect themselves from exposure.

The Hazard Communication Process

Hazard communication begins when chemical manufacturers and importers evaluate their products to determine each product's chemical hazards.

Next, they prepare a material safety data sheet—known by the abbreviation MSDS—for each product. An MSDS includes detailed information about the product's hazards. Manufacturers and importers must include an MSDS and a warning label with each container of product that they ship to a customer.

The part of the process that affects your workplace is the written hazard communication plan. The plan, which you produce, must identify hazardous chemicals at your workplace and describe how you will use material safety data sheets, warning labels, and training to protect employees and keep them informed about the product's chemical hazards.

Hazard Communication Rules

OR-OSHA's hazard communication rules affect all Oregon workplaces that have employees who may be exposed to hazardous chemicals. The purpose

Hazard communication warns us that a chemical product is hazardous and tells us how the product can harm us if we use it improperly.

of these rules is to ensure that workers who use hazardous chemicals know why the chemicals can harm them and *how* to handle the chemicals safely.

These are the general steps in the hazardous communication process:

1. Chemical manufacturers or importers determine if the chemicals they produce are hazardous.
2. The manufacturers or importers document the chemical's hazards on material safety data sheets (MSDS's).

3. Each hazardous chemical that is sold to a customer must include an MSDS and a warning label that identifies the chemical and warns of its hazards.
4. Your workplace purchases hazardous chemical products from a manufacturer, distributor, or importer.
5. You prepare a written hazard communication plan that identifies the hazardous chemicals your employees may be exposed to and describes how you will use MSDS's, container warning labels, and training to keep them informed.

Preparing a Written Hazard Communication Plan

A hazard communication plan identifies the hazardous chemicals at your workplace and describes how you will use material safety data sheets, container warning labels, and training to inform

You need to prepare a written hazard communication plan.

employees. You must prepare a written hazard communication plan if employees at your workplace use or may be exposed to hazardous chemicals.

The plan must be specific to your workplace and include the following parts:

The part	What to do
Hazardous chemical list	<ul style="list-style-type: none"> • List the hazardous chemicals to which employees may be exposed in your workplace. The list must include hazardous chemicals in all forms – liquids, solids, gases, vapors, fumes, and mists. If the chemical is hazardous and an employee could be exposed to it, include it on the list. • Match each chemical on the list with its material safety data sheet. • Update the list to keep it current.
Labels and other forms of warning	Describe how you will ensure that each hazardous chemical container has a label that identifies the chemical and has an appropriate hazard warning.
Material safety data sheets	Describe where you will keep material safety data sheets and whom to contact if one is missing or incomplete.
Employee training	Describe how you will train employees about chemical hazards to which they may be exposed; include how employees can protect themselves, how to read warning labels and material safety data sheets, and where employees can review material safety data sheets.
Hazardous non-routine tasks	Describe how you will inform employees about hazardous chemicals to which they may be exposed during non-routine tasks; identify the tasks and the information that you will provide.
Hazardous chemicals in pipes	Describe how you will inform employees about hazardous chemicals in pipes that run through their work areas.
Information for contractors	Describe how you will inform contractors' employees about hazardous chemicals to which they may be exposed at your workplace and what they can do to protect themselves.

Using Material Safety Data Sheets

A material safety data sheet contains detailed information about a hazardous chemical product's health effects and physical and chemical characteristics and safe practices for using it.

Chemical manufacturers and importers must prepare a material safety data sheet for each hazardous chemical product they produce. Distributors are responsible for ensuring that you have a material safety data sheet for each hazardous chemical product they sell to you.

You must have a current material safety data sheet for each product.

What to do if you use hazardous chemical products at your workplace

Employees must be able to review material safety data sheets in their work area at any time. You can keep material safety data

sheets in a notebook or on a computer; however, employees must be able to obtain the information immediately in an emergency.

One person should be responsible for managing all the material safety data sheets at your workplace. The person should ensure that the list of hazardous chemicals is current, that the identity of each chemical on the list matches its identity on its material safety data sheet, and that incoming hazardous-chemical containers have material safety data sheets.

When you no longer use a hazardous chemical, you don't need to keep its material safety data sheet. However, you do need to keep a record for at least 30 years of the chemical's identity, locations, and the years in which it was used in your workplace. For more information about record-keeping requirements, see OSHA Standards, 29 CFR, Part 1910.1020(d)(ii)(B), "Access to employee exposure and medical records."

Information Required on Material Safety Data Sheets

Chemical manufacturers and importers must prepare a material safety data sheet for each hazardous chemical product they ship to you. The following information must appear on each sheet.

Required information	Description
Identity of the chemical	Typically, a common chemical name. (The identity of the chemical on the material safety data sheet must match its identity on the container label.)
Physical and chemical characteristics	For example: vapor pressure, flashpoint, and solubility.
Physical hazards	For example: potential for fire, explosion, or reaction with water or other chemicals.

Health hazards	For example: signs and symptoms of exposure, and medical conditions that might be aggravated by exposure.
Primary routes of chemical entry	How the chemical enters the body.
Permissible exposure limit (PEL)	The maximum amount of the chemical that one can be exposed to during an eight-hour work shift.
Carcinogenicity	Based on findings in the National Toxicology Program Annual Report on Carcinogens or the International Agency for Research on Cancer Monographs (latest editions).
Precautions for safe use	How to handle the chemical safely, hygiene and protective practices, and cleanup procedures for spills and leaks.
Control measures	The engineering controls, safe work practices, and personal protective equipment necessary to control exposure.
Emergency and first-aid procedures	How to respond to spills, leaks, contamination, and overexposure.
Preparation date	The date the material safety data sheet was prepared or updated.
Name, address and phone number	Who to contact for more information on the chemical's hazards and emergency-response procedures

Using Container Warning Labels

The purpose of a container warning label is to warn employees about the container's contents and to refer employees to an appropriate material safety data sheet for more information about the chemical's physical and health hazards. Manufacturers, importers, and distributors must ensure that each hazardous chemical product sold to you has a label that includes the chemical's identity, a hazard warning, and a name and address for additional information about the product.

If you use hazardous chemicals at your workplace, you must ensure that each hazardous chemical container has a legible label, in English, that identifies the chemical and warns of its hazards.

Original containers of hazardous chemicals from a manufacturer, importer, or distributor must have warning labels. Don't remove or deface them.

If you transfer a hazardous chemical from a labeled container to an unlabeled container, label the container.

An Exception for Portable Containers

You don't need to put a *warning* label on a portable container if you use it to transfer a hazardous chemical from a labeled container. However, the chemical in the container must be for immediate use. This means "the hazardous chemical will be under the control of and used only by the person who transfers it from a labeled container and only within the work shift in which it is transferred." See 1910.1200 (c), Definitions.

A warning label must identify the chemical—a common chemical name or a code name is acceptable—and displays a hazard warning such as **DANGER** or the familiar skull and crossbones. In addition, the warning label must also show the following:

There are specific things a warning label must show.

- The identity of the chemical on the label, on its material safety data sheet, and on your hazardous chemical list must match.
- If you're not sure that a hazardous chemical container is properly labeled, contact the manufacturer or supplier.
- Make someone at your workplace responsible for ensuring that all hazardous chemical containers are properly labeled.

Hazard Communication Training Employees

If you have employees who may be exposed to hazardous chemicals, you must inform them about the chemicals and train them when they are hired and whenever they are exposed to a new chemical hazard or a process change. Required employee training covers:

- where to find and how to read the hazard communication plan, the list of hazardous chemicals, and material safety data sheets
- the operations in which hazardous chemicals are used
- the physical and health hazards of hazardous chemicals used by employees
- the meaning of warning labels on hazardous chemical containers and on pipes that contain hazardous substances
- how to recognize emergencies involving hazardous chemicals
- how to use personal protective equipment

Choose a person as trainer who understands the above topics and has the skills to conduct the training. It's important that employees are taught which hazardous chemicals they may be exposed to and understand how to use

the information on container warning labels and material safety data sheets to protect them.

Use a form such as this one to document that an employee has been trained about hazardous chemicals used in the workplace as required by OR-OSHA hazard communication rules.

I have been informed about the hazardous chemicals that I may be exposed to during my work and I have received training on the following topics:

- An overview of the requirements in OR-OSHA's hazard communication rules.
- Hazardous chemicals present in the workplace.
- The written hazard communication plan.
- Physical and health effects of the hazardous chemicals.
- Methods to determine the presence or release of hazardous chemicals in the work area.
- How to reduce or prevent exposure to these hazardous chemicals through use of exposure controls/work practices and personal protective equipment.
- Steps we have taken to reduce or prevent exposure to these chemicals.
- Emergency procedures to follow if exposed to these chemicals.
- How to read labels and review material safety data sheets.

Note to employee: This form becomes part of your personnel file; read and understand it before signing.

Employee: _____ Date: _____

Trainer: _____ Date: _____

Call Before You Dig



When you are going to excavate on a person's property, the landscape contracting business my request a "locate" to determine where buried utilities are located.

This section contains some of the common questions about excavating.

Q. It is my understanding that I only have to call for locates if I dig more than 12 inches deep. Is that correct?

A. No. The definition of excavation is very clear: any operation in which earth, rock or other material is moved or displaced by any means. That definition includes backhoes, trenchers, augers, drilling machines, blasting, graders, bulldozers, etc. There are a few, very limited exemptions to this rule. Responding to an emergency, road or ditch maintenance less than 12 inches in depth that does not lower the original grade or original ditch flow line and tilling of the soil for agricultural purposes conducted on private property that is not within the boundaries of a recorded right-of-way or easement for underground facilities. If those exact conditions cannot be met, then a locate request must be made.

The confusion about the "less than 12 inch depth" for a locate request comes from the exemption for homeowners. However, even a homeowner must meet four specific requirements to get the exemption. The four requirements are:

1. The excavator is a tenant or an owner of private property.
2. The excavation is on private property of that owner or tenant.
3. The excavation is less than 12 inches deep.
4. The excavation is not within an established easement.

All four of these conditions must be met or the homeowner or tenant must call for locates.

Other than the exemptions discussed above, any person performing excavation activities must call for locates, regardless of depth.

Q. Do I need to call for a locate even if I am digging in private property?

A. Yes. Even tenants or owners of private property planning to dig, must call for locates as required by Oregon law. These laws can be found in ORS 757.542 -562 and 757.993 and in Oregon Administrative Rules, Chapter 952.

Q. You mean, even if I am planting a rose bush I have to call?

A. Yes! Buried facilities are located everywhere and they may run right through your yard even though you are not aware of it. Make the free call. Its good insurance and you will feel better knowing what may be buried on the property.

Q. What is the penalty if I don't call for a locate?

A. According to 757.993, the penalty for violation of utility excavation notification provisions are:

(1) Except as provided in subsection (2) of this section and in addition to all other penalties provided by law, every person who violates or who procures, aids or abets in the violation of any rule of the Oregon Utility Notification Center shall incur a penalty of not more than \$1,000 for the first violation and not more than \$5,000 for each subsequent violation.

(2) In addition to all other penalties provided by law, every person who intentionally violates or who intentionally procures aids or abets in the violation of any rule of the Oregon Utility Notification Center shall incur a penalty of not more than \$5,000 for the first violation and not more than \$10,000 for each subsequent violation.

Chapter 9: Pesticide Law

What this chapter covers:

- The requirements for pesticide licenses.
- The types of pesticide licenses.

Do You Need a Pesticide License?



Landscape construction frequently requires the application of pesticides in the preparation of the property for landscaping work and in maintaining the landscape after the installation. If your business is going to apply pesticides, licensing with the Department of Agriculture may be required. The information provided in this manual is not to be taken as the final authority whether or not licensing is required but should be used as a guide to determine if there is a potential need for the license. Contact the Department of Agriculture for a final determination for your business.

You need a pesticide license when:

- buying or applying restricted-use pesticides
- applying pesticides (including herbicides) to someone else's property
- applying pesticides as a public employee while using a fuel or electric-powered sprayer or spreader
- giving advice on how to use a restricted-use pesticide or which restricted-use pesticide will work best

You do not need a pesticide license when:

- applying a pesticide on a person's owned or leased property (no restricted-use pesticide applications)
- applying a pesticide on property owned or leased by an employer while acting as an employee (no restricted-use pesticide applications)
- giving advice on general-use pesticides
- performing structural pest inspections for individuals buying or selling a home (see special situations page)

You also do not need a pesticide license to apply pesticides while doing lawn maintenance, but only if all of the following are true:

- The applications are made to small residential lawns or gardens only (vs. applications to commercial properties).
- You are not using restricted-use pesticides.
- You are not using fuel or electric-powered sprayers or spreaders.
- The use of pesticides is not stated in your advertisements, contracts, or invoices.

Types of Pesticide License

There are several types of pesticide license.

A commercial pesticide applicator's license is issued to an individual. To obtain a commercial pesticide applicator's license, you must pass tests on laws and safety as well as at least one of the following testing

- Agriculture Herbicide
- Agriculture Insecticide and Fungicide
- Agriculture Livestock Pests
- Agriculture Soil Fumigation
- Agriculture Vertebrate Pests
- Aquatic
- Demonstration and Research
- Forest; I.I.H.S. General Pest Control
- I.I.H.S. Moss Control
- I.I.H.S. Space Fumigation
- I.I.H.S. Structural Pest Control
- I.I.H.S. Wood Treatment
- Marine Fouling Organism Control
- Ornamental and Turf Herbicide
- Ornamental and Turf Insecticide and Fungicide
- Public Health
- Right-of-Way
- Regulatory Weed Control (Public Applicators and Trainees only)
- Seed Treatment

A commercial pesticide applicator's license lets you:

- use general or restricted-use pesticides on someone else's property, but only if employed by a company carrying the commercial operator license
- use restricted-use pesticides on your own (or your employer's) non-agricultural land
- supervise a licensed commercial pesticide trainee
- tell someone how to use a restricted-use pesticide or which restricted-use pesticide will work best (limited to the categories on your license)

A commercial operator license is issued to a company. Obtaining this license is done by application, with no test required. It lets a business use pesticides on someone else's property. For corporations, at least one employee must be licensed as a commercial pesticide applicator. For sole proprietors or partnerships, the owner or at least one partner must be licensed as a commercial pesticide applicator. The business must also show proof of insurance for pesticide applications and the categories must match the type of pesticide work that will be done.

This license cannot be issued to a public agency.

A pesticide consultant license is issued to an individual. To obtain a pesticide consultant license, you must pass a test on pesticide consulting. A pesticide consultant license lets you tell someone how to use a restricted-use pesticide or which restricted-use pesticide will work best.

The demonstration and research option lets you create demonstration plots or do research on pesticides.

Note: If you have a pesticide consultant license, you may obtain the private pesticide applicator license without passing the private pesticide applicator test.

A pesticide dealer license is issued to a company. Obtaining this license is done by application, with no test required. It lets a business sell restricted-use pesticides to licensed pesticide users.

A private applicator license is issued to an individual. To obtain a private applicator license, you must pass the private pesticide applicator test. It lets you use restricted-use pesticides on agricultural land, including farmland, ranches, forestland, nurseries, and orchards. It also lets you supervise a co-worker or employee applying a restricted-use pesticide. The private applicator license covers all agricultural pesticide uses.

A public applicator license is issued to an individual. To obtain a public applicator license, you must pass tests on laws and safety as well as at least one testing category. In addition, you must work for a state or federal agency, county, city, municipality, irrigation district, railroad, public utility,

telephone company, school, or other public employer. The public applicator license lets you:

- use restricted-use pesticides for your public employer
- use fuel or electric-powered sprayers or spreaders
- tell someone how to use restricted-use pesticide or which restricted-use pesticide will work best (limited to categories on your license)
- supervise a licensed public pesticide trainee

The categories must match the type of pesticide work that will be done.

A trainee license is issued to an individual. There are two types of trainee license: the immediately supervised pesticide trainee license and the directly supervised pesticide trainee license. Both types can be either a public or a commercial trainee license. They also allow you to use pesticides while supervised by a licensed commercial or public pesticide applicator. In addition, the trainee and supervisor categories must match the type of pesticide work that will be done.

The immediately supervised pesticide trainee license requires the supervisor to be on site at all times during spraying and within five minutes travel time from trainee. Obtaining this license is done by application, with no test required.

The directly supervised pesticide trainee license only requires the supervisor to be able to help the trainee by phone or radio during the application, but the supervisor does not need to be on site. To obtain this license, you must pass the directly supervised trainee test.

Appendix A: Specific Laws

What this appendix covers:

- Specific Oregon regulations for landscape contracting businesses and professionals.



There are some specific laws that the LCB wants to address in this manual that are often overlooked and not complied with by many landscape contracting businesses in Oregon. The LCB is bringing them to your attention to help decrease the unpleasant encounters between the landscape contracting business and the Board.

ORS 671.525 APPLICANT FOR LANDSCAPE CONTRACTING BUSINESS LICENSE REQUIRED TO BE AN INDEPENDENT CONTRACTOR; CLASSES OF LICENSURE.

- (1) An applicant for a landscape contracting business license must qualify as an independent contractor, under ORS 670.600, to be licensed with the Landscape Contractors Board.
- (2) The Board shall establish two classes of independent contractor licensees:
 - (a) The nonexempt class is composed of the following entities:
 - (A) Sole proprietorships, partnerships, corporations and limited liability companies with one or more employees; and
 - (B) Partnerships, corporations and limited liability companies with more than two partners, corporate officers or members if any of the partners, officers or members are not part of the same family and related as parents, spouses, siblings, children, grandchildren, sons-in-law or daughters-in-law.
 - (b) The exempt class is composed of all sole proprietorships, partnerships, corporations and limited liability companies that do not qualify as nonexempt.
- (3) All partnerships, corporations and limited liability companies applying for a landscape contracting business license must have a federal tax identification number.
- (4) If a licensee who qualifies under subsection (2)(b) of this section hires one or more employees, or falls into any of the categories set out in subsection (2)(a)(B) of this section, the licensee is subject to penalties

under ORS 671.997 and must submit proof that the licensee qualifies under subsection (2)(a) of this subsection.

- (5) The decision of the Board that a licensee is an independent contractor applies only when the licensee is performing work of the nature described in ORS 671.520 and 671.530.

Meaning: In order for a landscape contracting business to be granted a license with the LCB, the business must operate as an independent contractor. This means that the business must meet the conditions set out in ORS 670.600 which is discussed earlier in the manual.

ORS 671.530 (6): LANDSCAPE CONSTRUCTION PROFESSIONAL OR LANDSCAPE CONTRACTING BUSINESS LICENSE REQUIRED; USE OF TITLE; SCOPE OF LANDSCAPE CONSTRUCTION PROFESSIONAL LICENSE.

(6) A landscape construction professional is authorized to perform landscaping work only while in the employ of a landscape contracting business licensed and bonded as required by ORS 671.510 to 671.760. If the landscape construction professional is the sole proprietor, the landscape construction professional must also obtain a license as a landscape contracting business.

Meaning: an individual who has passed the examination to become a licensed landscape construction professional must either own or be employed by a licensed landscape contracting business before this person can perform landscaping work. The individual is not the contractor, the business is.

ORS 671.540(1)(q)&(r): APPLICATION OF ORS 671.510 TO 671.760. ORS 671.510 TO 671.760 AND 671.990(2) DO NOT APPLY TO:

- (q) An employee of a licensed landscape contracting business when performing work for the business under the direct supervision of a licensed landscape construction professional.
- (r) An employee of a worker leasing company or temporary service provider, both as defined in ORS 656.850, when performing work for a licensed landscape contracting business under the direct supervision of a licensed landscape construction professional

Meaning: any unlicensed person performing landscaping work as an employee of a licensed landscape contracting business is only exempt from being licensed with the LCB if they are under the "direct" supervision of a licensed landscape construction professional. Even when the individual is employed by the business if the condition of being directly supervised by a licensed landscape construction professional is not met, the employee could be cited for not being licensed (the exemption is not met) and face civil

penalties. It is the responsibility of the business to require direct supervision and the LCB has made a rule to this effect in OAR 808-003-0018

ORS 671.550: AUTHORITY OF BOARD TO INVESTIGATE; CONFIDENTIALITY OF INFORMATION

(1) The State Landscape Contractors Board may inquire into and inspect:

(a) Any services performed or materials furnished by a licensee under ORS 671.510 to 671.710.

(b) The financial records of a person who it reasonably believes is operating in violation of ORS 671.530.

(c) The services performed or materials furnished by a person who it reasonably believes is operating in violation of ORS 671.530.

(2) Except when used for legal action or to determine negligent or improper work under ORS 671.703, the information obtained by an inspection authorized by this section is confidential. However, the Board shall furnish copies of any inspection to the licensee or other person that is subjected to an inspection.

Meaning: This statute give the Board authority to investigate the work a licensee performs and the material the licensee supplies on a project. It also gives the Board authority to investigate the services and financial records of any person who the Board believes is operating as a landscape contracting business without being properly licensed.

ORS 671.555 INVESTIGATION OF PERSON ENGAGED IN LANDSCAPE CONTRACTING BUSINESS; PROCEDURES; ORDERS TO STOP WORK.

(1) The State Landscape Contractors Board may investigate the activities of any person engaged in the landscape contracting business to determine compliance with ORS 671.510 to 671.710.

(2) With the approval of the city or county, the Board may conduct investigations with city or county inspectors, provided that the city or county is reimbursed by the Board for the costs of such investigations.

(3) Any inspector authorized by the Board to determine compliance with the provisions of ORS 671.510 to 671.710 is authorized to require any person who is engaged in any activity regulated by ORS 671.510 to 671.710 to demonstrate proof of compliance with the licensing requirements of ORS 671.510 to 671.710. If a person who is contracting directly with the owner of the property does not demonstrate proof of compliance with the license requirements of ORS 671.510 to 671.710, the inspector shall give notice of noncompliance to the person. The notice of noncompliance shall be in writing, shall specifically state that the person is not in compliance with the licensing requirements of ORS 671.510 to 671.710 and shall provide that unless the person demonstrates proof of

compliance within two days of the date of the notice, the inspector may by order stop all work then being done by the person. The notice of noncompliance shall be served upon the person and shall be served upon or delivered to the owner of each property upon which the person is then performing work under contract. If more than one person is the owner of any such property, a copy of the notice need be given to only one of such persons. If after receipt of the notice of noncompliance the person fails within the two-day period specified in the notice to demonstrate proof of compliance with the registration requirements of ORS 671.510 to 671.710, the inspector is authorized to order the work stopped by notice in writing served on any persons engaged in the activity. Any person so notified shall stop such work until proof of compliance is demonstrated. However, the inspector may not order the work stopped until at least two days after the copies of the notice of noncompliance have been served upon or delivered to the owners.

(4) Notwithstanding subsection (3) of this section, the Board may order work stopped immediately if the landscape contracting business working on a worksite cannot demonstrate that the business has been licensed by the Board at any time within the two years immediately preceding work on the worksite.

(5) The Board has the power to administer oaths, issue notices and subpoenas in the name of the Board, compel the attendance of witnesses and the production of evidence, hold hearings and perform such other acts as are reasonably necessary to carry out its duties under ORS 671.510 to 671.710.

(6) If any person fails to comply with a subpoena issued under subsection (5) of this section or refuses to testify on matters on which the person may be lawfully interrogated, the Board shall compel obedience in the manner provided in ORS 183.440.

Meaning: This statute gives the Board the authority to investigate any activity of any person, licensee or not, engaged in landscape contracting work in Oregon and to subpoena witnesses and compel attendance at hearing and administer oaths. If a person fails to comply with a subpoena the Board can take legal action against the person in court. This statute also allows the Board to work in conjunction with other law enforcement agencies to compel compliance and allows the LCB to issue stop work orders under certain conditions.

ORS 671.563 APPLICANT NOTICE OF UNPAID JUDGMENTS, AWARDS AND ORDERS; RULES.

An applicant for the renewal of a landscape construction professional license or landscape contracting business license shall include in the application to the State Landscape Contractors Board notice of any unpaid court judgment,

arbitration award or administrative agency final order entered or issued in any jurisdiction that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work. The Board may adopt rules that require an applicant to provide additional information regarding a judgment, arbitration award or agency final order described in this section and the status of any appeal or exceptions.

Meaning: Every licensee (individual or business) must at the time of renewal provide the Board with information about any court decision that has been levied against the licensee for the performance of landscaping work (no matter where) and inform the Board how the issue is being resolved before the Board decides to issue or not issue a new license to the licensee.

ORS 671.565 (1)(b): LANDSCAPE CONTRACTING BUSINESS LICENSE REQUIREMENTS; FEES; EMPLOYEES; FILING OF SECURITY; INSURANCE; BASIS FOR INDEPENDENT CONTRACTOR STATUS.

- (1) Each person applying for a landscape contracting business license shall:
(b) Employ at least one person with a landscape construction professional license to supervise the landscaping operation of the business.

Meaning: Every landscape contracting business must have at least one owner or employee who has obtained the landscape construction professional license to supervise the landscape operations of the business. This includes the direct supervision of unlicensed employees of the business. Direct supervision is defined in rule: OAR 808-002-0328.

ORS 671.575(3): LICENSE REQUIRED TO OBTAIN JUDICIAL OR ADMINISTRATIVE REMEDY; EXCEPTION.

- (3) If a landscape contracting business falsely swears to information provided under ORS 671.560 or 671.565 or knowingly violates the provisions of ORS 656.029, 670.600, 671.560 or 671.565, the landscape contracting business may not file a lien, file a claim with the State Landscape Contractors Board or bring or maintain in any court of this state a suit or action for compensation for the performance of any work or for the breach of any contract for work which is subject to ORS 671.510 to 671.760 and 671.997

Meaning: If a landscape contracting business makes false statements on the application; has employees when they state they are exempt and knowingly attempts to not pay worker's compensation; or fails to meet the qualifications for an independent contractor then that business cannot collect for work they have performed nor can they file suit or file a claim against another business for breach of contract or negligent work. If the business wants to get paid then the business needs to make sure there is no fraudulent conduct associated with obtaining the business license or unethical employment activities associated with the business.

ORS 671.578: SUIT FOR DAMAGES FOR MISREPRESENTATION; ATTORNEY FEES.

If any person suffered costs or damages as a result of an individual providing a false or invalid State Landscape Contractors Board number or otherwise misleading a person with respect to licensing with the Board, that person may bring suit in a court of competent jurisdiction to recover damages. The court may award reasonable attorney fees to the prevailing party in an action under this section.

Meaning: If any consumer or other person was damaged because the business falsely represented that the business was licensed by the LCB, court costs and reasonable attorney fees can be awarded to the prevailing party in a court action.

ORS 671.580 LANDSCAPE CONSTRUCTION PROFESSIONAL LICENSE NOT TRANSFERABLE.

A landscape construction professional license issued pursuant to ORS 671.560 is a personal privilege and is not transferable

Meaning: A licensed landscape construction professional cannot allow another person to use or buy the individual license.

ORS 671.600: NEW LICENSE REQUIRED UPON CHANGE OF OWNERSHIP; NOTIFICATION OF CHANGE OF ADDRESS.

(1) A new landscape contracting business license shall be required whenever there is a change in ownership, irrespective of whether the business name is changed. As used in this subsection, "change in ownership" does not include a change in the holders of corporate stock.

(2) If a licensee moves to another location, re-licensing is not required but the licensee must notify the State Landscape Contractors Board promptly of the new address.

ORS 671.603(1): PERSONS REQUIRED TO GIVE NOTIFICATION OF CHANGE OF ADDRESS; COMMUNICATIONS DELIVERED TO LAST-KNOWN ADDRESS.

(1) A landscape construction professional or person operating as a landscape contracting business shall notify the State Landscape Contractors Board of a change of address for the professional or business that occurs while the professional or business is licensed by the Board or within one year after a license expires. The landscape construction professional or landscape contracting business shall ensure that the Board receives notice of the change of address no later than the 10th day after the change of address occurs.

Meaning: Licensees, both individual and business, must notify the Board within 10 calendar days after the change of address occurs. Failure to do so can result in a civil penalty for the landscape contracting business [**OAR 808-005-0020**].

ORS 671.605 Effect of change in partners or corporate officers.

A partnership or corporation licensed as a landscape contracting business shall notify the State Landscape Contractors Board immediately upon any change in partners or corporate owners or in the percentage of an ownership interest in the landscape contracting business. Upon a change in partners, a licensed partnership immediately shall apply for a new license and pay to the Board the fee required by ORS 671.650 for an original license.

Meaning: If a business entity changes ownership, except for corporations, then the business must apply for a new business license. The effect of a business changing from a sole proprietor to a corporation means there is a change in the ownership of the business and a new "baby" is born and a new license is required. The notification of address change is addressed more specifically in ORS 671.603 below.

ORS 671.610(1)(o)(p): GROUNDS FOR SANCTIONS AGAINST LICENSE; SUSPENSION OR REFUSAL OF LICENSE WITHOUT PRIOR HEARING; HEARING; EFFECT OF REVOCATION; CIVIL PENALTY.

(1) In addition to any civil penalty assessed under ORS 671.997, the State Landscape Contractors Board may suspend, revoke or refuse to issue or renew the license of a landscape construction professional or landscape contracting business that does any of the following:

(o) Engages in conduct as a landscape construction professional or landscape contracting business that is dishonest or fraudulent or that the Board finds injurious to the welfare of the public.

(p) Fails to comply with the requirements of ORS 652.120.

Meaning: For paragraph (1)(o) above, if the Board determines that an individual licensee or licensed business entity is falsely advertising, is taking money without performing work, fails to pay suppliers when the money has been received by the business, fails to pay minimum wages or overtime wages, fails to comply with employment laws, fails to pay a fine issued by another state agency or the federal government, writes bad checks, etc., [**see OAR 808-002-0330**] the Board can suspend the license and issue civil penalties.

For paragraph (1) (p) above, if the Board determines that a landscape contracting business has employees and does not establish regular payday; pay intervals; or an agreement to pay wages at future date the Board can suspend the license and issue civil penalties.

ORS 671.613: SANCTION FOR FAILURE TO COMPLY WITH CERTAIN LAWS.

(1) The failure of a landscape contracting business to comply with the provisions of this section and ORS 279C.800 to 279C.870, 656.021, 657.665, 670.600, 671.520, 671.525, 671.530 and 671.575 or to be in conformance with the provisions of ORS 279.835 to 279.855 or ORS chapter 279A, 279B, 279C, 316, 571, 656 or 657 is a basis for suspension of the landscape contracting business license, revocation of the landscape contracting business license, refusal to issue or reissue a landscape contracting business license, assessment of a civil penalty as set forth in ORS 671.997 or a combination of these sanctions.

Meaning: Failure of the landscape contracting business to properly follow the laws surrounding public contracts (prevailing wage) and to abide by the employment laws, specifically workers compensation, unemployment tax, and payroll tax requirements can result in the suspension of the landscape contracting business license and the assessment of a civil penalty.

ORS 671.625: MINIMUM STANDARDS FOR CONTRACTS AND BILLINGS; RULES; COMPLIANCE; EFFECT OF NONCOMPLIANCE.

(1) The State Landscape Contractors Board shall by rule adopt minimum standards for written contracts and billings of the landscape contracting businesses. The standards shall set forth requirements for information that must be contained in contracts and billings. The information required shall be any information the Board determines is necessary to provide protection for consumers of the services and materials provided by landscape contracting businesses.

(2) Work by a landscape contracting business subject to ORS 671.510 to 671.710 shall only be performed subject to a written contract. Any contract or billing for such work must conform to the standards adopted under subsection (1) of this section.

(3) A contract that does not substantially comply with this section may not be enforced by a landscape contracting business in any court or other proceedings within this state

Meaning: If landscaping work is done by a landscape contracting business without a written contract or if the written contract does not substantially meet the standards as set forth **in OAR 808-002-0020** the business cannot collect from the consumer, nor can the landscape contracting business enforce the contract in any court within the state of Oregon. This doesn't mean that the consumer can't enforce the contract; it is purely a consequence for the landscape contracting business. This is a very rigid requirement for landscape contracting businesses.

OAR 808-003-0010 ADVERTISING

(1) All written advertising, except telephone and internet directory line listings, shall include the landscape contracting business license number.

(2) Advertising shall include, but not be limited to:

(a) Newsprint classified advertising and newsprint display advertising for work subject to ORS 671 .510 through 671 .710;

(b) Telephone or internet directory space ads, display ads and line listings;

(c) Business cards;

(d) Business flyers;

(e) Business letterhead;

(f) Business signs at construction sites; and

(g) Websites.

(3) No person shall advertise under the heading of "landscape construction professional, landscape contractor, landscape contracting business" or any other heading that would lead any person to believe the business is a landscape contracting business in any advertising media unless the person holds an active landscape contracting business license.

Meaning: All written advertisement must include the 4 digit landscape contracting business number in the advertisement. The law allows for an exception from this requirement in telephone and internet directory line listings where no other information about the business is given. The law also specifies that the heading of "landscape contractor" or any other heading that indicates the business is a landscape contracting business requires an active landscape contracting business license with the LCB. Failure by a landscape contracting business to include this 4-digit number can result in civil penalties up to \$500.

OAR 808-003-0018: EMPLOYMENT, CHANGE OF LICENSE PHASE, SUPERVISORY RESPONSIBILITIES

(1) If a landscape contracting business employs only one licensed landscape construction professional, that licensed landscape construction professional must hold a license covering each phase of landscaping work that the business offers and must be on the payroll each hour or meet the salary test for salaried, exempt employees during the time the landscape contracting business is performing landscaping work related to the landscape construction professional's phase of license.

(2) If a landscape contracting business employs more than one licensed landscape construction professional the combined licenses must cover each phase of landscape contracting that the business offers and the licensed

landscape construction professionals must be on the payroll each hour or meet the salary test for salaried, exempt employees during the time the landscape contracting business is performing landscaping work related to each landscape construction professional's phase of license.

In conjunction with the above rule, see:

OAR 808-003-0040: Limitation of Service by License

(1) A licensed landscape contracting business shall perform only those phases of landscaping work for which its owners or employees who are landscape construction professionals are licensed.

(2) The landscaping work a licensed landscape contracting business offers to perform shall be limited to the following:

(a) An all phase license holder is entitled to perform all areas of landscaping work, plus the installation of backflow prevention assemblies unless, in lieu of Backflow Prevention, the landscape construction professional has signed an agreement with the Board prior to April 30, 1996 stating that the contractor will not perform Backflow Prevention work;

(b) An irrigation; no backflow limited license holder may only perform irrigation functions;

(c) A sod and seed limited license holder may only perform grass seed planting or sod laying;

(d) A tree limited license holder may only install new or transplant trees;

(e) A standard limited license holder may perform all areas of landscaping work except irrigation and the installation of backflow assemblies;

(f) An irrigation plus backflow license holder may perform only irrigation and the installation of backflow assemblies.

(g) A probationary All Phase Plus Backflow license holder may perform all areas of landscape contracting, provided all landscaping work on any given landscape job as defined in OAR 808-002-0495 must not exceed a total contract amount of \$15,000,

(h) If a landscape contracting business holds a probationary license and two or more claims are filed against the landscape contracting business within a 12 month period the owner or employee who holds the probationary license and is providing supervision as described in ORS 671.540(15) and (16) or 671.565(1)(b) may be required to take specific continued education hours (CEH) as required by the Board that are related to the claim issues. Failure to complete the required CEH within the specified time frame may result, in addition to any civil penalties, revocation, refusal to renew or suspension of the probationary license of the landscape construction professional.

Meaning: A landscape contracting business can only advertise for and/or perform the phase of landscaping work for which it is licensed based upon the phase of license of the licensed landscape construction professional(s) that either own or are employed by the landscape contracting business. OAR 808-003-0200 allows a landscape contracting business to bid on a contract that is outside the phase of its license if it enters into a subcontract with a landscape contracting business that is licensed in that phase of work. Working outside the scope of a license can result in civil penalties and suspension of license.

ORS 447: PLUMBING 447.060 ENGAGING IN CERTAIN PLUMBING WORK NOT AFFECTED.

(1) ORS 447.010 to 447.156 do not apply to a person:

(2) A landscape contracting business licensed under ORS 671.560 is not required to be licensed under ORS 447.010 to 447.156 to install, repair or maintain backflow assemblies for irrigation systems and ornamental water features if the work is performed by an individual who is licensed as required by ORS 671.615 and is an owner or employee of the landscape contracting business. The repair and maintenance of the backflow assembly must be performed by a tester certified under ORS 448.279. The registration exemption established under this subsection does not exempt the landscape contracting business from the inspection and permit requirements of ORS 447.010 to 447.156.

Meaning: A landscape contracting business licensed through the LCB can perform the installation, repair and maintenance on backflow assemblies for irrigation systems and ornamental water features only if the work is performed by a person who has passed the backflow section of the LCB irrigation exam. The repair and maintenance of the backflow assembly however can only be done by a person who has the tester certification under the Oregon Health Department.

ORS 479.940 ELECTRICAL ACTIVITIES NOT SUBJECT TO LICENSURE UNDER ORS 479.510 TO 479.945; IDENTIFICATION CARDS.

(1) The licensure provisions of ORS 479.510 to 479.945 do not apply to the following activity on Class II and III systems in one and two family dwellings regulated under the Low-Rise Residential Dwelling Code:

- (a) Pre-wiring of cable television and telephone systems owned by the owner of the residence;
- (b) Garage door openers;
- (c) Vacuum systems;
- (d) Audio and stereo systems;

- (e) HVAC;
- (f) Landscape sprinkler controls;
- (g) Landscape lighting; and
- (h) Doorbells.

(2) The provisions of subsection (1) of this section apply only to persons or businesses licensed and in good standing with the Construction Contractors Board.

(3)(a) The licensure provisions of ORS 479.510 to 479.945 do not apply to a business licensed under ORS 671.510 to 671.710 when making installations of landscape irrigation control wiring and outdoor landscape lighting involving a Class II or Class III system that does not exceed 30 volts and 750 volt-amperes.

(b) A business exempt from licensing under this section shall issue an identification card to its landscape irrigation control wiring or outdoor landscape lighting installer. The form for the identification card shall be provided by the State Landscape Contractors Board. The identification card shall include the name of the installer, the name and State Landscape Contractors Board identification number of the landscape contracting business and the date of issue of the identification card. The card shall be carried by the installer at the job site when performing the allowed electric installations.

Meaning: A landscape contracting business that is licensed with the LCB can install irrigation control wiring and outdoor landscape lighting for systems that do not exceed 30 volts and 750 volt-amperes. However, each individual of the business that is installing this wiring must carry an identification card that is supplied by the LCB. This card is on the LCB website:

<http://www.lcb.state.or.us/LCB/docs/LowvoltageIDCard.instructions.pdf>

ORS 571: NURSERY LICENSE

571.045 Exemption from licensing requirements. ORS 571.055 (1) and 571.057 do not apply to:

- (2) A person licensed as a landscape contracting business under ORS 671.560 and 671.565 who does not grow plants, does not store plants except as provided by the State Department of Agriculture by rule, and acquires all plants from a nursery licensed under this chapter.

In conjunction with this statute, the following Administrative rule applies:

OAR 603-054-0080 License Requirement for Persons doing landscape contracting business

The Department, as required by ORS 571.045(2), hereby establishes that any person doing landscape contracting business that stores plants for more than one year, operates as a grower, dealer or agent, keeps plants for propagation, advertises nursery stock for sale, or sells nursery stock, must obtain a nursery license.

ORS 571.135 Shipping permits, shipping invoices and bills of lading accompanying shipments and deliveries; retention; exceptions.

- (3) A shipping invoice or bill of lading shall accompany a commercial shipment or delivery of nursery stock to be offered for sale. If a shipping invoice accompanies the shipment or delivery, the shipping invoice shall include the following:
- (a) The name and address of the owner of the nursery stock.
 - (b) The nursery license number of the owner of the nursery stock.
 - (c) The point of origin of the nursery stock.
 - (d) The specific destination to which the nursery stock is being shipped or delivered.
 - (e) A description or inventory of the nursery stock in sufficient detail to allow identification of the nursery stock being shipped or delivered. The description or inventory shall include, at a minimum, the numbers, sizes and varieties of plants included in the shipment or delivery.
 - (f) The signature of the nursery stock carrier or the carrier's agent.
- 5) Each of the following persons shall retain a copy of the signed shipping invoice or the bill of lading for a commercial shipment or delivery of nursery stock to be offered for sale:
- (a) The owner of the nursery stock.
 - (b) The carrier or carrier's agent transporting the nursery stock.
 - (c) The person taking delivery of the nursery stock at the shipment or delivery destination.
- (6) Subsections (3) and (5) of this section do not apply to:
- (b) A commercial shipment or delivery of nursery stock in the possession of a business licensed by the State Landscape Contractors Board.

Meaning: A landscape contracting business does not have to have a nursery license to procure and sell nursery stock if the business does not store the plants for more than one year and acquires the plants from a licensed nursery. Also, if the landscape contracting business is transporting plants from one place to another, the business does not have to have a shipping invoice or bill of lading. (This is a law to try to stop illegal transport of nursery stock and the stealing of nursery stock in Oregon).

ORS 656: WORKERS COMPENSATION

656.027 Who are subject workers. All workers are subject to this chapter except those non-subject workers described in the following subsections:

(7)(a) Sole proprietors, except those described in paragraph (b) of this subsection. When labor or services are performed under contract, the sole proprietor must qualify as an independent contractor.

(b) Sole proprietors actively registered under ORS 671.525 or licensed under ORS 701.035. When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the sole proprietor must qualify as an independent contractor. Any sole proprietor registered under ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(23)(a) Partners who are actively registered under ORS 671.525 or licensed under ORS 701.035 and who have a substantial ownership interest in a partnership. If all partners are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such partners may elect to be non-subject workers. For all other partnerships registered under ORS 671.510 to 671.710 or licensed under ORS chapter 701, the maximum number of exempt partners shall be whichever is the greater of the following:

(A) Two partners; or

(B) One partner for each 10 partnership employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the partnership qualifies as an independent contractor. Any partnership registered under ORS 671.525 or licensed under ORS

701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(24)(a) Corporate officers who are directors of a corporation actively registered under ORS 671.525 or licensed under ORS 701.035 and who have a substantial ownership interest in the corporation, regardless of the nature of the work performed. If all officers of the corporation are members of the same family and are parents, spouses, sisters, brothers, daughters or sons,

daughters-in-law or sons-in-law or grandchildren, all such officers may elect to be non-subject workers. For all other corporations registered under ORS 671.510 to 671.710 or licensed under ORS chapter 701, the maximum number of exempt corporate officers shall be whichever is the greater of the following:

(A) Two corporate officers; or

(B) One corporate officer for each 10 corporate employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the corporation qualifies as an independent contractor. Any corporation registered under ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(25)(a) Limited liability company members who are members of a company actively registered under ORS 671.525 or licensed under ORS 701.035 and who have a substantial ownership interest in the company, regardless of the nature of the work performed. If all members of the company are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such members may elect to be non-subject workers. For all other companies registered under ORS 671.510 to 671.710 or licensed under ORS chapter 701, the maximum number of exempt company members shall be whichever is the greater of the following:

(A) Two company members; or

(B) One company member for each 10 company employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the company qualifies as an independent contractor. Any company registered under ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

Meaning: All employees of a landscape contracting business must be covered with worker's compensation but there are some exceptions if the business entity is different than a sole proprietor. Any business licensed with the LCB is presumed to be an independent contractor and subject to ORS 670.600.

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