

CHILD LABOR -- TABLE OF CONTENTS

Table of Contents
CHILD LABOR

- 1.0 AUTHORITY
 - 1.1 --- Commissioner of Labor & Industries
 - 1.2 --- Wage and Hour Commission
- 2.0 EMPLOYMENT RELATIONSHIP
 - 2.1 --- Generally
 - 2.2 --- Independent Contractors (see also Ch. IX, sec. 2.3)
 - 2.3 --- Volunteers/Interns
- 3.0 EMPLOYMENT CERTIFICATES
- 4.0 POSTING REQUIREMENTS
- 5.0 RECORD KEEPING/MAKING RECORDS AVAILABLE FOR INSPECTION
- 6.0 WORK PERMITS
- 7.0 OCCUPATION OR INDUSTRY
 - 7.1 --- Agriculture
 - 7.2 --- Domestic Work
 - 7.3 --- Door to Door Sales
 - 7.4 --- Entertainment
 - 7.5 --- Hazardous Occupations
 - 7.6 --- Newspaper Carriers/Vendors
- 8.0 HOURS OF EMPLOYMENT
 - 8.1 --- Under 18 Years of Age
 - 8.2 --- Under 16 Years of Age
 - 8.2.1 ----- Generally
 - 8.2.2 ----- Exceptions
 - 8.3 --- Under 14 Years of Age
- 9.0 OVERTIME - SPECIAL PERMIT
- 10.0 OTHER TERMS AND CONDITIONS OF EMPLOYMENT (see generally Ch. IX)
 - 10.1 --- Meal Periods and Rest Periods
 - 10.2 --- Wages
- 11.0 DEFENSES TO CHARGES OF CHILD LABOR LAW VIOLATIONS
- 12.0 ENFORCEMENT ACTIONS (see also Ch. I -- Admin. Proc.)
 - 12.1 --- Constitutionality
 - 12.2 --- Respondents
 - 12.3 --- Investigation and Hearing
 - 12.4 --- Civil Penalties
 - 12.4.1 ----- Generally
 - 12.4.2 ----- Aggravating Circumstances
 - 12.4.3 ----- Mitigating Circumstances
 - 12.4.4 ----- Repeated Violations
 - 12.4.5 ----- Willfulness of Violations (see also Ch. IX, sec. 13.1.2)

- 12.4.6 ----- Fair Labor Standards Act – Exemption
- 12.5 --- Revocation of Right to Hire Minors

1.0 AUTHORITY

1.1 --- Commissioner of Labor & Industries

□ Under ORS 653.370, OAR 839-21-001, *et seq.*, and 839-19-010, *et seq.*, the commissioner is authorized to impose a civil penalty for each child labor violation found when respondent is not regulate by the federal Fair Labor Standards Act as to the work permits, employment certificates, or records and preservation of those documents requested by state law in connection with the employment of minors. ----- ***In the Matter of Ronald Turman, 13 BOLI 166, 170, 173-74 (1994).***

□ Under ORS 653.370 and the facts and circumstances of the record in the proceedings, the forum held that the commissioner had the authority and power to impose and direct payment of civil penalties against respondents -- a corporation and three individual persons, one of whom was the president and owner of the corporation, and the other two were employee/crew chiefs of the corporation. ----- ***In the Matter of Northwest Advancement, Inc., 6 BOLI 71, 94 (1987).***

Affirmed, Northwest Advancement, Inc. v. Bureau of Labor, 96 Or App 146, 772 P2d 943 (1989). See also Northwest Advancement, Inc. v. Bureau of Labor, 96 Or App 133, 772 P2d 934 (1989).

1.2 --- Wage and Hour Commission

□ The Wage and Hour Commission did not exceed its authority in adopting OAR 839-21-170, 839-21-175, and 839-21-220(1). ----- ***In the Matter of Albertson's, Inc., 10 BOLI 199, 296 (1992).***

Reversed and remanded on other grounds, Albertson's, Inc. v. Bureau of Labor and Industries, 128 Or App 97, 874 P2d 1352 (1994).

□ When an employer keeps some of its records requested by OAR 839-21-170 outside of Oregon, those records are not "accessible," and it is within the authority of the agency to request that the employer provide access to the records in the form of a list containing the required information. ----- ***In the Matter of Albertson's, Inc., 10 BOLI 199, 298 (1992).***

Reversed and remanded on other grounds, Albertson's, Inc. v. Bureau of Labor and Industries, 128 Or App 97, 874 P2d 1352 (1994).

2.0 EMPLOYMENT RELATIONSHIP

2.1 --- Generally

□ ORS 653.010(3) and (4) define an employer as any person who suffers or permits another person to work. When evidence established that respondent suffered or permitted a minor to perform work that included preparing billings, answering telephones, endorsing checks, and picking up mail for respondent's benefit, that respondent agreed to and did pay the minor \$200 per

CHILD LABOR -- 2.0 EMPLOYMENT RELATIONSHIP

week for at least three weeks of work, and there was no credible evidence in the record that established that anyone other than respondent suffered or permitted the minor to work for the business respondent operated out of his residence, the forum concluded that respondent employed the minor. ----- *In the Matter of Randall Stuart Bates*, 23 BOLI 1, 16 (2002).

□ When an individual who is not an independent contractor or copartner and who is not a participant in a work training program administered under state or federal assistance laws renders personal services to another who pays or agrees to pay the individual at a fixed rate, that individual is an employee and the one to whom the services are rendered is an employer. ----- *In the Matter of LaVerne Springer*, 15 BOLI 47, 67 (1996).

□ The fact that a worker is not paid or there is no agreement to pay him a fixed rate does not take him out of the definition of "employee" when a minimum wage law requires he be paid the minimum wage. ----- *In the Matter of LaVerne Springer*, 15 BOLI 47, 67 (1996).

□ When an individual has no ownership interest in a business, has no right to share in the profits, no liability to share any losses, and no right to exert some control over the business, that individual is not a company-owner or copartners, but is an employee. ----- *In the Matter of LaVerne Springer*, 15 BOLI 47, 67 (1996).

2.2 --- Independent Contractors (see also Ch. IX, sec. 2.3)

□ The forum determines whether an individual rendering personal services is an employee or an independent contractor by applying an "economic reality" test. The forum considers five factors to gauge the degree of the worker's economic dependency, with no single factor being determinative. These factors are: (1) the degree of control exercised by the alleged employer; (2) the extent of the relative investment of the worker and the alleged employer; (3) the degree to which the worker's opportunity for profit and loss is determined by the alleged employer; (4) the skill and initiative requested in performing the job; and (5) the permanency of the relationship. ----- *In the Matter of Arabian Riding and Recreation Corp.*, 16 BOLI 79, 92 (1997).

□ Respondent attempted to give its ranch hands the status of independent contractors by having them registered assumed business names, sign an independent contractor agreement, receive periodic compensation without deductions, and report their income on an IRS form 1099. The forum applied the "economic reality" test and found the evidence showed that: (1) the employer controlled the work; (2) the worker had no investment and the employer owned the facilities, livestock, and equipment; (3) the worker's opportunity for profit was limited to a daily wage; (4) job performance was ordinary labor requiring minimal skill; and (5) the relationship was an indefinite one. The commissioner held that all these factors suggested an employer/employee relationship between respondent and its ranch hands, and held that respondent was an employer in its work relationship with a minor, and that the minor was respondent's employee. ----- *In the*

Matter of Arabian Riding and Recreation Corp., 16 BOLI 79, 92-93 (1997).

□ When the alleged employer has the right to control how work is performed, furnishes the equipment, materials, and facilities used by the alleged employee, and the alleged employee cannot hire others to assist with the assigned work, the relationship is one of employer-employee and not one involving an independent contractor. ----- *In the Matter of LaVerne Springer*, 15 BOLI 47, 67 (1996).

□ The forum held that minors performing work for respondent were not independent contractors, but commissioned salespersons and employees subject to child labor laws when the minors did not control any aspects of the business operation; they did not procure or purchase in advance any of the goods they sold; they were not engaged in the business of selling goods outside of their work for the employer; they did not furnish any equipment or transportation; they did not control the price structure of goods sold or where they sold the goods; they bore no risk of failure and were able to turn back any unsold goods; customer's checks were made out to the employer; and the employer covered the minors under the employer's workers' compensation policy. ----- *In the Matter of Northwest Advancement, Inc.*, 6 BOLI 71, 87, 99 (1987).

Affirmed, *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 146, 772 P2d 943 (1989). See also *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 133, 772 P2d 934 (1989).

□ In a child labor case, when crew chiefs were requested to provide transportation for themselves and their crew of teenagers, but invested no money and took no risk of loss, were not requested to pay in advance for the goods that their teenage crews sold; could return any goods remaining unsold; did not have their own businesses prior to entering into their relationship with the employer; when the employer controlled most aspects of how the crew chiefs conducted business, provided the credit for all the goods and the central accounting system for sales and inventory; and when the crew chiefs turned over all moneys to the employer, which then paid the crew chiefs a share of commission on the goods sold, the forum held that the crew chiefs were acting in the same capacity as any commissioned salesperson who is an employee of a parent company, and were not acting as independent contractors, but were working as commissioned salesmen for the employer. ----- *In the Matter of Northwest Advancement, Inc.*, 6 BOLI 71, 99 (1987).

Affirmed, *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 146, 772 P2d 943 (1989). See also *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 133, 772 P2d 934 (1989).

2.3 --- Volunteers/Interns

□ Voluntary work is that which is done without expectation of compensation and only if the entity for which the services are performed is "a public employer * * * or a religious, charitable, educational, public service or similar nonprofit corporation, organization or institution for community service, religious or humanitarian reasons" or the work is part of a work training program

CHILD LABOR -- 3.0 EMPLOYMENT CERTIFICATES

administered under the state or federal assistance laws. ORS 653.010(3). ---- *In the Matter of Randall Stuart Bates, 23 BOLI 1, 16 (2002).*

□ Respondent's claim that a minor volunteered her services was rejected when credible evidence established that she did not volunteer her services, she expected to receive an agreed upon salary of \$200 per week and for three weeks of work received checks from respondent totaling \$600, and respondent admitted he was not a public employer or a religious, charitable, or educational organization as described. ---- *In the Matter of Randall Stuart Bates, 23 BOLI 1, 16-17 (2002).*

□ Work may be voluntary, without expectation of compensation, *only* if the entity for which the services are performed is "a public employer * * * or a religious, charitable, educational, public service or similar nonprofit corporation, organization or institution for community service, religious or humanitarian reasons" or the work is part of a work training program administered under the state or federal assistance laws. ---- *In the Matter of Arabian Riding and Recreation Corp., 16 BOLI 79, 92 (1997).*

□ Respondent operated a ranch for horse rentals and riding and permitted minors to work at the ranch in exchange for "free" horse riding. The commissioner held that the minors were employees, not volunteers, because there was no evidence or attempt to show that respondent was a public employer or a religious, charitable, or educational institution as described or was involved in a federal or state public assistance program. ---- *In the Matter of Arabian Riding and Recreation Corp., 16 BOLI 79, 92 (1997).*

□ Respondent argued that a 16-year-old minor was an unpaid intern exchanging his volunteer labor for training and knowledge in the film business and introduced evidence that such intern arrangements were common throughout the film industry. The commissioner found that no matter how widespread that type of "training" might have been in the past or was elsewhere, it is not lawful in Oregon, whether involving adult or minor employees. ---- *In the Matter of LaVerne Springer, 15 BOLI 47, 67 (1996).*

3.0 EMPLOYMENT CERTIFICATES

□ Respondent admitted, and evidence confirmed that respondent failed to obtain or post an employment certificate. ---- *In the Matter of Randall Stuart Bates, 23 BOLI 1, 17 (2002).*

□ Respondent violated OAR 839-21-220(3) by failing to file a completed employment certificate form with the agency within 48 hours after permitting a minor between 14 and 17 years of age to work and the commissioner assessed a \$100 civil penalty. ---- *In the Matter of Arabian Riding and Recreation Corp., 16 BOLI 79, 89 (1997).*

□ Respondent violated ORS 653.307, 653.310, and OAR 839-21-220(3) by failing to file a completed employment certificate form with the agency within 48 hours after hiring a minor employee and the commissioner assessed a \$500 civil penalty. ---- *In the*

Matter of LaVerne Springer, 15 BOLI 47, 66, 68 (1996).

□ Willfulness is not an element of proving violations of failing to verify a minor's age, failing to file a completed employment certificate form with the Bureau within 48 hours of hiring the minor, or employing a minor over 44 hours per week without a Wage and Hour Commission special permit. ---- *In the Matter of LaVerne Springer, 15 BOLI 47, 67-68 (1996).*

□ The commissioner imposed the statutory maximum civil penalty for each day of a minor's employment based on respondent's failure to file a completed employment certificate form for five successive working days after employing a 15-year-old minor in the hazardous occupation of logging, and the minor suffered a devastating back injury. ---- *In the Matter of Ronald Turman, 13 BOLI 166, 175 (1994).*

□ Respondent committed 205 violations of ORS 653.310 and OAR 839-21-220(1)(b) and (3) by not filing a completed employment certificate form with the agency within 48 hours after hiring each of 205 minors or permitting them to work. ---- *In the Matter of Albertson's, Inc., 10 BOLI 199, 314-15 (1992).*

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ ORS 653.310 requires employers to procure an employment certificate and keep it on file and accessible to school authorities of the district where each minor employee resides, to police, and to the Wage and Hour Commission. The statute only identifies which school authorities may have access to the employment certificate but does not require employers to keep the employment certificate locally. OAR 839-21-175(2) only requires that the records must be kept in a safe and accessible place; it is enough that records are accessible during the normal business hours of an employer's business office. ---- *In the Matter of Albertson's, Inc., 10 BOLI 199, 297-98, 302 (1992).*

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ Employers are required to obtain employment certificate forms to comply with the law. If an employer does not obtain employment certificate forms, the employer is not excused from filing them as required. ---- *In the Matter of Albertson's, Inc., 10 BOLI 199, 297-98, 306 (1992).*

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ Respondent committed 17 violations of OAR 839-21-220(1)(b) and (3) by failing to file a completed employment certificate form with the agency within 48 hours after hiring each of 17 minors or permitting each of 17 minors to work. ---- *In the Matter of Panda Pizza, 10 BOLI 132, 137 (1992).*

4.0 POSTING REQUIREMENTS

□ Respondent violated OAR 839-21-180 by failing to post a schedule of the maximum hours allowed in one

CHILD LABOR -- 5.0 RECORD KEEPING/MAKING RECORDS AVAILABLE FOR INSPECTION

week while employing a minor under 16 years of age, contrary to ORS 653.315(4). The commissioner assessed a \$100 civil penalty. ----- *In the Matter of Arabian Riding and Recreation Corp., 16 BOLI 79, 90-91 (1997).*

5.0 RECORD KEEPING/MAKING RECORDS AVAILABLE FOR INSPECTION

□ Respondent admitted, and evidence confirmed that respondent failed to maintain and preserve requisite records pertaining to a minor's employment and failed to make employment records available to the agency when requested. ----- *In the Matter of Randall Stuart Bates, 23 BOLI 1, 17 (2002).*

□ Respondent violated OAR 839-21-170 by failing to maintain and preserve records related to hours worked by a minor while in respondent's employ. The commissioner assessed a \$500 civil penalty. ----- *In the Matter of Arabian Riding and Recreation Corp., 16 BOLI 79, 90 (1997).*

□ Respondent violated OAR 839-21-170 by failing to create and maintain records related to hours worked by a minor employed by respondent in a hazardous occupation who suffered a devastating back injury while in respondent's employ. The commissioner imposed the statutory maximum penalty for each violation. ----- *In the Matter of Ronald Turman, 13 BOLI 166, 175 (1994).*

□ Respondent violated OAR 839-21-175 by failing to make records containing the information required by OAR 839-21-170 accessible and available for inspection and transcription by the commissioner's duly authorized representatives. ----- *In the Matter of Albertson's, Inc., 10 BOLI 199, 298 (1992).*

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ Records kept in another state are not "accessible" and "available for inspection and transcription" as required by ORS 653.307(1), 653.310, OAR 839-21-170(1), and 839-21-175. ----- *In the Matter of Albertson's, Inc., 10 BOLI 199, 298 (1992).*

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ A respondent who had either actual or constructive knowledge of the requirements of the child labor record keeping rules and several times failed to make the records containing the information required by OAR 839-21-170 accessible and available for agency inspection and transcription was found to have willfully violated OAR 839-21-175. When no evidence was produced to show that respondent had been cited for noncompliance in the past, the agency did not prove that the violations were repeated. After considering aggravating and mitigating circumstances, the forum imposed a civil penalty of \$750 for the violation. ----- *In the Matter of Albertson's, Inc., 10 BOLI 199, 296-98, 313-14 (1992).*

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ Respondent committed one violation of OAR 839-

21-170(1) by failing to maintain and preserve records containing the sex of five minor employees, the time of day and day of the week on which six minors' work weeks began, and the dates of birth of three minor employees. ----- *In the Matter of Panda Pizza, 10 BOLI 132, 138, 146 (1992).*

□ When respondent failed to maintain proper records in violation of OAR 839-21-170(1), the forum imposed the \$100 civil penalty requested by the agency. ----- *In the Matter of Panda Pizza, 10 BOLI 132, 146 (1992).*

6.0 WORK PERMITS

□ Respondent violated OAR 839-21-220(1)(a) by failing to verify a minor employee's age by viewing the minor's work permit before hire. The commissioner assessed a \$100 civil penalty. ----- *In the Matter of Arabian Riding and Recreation Corp., 16 BOLI 79, 96 (1997).*

□ Willfulness is not an element of proving violations of failing to verify a minor's age, failing to file a completed employment certificate form with the Bureau with 48 hours of hiring the minor, or employing a minor over 44 hours per week without a Wage and Hour Commission special permit. ----- *In the Matter of LaVerne Springer, 15 BOLI 47, 67-68 (1996).*

□ Respondent violated ORS 653.307, 653.310, and OAR 839-21-220(1)(a) by failing to verify a minor employee's age by requiring him to produce a work permit before employing him or permitting him to work. The commissioner assessed a \$500 civil penalty for one violation. ----- *In the Matter of LaVerne Springer, 15 BOLI 47, 66, 68 (1996).*

□ The commissioner imposed the statutory maximum civil penalty of \$1,000 when respondent failed to verify a minor's age prior to hire by inspecting a work permit, then employed the minor in the hazardous occupation of logging, and the minor suffered a devastating back injury. ----- *In the Matter of Ronald Turman, 13 BOLI 166, 173 (1994).*

□ Respondent committed 51 violations of OAR 839-21-220(1)(a) by failing to require minor employees to produce work permits before employing them or permitting them to work. ----- *In the Matter of Albertson's, Inc., 10 BOLI 199, 295-96, 311-12 (1992).*

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ When the agency advised respondent by letter of its duty to verify the age of each minor by checking the work permit before hire and sent respondent a copy of the administrative rules regarding the employment of minors, respondent had actual knowledge of the law. Respondent's 51 violations of OAR 839-21-220(1) were willful when respondent made no effort to bring itself into compliance with the work permit law. After considering the aggravating and mitigating circumstances, the forum imposed the minimum civil penalty of \$500 per willful violation, pursuant to OAR 839-19-025(5), for a total of \$25,500. ----- *In the Matter of Albertson's, Inc., 10 BOLI 199, 315 (1992).*

Reversed and remanded on other ground,

CHILD LABOR -- 7.0 OCCUPATION OR INDUSTRY

Albertson's, Inc. v. Bureau of Labor and Industries, 128 Or App 97, 874 P2d 1352 (1994).

□ Respondent committed 17 violations of OAR 839-21-220(1)(a) by failing to require minors to produce work permits before employing them or permitting them to work. ---- ***In the Matter of Panda Pizza, 10 BOLI 132, 137 (1992).***

□ When respondent employed 17 minors and failed to verify their ages by requiring them to produce work permits in violation of OAR 839-21-220(1)(a), one minor was killed while employed driving a motor vehicle on public roads or highways in violation of OAR 839-21-104, and two other minors were so employed, the forum imposed a \$1000 civil penalty for the work permit violation related to the minor who was killed, a \$500 civil penalty for each of the two work permit violations related to the other minors driving motor vehicles, and imposed a \$100 civil penalty for each of the remaining 14 work permit violations. ---- ***In the Matter of Panda Pizza, 10 BOLI 132, 146 (1992).***

7.0 OCCUPATION OR INDUSTRY

7.1 --- Agriculture

7.2 --- Domestic Work

7.3 --- Door to Door Sales

□ The forum found three clear violations of OAR 839-21-265(13) when respondent dropped off one minor girl who had become ill at the girl's mother's place of employment and someone else was required to take the girl home; a second minor girl spilled a soft drink on herself and was unable to work and respondent's crew chief dropped her off at a gas station and the minor was required to find her own way home; and a third minor girl was dropped off at the home of another crew member following an argument with the crew chief and was required to find her own way home. ---- ***In the Matter of Northwest Advancement, Inc., 6 BOLI 71, 91, 93-94 (1987).***

Affirmed, *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 146, 772 P2d 943 (1989). See also *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 133, 772 P2d 934 (1989).

□ When respondent's crew chief failed to control a situation in which three minor girls employed by respondent were subjected to abusive sexual and racial remarks, got out of the car five and one-half miles from home on an extremely cold and icy evening, and the crew chief made no attempt to persuade the girls to get back into the car and did not telephone the girls' parents, the forum found three violations of OAR 839-21-265(13). ---- ***In the Matter of Northwest Advancement, Inc., 6 BOLI 71, 79-80, 89 (1987).***

Affirmed, *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 146, 772 P2d 943 (1989). See also *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 133, 772 P2d 934 (1989).

□ When a minor employee got out of a crew car after having a disagreement with another minor employee and refused to get back into the car, the forum held that respondent was responsible for the failure to provide return transportation for the minor. Respondent's failure

was a violation of OAR 839-21-265(13). ---- ***In the Matter of Northwest Advancement, Inc., 6 BOLI 71, 79, 93-94 (1987).***

Affirmed, *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 146, 772 P2d 943 (1989). See also *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 133, 772 P2d 934 (1989).

□ When two minors informed their parents that the minors would be taken out-of-state, the forum held that was insufficient notice, as OAR 839-21-265(14) requires prior written permission. ---- ***In the Matter of Northwest Advancement, Inc., 6 BOLI 71, 79, 88 (1987).***

Affirmed, *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 146, 772 P2d 943 (1989). See also *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 133, 772 P2d 934 (1989).

7.4 --- Entertainment

□ Respondent argued that a 16-year-old minor was an unpaid intern exchanging his volunteer labor for training and knowledge in the film business and introduced evidence that such intern arrangements were common throughout the film industry. The commissioner found that no matter how widespread that type of "training" might have been in the past or was elsewhere, it is not lawful in Oregon, whether involving adult or minor employees. ---- ***In the Matter of LaVerne Springer, 15 BOLI 47, 67 (1996).***

7.5 --- Hazardous Occupations

□ Respondent violated OAR 839-21-280(2) by permitting a minor under 18 years of age to operate a tractor. The commissioner assessed a \$500 civil penalty. ---- ***In the Matter of Arabian Riding and Recreation Corp., 16 BOLI 79, 90 (1997).***

□ Respondent could not legally employ a 15-year-old minor in a salvage logging operation because it included logging, woodcutting, and sawing, each of which was declared hazardous by the Wage and Hour Commission under OAR 839-21-102(1). ---- ***In the Matter of Ronald Turman, 13 BOLI 166, 173 (1994).***

□ The commissioner imposed the statutory maximum civil penalties when respondent's failure to ascertain a minor employee's age allowed the minor to be employed in the hazardous occupation of logging and the minor suffered a devastating back injury while employed by respondent. ---- ***In the Matter of Ronald Turman, 13 BOLI 166, 174-75 (1994).***

□ The commissioner imposed the maximum civil penalty of \$1000 when a minor was killed while employed in the hazardous occupation of driving a motor vehicle on a public road or highway in violation of OAR 839-21-104. ---- ***In the Matter of Panda Pizza, 10 BOLI 132, 143-44 (1992).***

□ When three minors were employed to drive motor vehicles on public roads or highways to deliver pizza, in violation of OAR 839-21-104, and there were both aggravating and mitigating circumstances, the forum imposed a \$1500 civil penalty -- \$500 for each of the three violations -- as proposed by the agency. ---- ***In the Matter of Panda Pizza, 10 BOLI 132, 144 (1992).***

CHILD LABOR -- 8.0 HOURS OF EMPLOYMENT

□ The occupation of motor vehicle driver on any public road or highway is prohibited for minors between 16 and 18 years of age, with some exceptions. By permitting four employees under the age of 18 to drive motor vehicles on public roads or highways, respondent committed four violations of OAR 839-21-104. ----- ***In the Matter of Panda Pizza, 10 BOLI 132, 140 (1992).***

7.6 --- Newspaper Carriers/Vendors

8.0 HOURS OF EMPLOYMENT

8.1 --- Under 18 Years of Age

□ Respondent committed 19 violations of ORS 653.305 and OAR 839-21-067(1) by employing a minor for more than 44 hours per week for each of 19 weeks when respondent did not have a Special Emergency Overtime Permit from the Wage and Hour Commission. The commissioner assessed a \$19,000 civil penalty. ----- ***In the Matter of LaVerne Springer, 15 BOLI 47, 66, 68 (1996).***

8.2 --- Under 16 Years of Age

8.2.1 --- Generally

□ Other than Respondent's denial that he employed a minor between the hours of 6 p.m. and 7 a.m., there was no evidence in the record that controverted the credible testimony of the minor and her sister that the minor performed work for respondent between those hours in July 1999, when she was only 15 years old. Accordingly, the Commissioner was authorized to impose civil penalties. ----- ***In the Matter of Randall Stuart Bates, 23 BOLI 1, 17 (2002).***

□ Respondent committed 101 violations of ORS 653.315(1) by employing a minor under 16 years of age for more than 10 hours per week on at least 101 separate days. The commissioner assessed a \$10,100 civil penalty. ----- ***In the Matter of Arabian Riding and Recreation Corp., 16 BOI 79, 91 (1997).***

□ Respondent committed 10 violations of ORS 653.315(1) by employing a minor under 16 years of age for more than six days in any one week in at least 10 separate weeks. The commissioner assessed a \$1000 civil penalty. ----- ***In the Matter of Arabian Riding and Recreation Corp., 16 BOI 79, 91 (1997).***

□ Respondent violated OAR 839-21-070(1)(a) by employing a minor under 16 years of age to work during school hours on 55 different days. The commissioner assessed a \$500 civil penalty. ----- ***In the Matter of Arabian Riding and Recreation Corp., 16 BOI 79, 91 (1997).***

□ Respondent committed 11 violations of OAR 839-21-070(1)(b) by employing a minor under 16 years of age to work more than 40 hours per week during at least three different weeks when school was not in session. The commissioner assessed a \$300 civil penalty. ----- ***In the Matter of Arabian Riding and Recreation Corp., 16 BOI 79, 91-92 (1997).***

□ Respondent committed three violations of OAR 839-21-070(1)(c) by employing a minor under 16 years of age to work more than 18 hours per week during 11 weeks when school was in session. The commissioner assessed a \$1,100 civil penalty. ----- ***In the Matter of***

Arabian Riding and Recreation Corp., 16 BOI 79, 92 (1997).

□ Respondent committed 30 violations of OAR 839-21-070(1)(d) by employing a minor under 16 years of age to work more than eight hours per day on 30 separate days when school was not in session. The commissioner assessed a \$3,000 civil penalty. ----- ***In the Matter of Arabian Riding and Recreation Corp., 16 BOI 79, 92 (1997).***

□ Respondent committed 55 violations of OAR 839-21-070(1)(e) by employing a minor under 16 years of age to work more than three hours per day on 55 separate days when school was in session. The commissioner assessed a \$5,500 civil penalty. ----- ***In the Matter of Arabian Riding and Recreation Corp., 16 BOI 79, 92 (1997).***

8.2.2 --- Exceptions

□ Respondent argued that civil penalties should be abated because a minor employee was not enrolled in school while she was present and living on the property occupied by respondent and that the minor had dropped out of school was not living with either of her natural parents. The commissioner held that, while ORS 653.315 and related statutes contain exceptions to the limitations on the employment of minors under 16 years of age, enrollment or non-enrollment in school is not one of them. Because the statutes require that the school authorities of the resident school district be informed by certificate of a minor's work status, the Wage and Hour Commission's rules couple the age of the child with whether or not school is in session. There is no exception in the statute or in the rules covering employment of a child who merely does not attend school. The casual presence of a supervisor, in this case a ranch foreman, is not the same as employment by a parent or person standing in the place of a parent permitted by ORS 653.365. ----- ***In the Matter of Arabian Riding and Recreation Corp., 16 BOI 79, 94-95 (1997).***

8.3 --- Under 14 Years of Age

9.0 OVERTIME - SPECIAL PERMIT

□ Respondent committed 19 violations of ORS 653.305 and OAR 839-21-067(1) by employing a minor for more than 44 hours per week for each of 19 weeks when respondent did not have a Special Emergency Overtime Permit from the Wage and Hour Commission. The commissioner assessed a \$19,000 civil penalty. ----- ***In the Matter of LaVerne Springer, 15 BOLI 47, 66, 68 (1996).***

□ Willfulness is not an element of proving violations of failing to verify a minor's age, failing to file a completed employment certificate form with the Bureau with 48 hours of hiring a minor, or employing a minor over 44 hours per week without a Wage and Hour Commission special permit. ----- ***In the Matter of LaVerne Springer, 15 BOLI 47, 67-68 (1996).***

10.0 OTHER TERMS AND CONDITIONS OF EMPLOYMENT (see generally Ch. IX)

10.1 --- Meal Periods and Rest Periods

CHILD LABOR -- 11.0 DEFENSES TO CHARGES OF CHILD LABOR VIOLATIONS

10.2 --- Wages

□ Respondent violated OAR 839-21-087(1)(g)(C) by failing to pay the minimum hourly wage required by ORS 653.025 to a minor. The commissioner assessed a \$250 civil penalty. ----- *In the Matter of Arabian Riding and Recreation Corp., 16 BOI 79, 90 (1997).*

11.0 DEFENSES TO CHARGES OF CHILD LABOR LAW VIOLATIONS

□ Respondent argued that civil penalties should be abated because a minor employee was not enrolled in school while she was present and living on the property occupied by respondent and that the minor had dropped out of school was not living with either of her natural parents. The commissioner held that, while ORS 653.315 and related statutes contain exceptions to the limitations on the employment of minors under 16 years of age, enrollment or non-enrollment in school is not one of them. Because the statutes require that the school authorities of the resident school district be informed by certificate of a minor's work status, the Wage and Hour Commission's rules couple the age of the child with whether or not school is in session. There is no exception in the statute or in the rules covering employment of a child who merely does not attend school. The casual presence of a supervisor, in this case a ranch foreman, is not the same as employment by a parent or person standing in the place of a parent permitted by ORS 653.365. ----- *In the Matter of Arabian Riding and Recreation Corp., 16 BOI 79, 94-95 (1997).*

□ The statutes and rules regarding the employment of minors are designed to protect minors from their own eagerness and naiveté. A minor's willingness to undertake an unpaid intern position is not a defense to charges that those statutes and rules were violated. ----- *In the Matter of LaVerne Springer, 15 BOLI 47, 68 (1996).*

□ Respondent must prove the defense of equitable estoppel by a preponderance of the evidence. ----- *In the Matter of Albertson's, Inc., 10 BOLI 199, 299 (1992).*

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ The doctrine of equitable estoppel does not apply to the agency when it is enforcing a mandatory requirement of the law. ----- *In the Matter of Albertson's, Inc., 10 BOLI 199, 299 (1992).*

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ To constitute equitable estoppel or estoppel by conduct there must be a false representation, it must be made with knowledge of the facts, the other party (respondent) must have been ignorant of the truth, the representation must have been made with the intention that it should be acted on by the other party, and the other party must have been induced to act on it. The misrepresentation must be one of existing material fact, and not of intention, nor may it be a conclusion from facts or a conclusion of law. Respondent must demonstrate not only reliance, but a right to rely upon

the representation of the agency. Reliance is not justified when respondent had knowledge contrary to the fact or representation allegedly relied upon. Estoppel requires a representation to the person claiming detrimental reliance. Silence will create an estoppel only when there is a duty to speak. ----- *In the Matter of Albertson's, Inc., 10 BOLI 199, 300 (1992).*

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ Respondent argued that it had a contract with the agency regarding respondent's compliance with child labor laws. The forum found that the agency did not enter into an agreement, but was attempting to bring respondent into compliance with the law. Respondent had an undisputed legal duty to comply. Therefore, respondent's "compromise" to come into compliance could not constitute consideration for a contract. ----- *In the Matter of Albertson's, Inc., 10 BOLI 199, 309-10 (1992).*

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

12.0 ENFORCEMENT ACTIONS (see also Ch. I -- Admin. Proc.)

12.1 --- Constitutionality

□ The void for vagueness doctrine does not apply to ORS 653.370. In addition, the statute is not vague. ----- *In the Matter of Albertson's, Inc., 10 BOLI 199, 296, 315-17 (1992).*

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ The agency did not selectively enforce child labor statutes against respondent in violation of respondent's constitutional rights under the Fourteenth Amendment of the U.S. Constitution or under Article I, section 20, of the Oregon Constitution. ----- *In the Matter of Albertson's, Inc., 10 BOLI 199, 318-24 (1992).*

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ In order to prove selective enforcement under the Equal Protection clause of the Fourteenth Amendment, respondent must present evidence of deliberate invidious discrimination. Respondent must show that others were not prosecuted for the same conduct and that the decision to prosecute was based on impermissible grounds; mere selectivity in prosecution creates no constitutional barrier. Equal protection does not go so far as to require previously stated standards as long as no discriminatory practice or illegitimate motive is shown and the use of discretion has a defensible explanation. ----- *In the Matter of Albertson's, Inc., 10 BOLI 199, 318-24 (1992).*

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ In order to prove selective enforcement under the Article I, section 20, of the Oregon Constitution,

CHILD LABOR -- 12.0 ENFORCEMENT ACTIONS (SEE ALSO CH. I -- ADMIN. PROC.)

respondent must show that the difference in treatment was merely haphazard, *i.e.*, without any attempt to strive for consistency among similar cases. It is unsettled whether a corporation is protected by Article I, section 20, as an individual or as a member of a class. ---- ***In the Matter of Albertson's, Inc., 10 BOLI 199, 318-24 (1992).***

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ When respondents raised the issues of whether Oregon's child labor laws deprived the respondents and the minors of their constitutional rights to commercial free speech, the forum held that "it is not, in this case, within the province of this forum to declare that its own rules are violative of constitutional guarantees * * *. It is understood, however, that as a legal matter it may have been necessary to raise these separate legal and constitutional issues in this forum and thereby preserve them for some later possible judicial proceeding. The record reflects that these issues have been raised, notwithstanding that the resolution of those issues is outside the scope of this contested case proceeding." --- ***In the Matter of Northwest Advancement, Inc., 6 BOLI 71, 99-101 (1987).***

Affirmed, *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 146, 772 P2d 943 (1989). See also *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 133, 772 P2d 934 (1989).

12.2 --- Respondents

□ The actions or inactions of respondent's agents or employees were properly imputed to respondent. ---- ***In the Matter of Albertson's, Inc., 10 BOLI 199, 295 (1992).***

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ The actions or inactions of a corporate respondent's president, an agent or employee of respondent, were properly imputed to respondent. ---- ***In the Matter of Panda Pizza, 10 BOLI 132, 137 (1992).***

□ In a child labor case, the actions of respondent's crew chiefs were held to be attributable to the corporate employer. ---- ***In the Matter of Northwest Advancement, Inc., 6 BOLI 71, 93 (1987).***

Affirmed, *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 146, 772 P2d 943 (1989). See also *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 133, 772 P2d 934 (1989).

□ Under ORS 653.370 and the facts and circumstances of the record in the proceedings, the forum held that the commissioner had the authority and power to impose and direct payment of civil penalties against respondents -- a corporation and three individual persons, one of whom was the president and owner of the corporation, and the other two were employee/crew chiefs of the corporation. ---- ***In the Matter of Northwest Advancement, Inc., 6 BOLI 71, 94 (1987).***

Affirmed, *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 146, 772 P2d 943 (1989). See also *Northwest Advancement, Inc. v. Bureau of*

Labor, 96 Or App 133, 772 P2d 934 (1989).

12.3 --- Investigation and Hearing

□ The forum found that respondent's failure to produce its records after several agency requests, in violation of OAR 839-21-175, impaired the agency's ability to investigate the case and bring into compliance with Oregon's child labor laws and constituted aggravating circumstances. ---- ***In the Matter of Albertson's, Inc., 10 BOLI 199, 314 (1992).***

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

12.4 --- Civil Penalties

12.4.1 --- Generally

□ The Commissioner assessed a civil penalty of \$500 for respondent's failure to obtain an annual employment certificate in 1999 when there were aggravating circumstances present but no mitigating circumstances. - ---- ***In the Matter of Randall Stuart Bates, 23 BOLI 1, 17 (2002).***

□ When there was no evidence of mitigation, the Commissioner assessed the \$250 sought by the agency for respondent's failure to maintain and preserve records regarding the employment of a minor. ---- ***In the Matter of Randall Stuart Bates, 23 BOLI 1, 18 (2002).***

□ When respondent could have easily complied with each of the agency's requests for records reflecting a minor's employment and failed to do so, the Commissioner assessed the \$250 sought by the agency for respondent's failure to maintain and preserve records regarding the employment of a minor. ---- ***In the Matter of Randall Stuart Bates, 23 BOLI 1, 18 (2002).***

□ When respondent was aware that he employed a minor under 16 years of age, yet failed to obtain an employment certificate and allowed her to work after 6 p.m. and before 7 a.m., the Commissioner assessed the \$500 civil penalty sought by the agency. ---- ***In the Matter of Randall Stuart Bates, 23 BOLI 1, 18 (2002).***

□ The commissioner assessed a civil penalty of \$250 for respondent's failure to pay the minimum hourly wage to a minor and resultant single violation of OAR 839-21-087(1)(g)(C). ---- ***In the Matter of Arabian Riding and Recreation Corp., 16 BOLI 79, 90 (1997).***

□ The commissioner assessed a civil penalty of \$500 for respondent's failure to verify the age of a minor employee by requiring him to produce a work permit before employing him or permitting him to work. ---- ***In the Matter of LaVerne Springer, 15 BOLI 47, 66, 68 (1996).***

□ Under ORS 653.370 and the facts and circumstances of the record in the proceedings, the forum held that the commissioner had the authority and power to impose and direct payment of civil penalties against respondents -- a corporation and three individual persons, one of whom was the president and owner of the corporation, and the other two were employee/crew chiefs of the corporation. ---- ***In the Matter of Northwest Advancement, Inc., 6 BOLI 71, 94 (1987).***

CHILD LABOR -- 12.0 ENFORCEMENT ACTIONS (SEE ALSO CH. I -- ADMIN. PROC.)

Affirmed, *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 146, 772 P2d 943 (1989). See also *Northwest Advancement, Inc. v. Bureau of Labor*, 96 Or App 133, 772 P2d 934 (1989).

□ When respondent did not file a completed employment certificate form with the Bureau of Labor and Industries with 48 hours after hiring a minor employee, respondent violated ORS 653.307, 653.310, and OAR 839-21-220(3). The commissioner assessed a \$500 civil penalty for one violation. ----- *In the Matter of LaVerne Springer*, 15 BOLI 47, 66, 68 (1996).

□ The commissioner assessed a civil penalty of \$19,000 for respondent's 19 violations of ORS 653.305 and OAR 839-21-067(1) by employing a minor for more than 44 hours per week for each of 19 weeks without a Special Emergency Overtime Permit from the Wage and Hour Commission. ----- *In the Matter of LaVerne Springer*, 15 BOLI 47, 66, 68 (1996).

□ The commissioner assessed a civil penalty of \$750 for respondent's willful violation of OAR 839-21-175 in failing to make accessible and available for agency inspection and transcription records containing the information required by OAR 839-21-170. ----- *In the Matter of Albertson's, Inc.*, 10 BOLI 199, 296-98, 313-14 (1992).

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ When three minors were employed to drive motor vehicles on public roads or highways to deliver pizza in violation of OAR 839-21-104, and there were both aggravating and mitigating circumstances, the commissioner assessed a civil penalty of \$500 for each violation, for a total of \$1500. ----- *In the Matter of Panda Pizza*, 10 BOLI 132, 144 (1992).

□ When respondent employed 17 minors and failed to file employment certificates for them in violation of OAR 839-21-220(1)(b) and (3) and failed verify their ages by requiring them to produce work permits in violation of OAR 839-21-220(1)(a), and one minor was killed while employed driving a motor vehicle on public roads or highways in violation of OAR 839-21-104, and two other minors were so employed, the forum imposed \$1000 civil penalties for the work permit and employment certificate violations related to the minor who was killed, \$500 civil penalties for each of the two work permit and two employment certificate violations related to the other minors driving motor vehicles, and imposed \$100 civil penalties for each of the remaining 14 work permit and 14 employment certificate violations. ----- *In the Matter of Panda Pizza*, 10 BOLI 132, 145-46 (1992).

□ The commissioner assessed a civil penalty of \$100, the amount requested by the agency, when respondent failed to maintain proper records in violation of OAR 839-21-170(1). ----- *In the Matter of Panda Pizza*, 10 BOLI 132, 146 (1992).

12.4.2 --- Aggravating Circumstances

□ Respondent's failure to obtain an employment certificate was aggravated by respondent's failure to make any attempt to prevent or correct child labor violations when respondent knew he employed a minor.

----- *In the Matter of Randall Stuart Bates*, 23 BOLI 1, 17 (2002)

□ Respondent's failure to obtain an employment certificate was aggravated by the seriousness of the violation. ----- *In the Matter of Randall Stuart Bates*, 23 BOLI 1, 17 (2002).

□ Respondent's assurances of future compliance with the wage and hour laws were offset by evidence that respondent continued to use unpaid labor at the time of hearing. ----- *In the Matter of LaVerne Springer*, 15 BOLI 47, 68 (1996).

□ The commissioner imposed the statutory maximum civil penalties when respondent's failure to ascertain a minor employee's age allowed the minor to be employed in the hazardous occupation of logging and the minor suffered a devastating back injury while employed by respondent. ----- *In the Matter of Ronald Turman*, 13 BOLI 166, 174-75 (1994).

□ Respondent's failure to produce its records after several agency requests, which impaired the agency's ability to investigate the case and bring respondent into compliance with Oregon's child labor laws, was an aggravating circumstance regarding respondent's violation of OAR 839-21-175. ----- *In the Matter of Albertson's, Inc.*, 10 BOLI 199, 314 (1992).

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ Respondent's violations of ORS 653.310 and OAR 839-21-220(3) and (5) regarding filing employment certificates were aggravated by respondent's upper management's recalcitrant attitude and its failure to take effective steps to bring itself into compliance with the law. ----- *In the Matter of Albertson's, Inc.*, 10 BOLI 199, 315 (1992).

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ Respondent violated OAR 839-21-104 three times by allowing three minors to drive motor vehicles on public roads or highways. These violations were aggravated by: (1) the death of a fourth minor while driving; (2) the inherent hazardousness of the activity; (3) the amount of time the minors spent performing the hazardousness activity – 50% of their work time; and (4) the fact that the minors did their driving during evening or nighttime hours, thereby increasing the risk of already hazardous work. ----- *In the Matter of Panda Pizza*, 10 BOLI 132, 144 (1992).

□ The forum imposed the maximum civil penalty of \$1000 against respondent when its minor employee was killed while employed in an occupation declared hazardousness for minors. ----- *In the Matter of Panda Pizza*, 10 BOLI 132, 143-44 (1992).

12.4.3 --- Mitigating Circumstances

□ Evidence suggesting that a minor employee may have been disloyal or undependable does not mitigate civil penalties for violation of child labor laws. ----- *In the Matter of LaVerne Springer*, 15 BOLI 47, 68 (1996).

CHILD LABOR -- 12.0 ENFORCEMENT ACTIONS (SEE ALSO CH. I -- ADMIN. PROC.)

□ Respondent's assurances of future compliance with the wage and hour laws were not mitigating circumstances when the assurances were offset by evidence that respondent continued to use unpaid labor at the time of hearing. ----- *In the Matter of LaVerne Springer*, 15 BOLI 47, 68 (1996).

□ Noting that ignorance of the law is not a mitigating circumstance, the commissioner imposed the statutory maximum civil penalties when respondent's failure to ascertain a minor employee's age allowed the minor to be employed in the hazardous occupation of logging and the minor suffered a devastating back injury while employed by respondent. ----- *In the Matter of Ronald Turman*, 13 BOLI 166, 175 (1994).

□ Mitigation refers to actions taken by the employer regarding the alleged violation, or to circumstances that might affect an employer's ability to comply with the law. ----- *In the Matter of Albertson's, Inc.*, 10 BOLI 199, 314 (1992).

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ When respondent requested a citation of authority for the agency's request for records and the agency did not provide it, the agency's failure to supply the citation did not mitigate respondent's violation of OAR 839-21-175. ----- *In the Matter of Albertson's, Inc.*, 10 BOLI 199, 314 (1992).

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ When respondent violated OAR 839-21-175 on several occasions by failing to provide its records to the agency, these violations were mitigated by the fact that much of the information requested was available at respondent's stores, and respondent's store directors and other store level staff were cooperative in making their records available. ----- *In the Matter of Albertson's, Inc.*, 10 BOLI 199, 314 (1992).

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ The cooperation of many of respondent's store managers and other staff was a mitigating circumstance with respect to respondent's 205 willful violations of the law regarding employment certificates. ----- *In the Matter of Albertson's, Inc.*, 10 BOLI 199, 315 (1992).

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ The cooperation of many of respondent's store managers and other staff was a mitigating circumstance regarding respondent's 51 willful violations of the law regarding work permits. ----- *In the Matter of Albertson's, Inc.*, 10 BOLI 199, 315 (1992).

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ Ignorance of the law is not a mitigating circumstance. Employers have a legal duty to know and

comply with the law and cannot sit back and wait for someone to come out and train them, then claim mitigation when no one has done so. ----- *In the Matter of Panda Pizza*, 10 BOLI 132, 144 (1992).

□ Respondent's prompt correction of violations and its cooperation with the agency's investigation were mitigating circumstances. ----- *In the Matter of Panda Pizza*, 10 BOLI 132, 145 (1992).

□ Respondent's president's assurance of future compliance was a mitigating factor. ----- *In the Matter of Panda Pizza*, 10 BOLI 132, 145 (1992).

12.4.4 --- Repeated Violations

□ "Repeated" means said, done, or happening again, or again and again. "Repeated violations," for purposes of OAR 839-19-025(5), is directed at genuinely recalcitrant employers who are repeated violators in the sense of having been cited for noncompliance in the past. There is no need in such cases to rely on actual or constructive knowledge of the law in order to justify minimum penalties. The fact of a prior citation for the same offense gives notice of the law's potential application and the forum need not dwell in cases involving repeat violations on questions of knowledge or intent. ----- *In the Matter of Albertson's, Inc.*, 10 BOLI 199, 313 (1992).

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

See also *In the Matter of Panda Pizza*, 10 BOLI 132, 143 (1992).

□ OAR 839-19-025(5), concerning civil penalties for "willful and repeated violations," is interpreted to mean that willful and repeated violations are both considered to be of such seriousness and magnitude that a minimum civil penalty will be imposed for each willful or repeated violation. ----- *In the Matter of Albertson's, Inc.*, 10 BOLI 199, 312 (1992).

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

12.4.5 --- Willfulness of Violations (see also Ch. IX, sec. 13.1.2)

□ OAR 839-19-025(5), concerning civil penalties for "willful and repeated violations," is interpreted to mean that willful and repeated violations are both considered to be of such seriousness and magnitude that a minimum civil penalty will be imposed for each willful or repeated violation. ----- *In the Matter of Albertson's, Inc.*, 10 BOLI 199, 312 (1992).

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ Under OAR 839-19-025(5), consequences flow not from the willful doing of an act, but rather from the willful violation of the law. It is reasonable to predicate such consequences on actual or constructive knowledge of the law's requirements. "Constructive knowledge" means knowledge of facts respondent circumstances, which, with reasonably diligent inquiry, would place the

CHILD LABOR -- 12.0 ENFORCEMENT ACTIONS (SEE ALSO CH. I -- ADMIN. PROC.)

person on notice of the thing to be done or omitted to be done. A person has constructive knowledge of a thing if the person has the means to inform himself or herself but elects not to do so. ----- ***In the Matter of Albertson's, Inc., 10 BOLI 199, 313 (1992).***

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ When respondent knew of the law's requirements to file employment certificate and refused to file them, the forum found that respondent's failures to comply were committed knowingly and intentionally. When later assurances to comply were conditional and compliance was largely not achieved for almost two years, the forum found that respondent's 205 violations of ORS 653.310 and OAR 839-21-220(3) and (5) were willful. After considering aggravating and mitigating circumstances, the forum imposed the minimum civil penalty of \$500 per willful violation, pursuant to OAR 839-19-025(5), for a total of \$102,500. ----- ***In the Matter of Albertson's, Inc., 10 BOLI 199, 314-15 (1992).***

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ When the agency advised respondent by letter of its duty to verify the age of each minor by checking the work permit before hire and sent respondent a copy of the administrative rules regarding the employment of minors, respondent had actual knowledge of the law. When respondent made no effort to bring itself into compliance with the work permit law, the forum found that respondent's 51 violations of OAR 839-21-220(1) were willful. After considering aggravating and mitigating circumstances, the forum imposed the minimum civil penalty of \$500 per willful violation, pursuant to OAR 839-19-025(5), for a total of \$25,500. -- ***In the Matter of Albertson's, Inc., 10 BOLI 199, 315 (1992).***

Reversed and remanded on other ground, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ "Willful" means intentional and includes a failure to act. A person commits a willful act when the person knows what he or she is doing, intends to do what he or she is doing, and is a free agent. OAR 839-19-025(5) requires an element of actual or constructive intent to violate the law. It is reasonable to predicate such consequences on actual or constructive knowledge of the law's requirements. "Constructive knowledge" means knowledge of facts respondent circumstances, which, with reasonably diligent inquiry, would place the person on notice of the thing to be done or omitted to be done. A person has constructive knowledge of a thing if the person has the means to inform himself or herself but elects not to do so. ----- ***In the Matter of Panda Pizza, 10 BOLI 132, 141-43 (1992).***

12.4.6 --- Fair Labor Standards Act -- Exemption

□ Under ORS 653.370, OAR 839-21-001, *et seq.*, and 839-19-010, *et seq.*, the commissioner was authorized to impose a civil penalty for each child labor law violation

found when respondent "was not regulated by the federal Fair Labor Standards Act as to the work permits, employment certificate, or records and preservation thereof requested by state law in connection with the employment of minors." ----- ***In the Matter of Ronald Turman, 13 BOLI 166, 173-74 (1994).***

□ When respondent was charged with only employment certificate, work permit, and record keeping violations, the forum found that respondent was not regulated under the Fair Labor Standards Act with regard to employment certificate, work permits, and child labor record keeping requirements. ----- ***In the Matter of Albertson's, Inc., 10 BOLI 199, 293, 312 (1992).***

Reversed and remanded on this point, *Albertson's, Inc. v. Bureau of Labor and Industries*, 128 Or App 97, 874 P2d 1352 (1994).

□ When respondent's sales did not exceed \$280,000, and the USDOL advised the agency that USDOL would not regulate the hazardous order violations alleged because the minors would not be under USDOL's jurisdiction, the forum found that respondent was not regulated under the Fair Labor Standards Act for the violations found. ----- ***In the Matter of Panda Pizza, 10 BOLI 132, 137, 141 (1992).***

12.5 --- Revocation of Right to Hire Minors