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**FARM/FOREST LABOR CONTRACTOR  
(F/FLC)**

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□ The commissioner is generally charged to "cause to be enforced" all laws protecting employees. In the context of ORS 658.405 to 658.503 and 658.830, the commissioner need not wait for or solicit an employee claim in order to initiate an investigation. An agency has such implied authority as is necessary to carry out power expressly granted. ----- ***In the Matter of Manuel Galan, 16 BOLI 51, 68 (1997).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 154 Or App 762 (2000), 763 P2d 755, rev den 327 Or 553, 971P2d 409 (1998).

□ The commissioner may impose any sanction authorized by statute. Respondents' assertion at hearing that a civil penalty would be an appropriate sanction in lieu of revocation cannot confer such authority on the commissioner. ORS 658.453 is the commissioner's statutory authority for assessing a civil penalty. In subsection (1), the statute specifies the violations for which a civil penalty may be assessed. OAR 839-15-508 similarly lists the violations for which the commissioner may impose a civil penalty. Neither the statute nor the rule lists a failure to make workers' compensation insurance premium payments when due as a basis for assessing a civil penalty. Thus, a civil penalty is not an available sanction for that violation. ----- ***In the Matter of Scott Nelson, 15 BOLI 168, 184-85 (1996).***

□ The Farm Labor Contractor's Act (ORS 658.405 to 658.503 and 658.830) applies to an unlicensed contractor entering into a subcontract in Oregon for the forestation of lands in another state. ----- ***In the Matter of Manuel Galan, 15 BOLI 106, 114, 130-31 (1996).***

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ Respondents sought postponement of the hearing until the agency adopted rules defining recruiting, soliciting and supplying as used in ORS 658.405. Respondents argued that the formal rulemaking procedures set forth in ORS chapter 183 were required because BOLI's rule, OAR 839-15-000, did not specifically authorize rulemaking through contested case decisions. The commissioner rejected that argument, finding that, as the official with comprehensive review powers to consider interpretations of law in final contested case decisions under the Farm Labor Contractors Act, the commissioner could interpret a statutory term in a contested case. ----- ***In the Matter of Manuel Galan, 15 BOLI 106, 114, 133-34 (1996).***

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ When an unlicensed farm labor contractor recruited workers in Oregon to perform forestation work on a USFS contract outside Oregon, the forum held that Oregon's farm labor contractor law applied to this act. Regulation of this act was within the constitutional power of Oregon to regulate, and was not preempted by federal law. ----- ***In the Matter of Jose Linan, 13 BOLI 24, 36***

### 1.0 AUTHORITY OF THE COMMISSIONER (see also Ch. I, sec. 2.1)

□ When an agency policy statement is a "directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of [the] agency," that statement is a rule binding on the agency until the agency amends or repeals it or until it is declared invalid by a court. ----- ***In the Matter of Charles Hurt, 18 BOLI 265, 274-75 (1999).***

□ At the close of the agency's case, respondents moved to dismiss the case on the ground that the commissioner lacked jurisdiction because none of the three subsections of ORS 658.407 specifically authorizes the commissioner to enforce farm/forest labor contractors' duty to provide their workers with written agreements, pursuant to ORS 658.440(1)(g). The forum denied the motion, holding that the commissioner has jurisdiction over all state farm/forest labor statutes. ----- ***In the Matter of Paul A. Washburn, 17 BOLI 212, 214, 221-22 (1998).***

□ The commissioner has broad authority over applicants and licensees for farm and forest labor activities. In addition to specific protection of worker earnings, the commissioner is empowered to license farm and forest contractors, and in doing so, may either upon the protest of an individual or on the commissioner's own motion, investigate an applicant's character and proposed method of operation, revoke, suspend or refuse to renew an existing license, and impose civil penalties for violations. ----- ***In the Matter of Manuel Galan, 16 BOLI 51, 68 (1997).***

Affirmed without opinion, *Galan v. Bureau of Labor*

(1994).

□ The commissioner may impose any sanction authorized by statute. OAR 839-15-520(2) gives direction to the commissioner in her role as prosecutor, but does not limit her statutory discretion in her role as adjudicator. ----- ***In the Matter of Clara Perez, 11 BOLI 181, 194-95 (1993).***

□ When the commissioner delegates final order authority to a hearings referee, pursuant to OAR 839-33-095, the hearings referee may impose any sanction authorized by statute. ----- ***In the Matter of Clara Perez, 11 BOLI 181, 195 (1993).***

□ OAR 839-15-520(2), which provides that the commissioner “shall propose” that a license be suspended, revoked, or not renewed when a licensee demonstrates that the licensee’s character, competence, and reliability makes the licensee unfit to act as a farm labor contractor, gives direction to the commissioner in her role as prosecutor, but does not limit her statutory discretion in her role as adjudicator. ----- ***In the Matter of Efrain Corona, 11 BOLI 44, 58 (1992).***

Affirmed without opinion, *Corona v. Bureau of Labor and Industries*, 124 Or App 211, 861 P2d 1046 (1993).

□ When respondent was an applicant for a farm/forest labor contractor license, and the evidence established that he recruited workers through employees who were unlicensed, failed while acting as a farm/forest labor contractor to comply with the terms and provisions of his contract with a payroll service, and failed to furnish the workers with required written statements of the working agreement and their rights, the commissioner had jurisdiction over respondent and the subject matter under ORS 658.405 to 658.503. ----- ***In the Matter of Stancil Jones, 9 BOLI 233, 238 (1991).***

□ When a respondent who lacked a farm/forest labor contractor license recruited and paid workers in connection with the forestation or reforestation of land and had a financial interest in and managed the business of the putative contractor on a specific BLM contract involving forestation or reforestation of land, the commissioner had jurisdiction over respondent and the subject matter under ORS 658.405 to 658.503. ----- ***In the Matter of Kenneth Vanderwall, 9 BOLI 148, 154-55 (1990).***

□ When respondent was a licensed farm/forest labor contractor and violated farm/forest labor contractor laws while licensed, the commissioner had jurisdiction over the subject matter and the person, even though the person was no longer licensed at the time of the hearing and when the final order was issued. ----- ***In the Matter of Deanna Donaca, 6 BOLI 212, 236 (1987).***

□ The commissioner has the authority to and may, according to ORS 658.445 and OAR 839-15-520(1)(d) and (2), revoke and refuse to issue a contractor’s license to act as a forest labor contractor. ----- ***In the Matter of Jesus Ayala, 6 BOLI 54, 67 (1987).***

□ A contractor permitted his license to expire without applying for its renewal after he had been given notice by the agency of its intent to refuse to renew the

contractor’s license because of multiple violations of farm/forest labor contractor laws. The forum held that the commissioner had the authority, when the contractor had been given full and fair opportunity to respond to the modification in the action from refusing to renew a license to assessing civil penalties, to assess civil penalties for the violations. The forum also held that the commissioner would have the authority to and would refuse to renew the contractor’s farm/forest labor contractor license if he had such a license. ----- ***In the Matter of Jose Solis, 5 BOLI 180, 199, 202-03 (1986).***

□ When the agency notified a licensed contractor on March 4, 1983, that the agency proposed to refuse to renew the contractor’s license for the 1983 license year, which ran from February 1, 1983, through January 31, 1984, a hearing was conducted on October 20-21, 1984, and the commissioner’s final order was issued on May 8, 1984, the forum found that the commissioner had the authority, under the facts and circumstances of the record, to refuse to renew the contractor’s license. ----- ***In the Matter of Highland Reforestation, 4 BOLI 185, 203-04 (1984).***

□ When the agency notified a licensed contractor on February 14, 1983, that the agency proposed to refuse to renew the contractor’s license for the 1983 license year, which ran from February 1, 1983, through January 31, 1984, a hearing was conducted on September 13-14, 1983, and the commissioner’s final order was issued on April 5, 1984, the forum found that the commissioner had the authority, under the facts and circumstances of the record, to refuse to renew the contractor’s license. --- ***In the Matter of Desiderio Salazar, 4 BOLI 154, 172 (1984).***

**2.0 DEFINITIONS**

**2.1 --- Crew Leader**

**2.2 --- False**

□ For the purposes of ORS 658.440(3)(b), “false” generally means that the questioned representation is untrue. ----- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 159 (2007).***

□ Under ORS 658.440(2)(b), “false” generally means that the questioned representation is untrue (legally, it may also include a connotation of intentional deception. - ***In the Matter of Leonard Williams, 8 BOLI 57, 74 (1989).***

**2.3 --- False Statement**

□ A false statement, for the purpose of ORS 658.440(3)(a), is “an incorrect statement made with knowledge of the incorrectness or with reckless indifference to the actual facts, and with the intention to mislead or deceive.” As with a misrepresentation, the false statement must also be about a substantive matter that is influential in the decision to grant or deny a license. ----- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 46 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ A false statement, for the purposes of ORS

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658.440(3)(a) and OAR 839-15-520(1)(a), is an incorrect statement made with knowledge of the incorrectness or with reckless indifference to the actual facts, and with the intention to mislead or deceive. The false statement must be about a substantive matter that is influential in the decision to grant or deny a license. ----- ***In the Matter of Alejandro Lumbreras, 12 BOLI 117, 125 (1993).*** See also *In the Matter of Z & M Landscaping, Inc., 10 BOLI 174, 181 (1992)*; *In the Matter of Rogelio Loa, 9 BOLI 139, 146 (1990)*; *In the Matter of Raul Mendoza, 7 BOLI 77, 83 (1988)*.

### 2.4 --- Farm Labor Contractor

□ Respondents did not act in the capacity as a farm labor contractor when its workers collected cones, an activity that is not a regulated activity requiring a farm labor contractor license. ----- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 37 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ A person who supplies farm workers to another person acts as a farm labor contractor if he or she either: (1) supplies the workers "for an agreed remuneration or rate of pay" to work in the production or harvesting of farm products; or (2) supplies the workers "on behalf of an employer engaged in" the production or harvesting of farm products. A person supplies farm workers "on behalf of an employer" if he or she acts as the employer's agent when supplying the workers. ----- ***In the Matter of Tomas Benitez, 19 BOLI 142, 158 (2000).***

□ The forum rejected respondent's argument that he was not required to give farm workers statements of their rights because he was an employee of the farm to which he supplied the workers and therefore was not acting as a "contractor." The forum noted that "the statutory language is clear – a person acts as a farm labor contractor when he or she supplies farm workers to another either as that other's agent or for an agreed remuneration or rate of pay, whether or not the person is the other's employee. Respondent was obliged to understand the laws regulating the business in which he was engaged, including the statutory definition of 'farm labor contractor,'" particularly because he had been a licensed farm labor contractor for approximately 10 years. ----- ***In the Matter of Tomas Benitez, 19 BOLI 142, 159, 161 (2000).***

□ The forum overruled the implication in prior cases, including *In the Matter of Joann West*, that mere recruitment, solicitation, supplying, or employing workers, without more, qualifies a person as a farm/forest labor contractor. ----- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 236 (1999).***

□ To establish that a person acted as a farm labor contractor by supplying workers to another, the agency had to prove that the alleged contractor supplied workers to respondent either "for an agreed remuneration or rate of pay" or as respondent's agent. ----- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 235 (1999).***

□ When the evidence established that respondent and

an alleged unlicensed contractor mutually agreed that the contractor should act on respondent's behalf, and respondent had the right to control the contractor's action in supplying four workers, the forum concluded that the contractor had acted as respondent's agent and that respondent had violated ORS 658.437(2) by having the contractor supply workers on his behalf without first examining and retaining a copy of the contractor's license. The forum assessed civil penalties. ----- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 236 (1999).***

□ Respondents operated two companies. One obtained forestation/reforestation contracts and the other leased employees to the contracting company and paid the employees. The forum concluded that the company that leased out and paid the workers was a farm labor contractor because it received an agreed rate of remuneration for providing workers to the contracting company – the exact amount of money that it paid its employees. The forum dismissed respondents' argument that the company that leased and paid the workers was not a farm labor contractor because it made no profit from leasing workers to the contracting company. ----- ***In the Matter of Mike L. Sulfridge, 18 BOLI 22, 42-43 (1999).***

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ When an unlicensed person bid for and obtained a USFS contract to apply big game repellent before a rule change that made the application of big game repellent an activity that required a farm labor contractor license, then entered into a subcontract with respondent, a licensed farm labor contractor, to perform the contract, and respondent provided the workers and performed the contract before and after the rule change, the commissioner held that the unlicensed person was not a farm labor contractor within the definition of ORS 658.405(1) and OAR 839-15-004(4), and respondent therefore did not assist the person to act as a farm labor contractor without a license when respondent performed part of the subcontract after the rule change. ----- ***In the Matter of Andres Bermudez, 16 BOLI 229, 241-42 (1998).***

□ The statutory definition of a farm labor contractor includes a person "who enters into a subcontract with another for [forestation and reforestation] activities." The act that brings a person within the definition of a farm labor contractor is the act of entering into a subcontract, not the performance of the subcontract. ----- ***In the Matter of Richard Cole, 16 BOLI 221, 228 (1997).***

□ Respondent bid for and obtained a USF contract to apply big game repellent and entered into a subcontract with another licensed farm labor contractor to perform this contract before a rule change that made the application of big game repellent an activity that required a farm labor contractor license. The licensed subcontractor provided the workers and performed the contract before and after the rule change. The commissioner held that respondent was not a farm labor contractor within the definition of ORS 658.405(1) and OAR 839-15-004(4), and therefore did not act as a farm

labor contractor without a license when the contract was completed after the rule change. ---- *In the Matter of Richard Cole, 16 BOLI 221, 228-29 (1997).*

□ When a respondent corporation did not have an Oregon farm labor contractor license and respondent's foreman, for the purpose of establishing a direct employer-employee relationship between the workers and the respondent corporation, gave oral notice to 14 workers in and around Medford, Oregon, of employment availability with the respondent corporation in California and transported them to California to work for the respondent corporation, the respondent corporation recruited workers and violated ORS 658.410 by acting as a farm labor contractor without a license. ---- *In the Matter of Manuel Galan, 15 BOLI 106, 127, 137 (1996).*

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ When a person who was not the employee of the respondent farmer supplied workers to harvest the respondent farmer's Christmas trees, that person was acting as a farm labor contractor and should have had a valid farm labor contractor's license. ---- *In the Matter of Melvin Babb, 14 BOLI 230, 237 (1995).*

□ A respondent who lodged workers, located work for them in the production or harvest of farm products, transported and supplied them to harvest crops for farmers engaged in the production of farm products was acting as a farm labor contractor and was required to be licensed under the provisions of ORS 658.410(1) and 658.415(1). ---- *In the Matter of Javier Garcia, 13 BOLI 93, 109-110 (1994).*

□ A farm labor contractor is a person "who recruits, solicits, supplies or employs workers on behalf of an employer engaged in [reforestation] activities." When respondent recruited two workers on behalf of an employer and respondent was not the workers' employer, he was still acting as a contractor and was required to be licensed. ---- *In the Matter of Jose Linan, 13 BOLI 24, 26, 44-45 (1994).*

□ Any person who subcontracts with another for the forestation or reforestation of lands is a farm labor contractor as defined in ORS 658.405(1) and OAR 839-15-004(5)(e) and is required to possess a valid farm labor contractor's license issued by the agency pursuant to ORS 658.410. ---- *In the Matter of Efrain Corona, 11 BOLI 44, 54-55 (1992).*

Affirmed without opinion, *Corona v. Bureau of Labor and Industries*, 124 Or App 211, 861 P2d 1046 (1993).

## 2.5 --- Financially Interested

□ An applicant for a farm labor contractor license has a duty to reveal to the agency the identity of all persons financially interested in the business. Such data is a substantive matter influential in the commissioner's decision to grant or deny a license. Respondents misrepresented the truthfulness and accuracy of the information they provided to the agency on their license application when they certified all of the information on their license application was correct and respondents knew or should have known they were not giving correct

information when responding to questions about the financial composition of their business. ---- *In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 48-49 (2003).*

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ Pursuant to ORS 658.415(1)(d), an applicant for a farm labor contractor license is required to provide the names and addresses of all persons financially interested, whether as partners, shareholders, associates, or profit-sharers, in the applicant's proposed operations as a farm labor contractor, together with the amount of their respective interests, and whether or not, to the best of the applicant's knowledge, any of these persons was ever denied a license under ORS 658.405 to 658.503 and 658.830 within the preceding three years, or had such a license denied, revoked, or suspended within the preceding three years in this or any other jurisdiction. Compliance with this requirement is a substantive matter that is influential in the commissioner's decision to grant or deny a license. ---- *In the Matter of Amalia Ybarra, 10 BOLI 75, 81 (1991).*

□ A financially interested associate in an applicant's operation includes anyone who has put up money, any kind of equipment, the equitable use of equipment, or anything that generally would be considered capitalization of a business. ---- *In the Matter of Amalia Ybarra, 10 BOLI 75, 80 (1991).*

□ The names and addresses of all persons financially interested in an applicant's proposed operation as a farm/forest labor contractor is a substantive matter that is influential in the commissioner's decision to grant or deny a license. ---- *In the Matter of Rogelio Loa, 9 BOLI 139, 145, 147 (1990).*

## 2.6 --- Forest Labor Contractor

□ The term "farm/forest labor contractor" may be used to refer to a person engaged in activities related to the forestation or reforestation of land that requires the person to obtain both a farm labor contractor's license pursuant to ORS 658.405(1) and a forestation/reforestation indorsement pursuant to ORS 658.417(1). - ---- *In the Matter of Lambertus Sandker, 18 BOLI 277, 280 n.\*\* (1999).* See also *In the Matter of Charles Hurt, 18 BOLI 265, 268 n.\* (1999).*

□ The forum overruled the implication in prior cases, including *In the Matter of Joann West*, that mere recruitment, solicitation, supplying, or employing workers, without more, qualifies a person as a farm/forest labor contractor. ---- *In the Matter of Thomas L. Fery, 18 BOLI 220, 236 (1999).*

□ To establish that a person acted as a farm labor contractor by supplying workers to another, the agency had to prove that the alleged contractor supplied workers to respondent either "for an agreed remuneration or rate of pay" or as respondent's agent. ---- *In the Matter of Thomas L. Fery, 18 BOLI 220, 235 (1999).*

□ When the evidence established that respondent and an alleged unlicensed contractor mutually agreed that the contractor should act on respondent's behalf and

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respondent had the right to control the contractor's action in supplying four workers, the forum concluded that the contractor had acted as respondent's agent and that respondent had violated ORS 658.437(2) by having the contractor supply workers on his behalf without first examining and retaining a copy of the contractor's license. The forum assessed civil penalties. ---- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 236 (1999).***

□ Respondents operated two companies. One obtained forestation/reforestation contracts and the other leased employees to the contracting company and paid the employees. The forum concluded that the company that leased out and paid the workers was a farm labor contractor because it received an agreed rate of remuneration for providing workers to the contracting company – the exact amount of money that it paid its employees. The forum dismissed respondents' argument that the company that leased and paid the workers was not a farm labor contractor because it made no profit from leasing workers to the contracting company. ---- ***In the Matter of Mike L. Sulfridge, 18 BOLI 22, 42-43 (1999).***

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ The statutory definition of a farm labor contractor includes a person "who enters into a subcontract with another for [forestation and reforestation] activities." The act that brings a person within the definition of a farm labor contractor under former OAR 839-15-0044(4)(e) and OAR 839-015-0004(4)(e) is the act of entering into a subcontract, not the performance of the subcontract. ---- ***In the Matter of Andres Bermudez, 16 BOLI 229, 231 (1998).***

□ A person who bids or submits prices on contract offers or subcontracts with another for the forestation or reforestation of lands, including piling of brush and slash, and fire trail building, is a farm/forest labor contractor as defined in ORS 658.405(1) and OAR 839-15-004(5) and (9). ---- ***In the Matter of Z & M Landscaping, Inc., 10 BOLI 174, 179-80 (1992).***

□ Any person who subcontracts with another for the forestation or reforestation of lands, including thinning of trees and piling brush and slash, is a farm/forest labor contractor, as that term is defined in ORS 658.405(1) and OAR 839-15-004(5), and is required by ORS 658.410 to possess a valid farm/forest labor contractor's license issued to him or her by the agency. ---- ***In the Matter of Deanna Donaca, 6 BOLI 212, 237 (1987).***

### 2.7 --- Forestation or Reforestation Activity

□ When respondent obtained two permits to collect cones on federal land from the USFS, no license was necessary to obtain a special use permit for cone gathering, there was no evidence that respondent gathered any other wild forest products, and respondent paid workers for cones harvested for use in respondent's nursery business, the forum concluded that cone collecting was not a regulated activity requiring a farm labor contractor license. ---- ***In the Matter of Rodrigo***

***Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 37 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ Lifting seedlings for transplant, tree nettings, and tree planting are all forestation or reforestation activities subject to Oregon's farm labor contractor laws. ---- ***In the Matter of Bill Martinez, 14 BOLI 214, 220 (1995).***

□ Supplying workers to plant trees on the land of another is a forestation or reforestation activity that requires an Oregon farm labor contractor license. ---- ***In the Matter of Bill Martinez, 14 BOLI 214, 221 (1995).***

□ Recruiting, soliciting, or employing workers in Oregon to work in the forestation or reforestation of lands, wherever located, are activities requiring an Oregon farm labor contractor license with the appropriate indorsement. ---- ***In the Matter of Alejandro Lumberras, 12 BOLI 117, 125 (1993).***

### 2.8 --- Fraudulent

□ For the purposes of ORS 658.440(2)(b), "fraudulent" generally means that the questioned representation is untrue, is known to the speaker to be untrue, and is made with the specific intent that the hearer act on it to the hearer's legal injury. ---- ***In the Matter of Leonard Williams, 8 BOLI 57, 74 (1989).***

### 2.9 --- Misconduct

□ In order to give effect to the intent of the agency in enacting OAR 839-015-0520(3)(m), the forum relied on the PGE template for statutory interpretation to determine the meaning of the word "misconduct." ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 167 (2007).***

□ When interpreting the word "misconduct" in the agency's administrative rule, the forum relied on its plain, natural and ordinary meaning contained in *Webster's Third New Int'l Dictionary* because it was not defined anywhere in the rule, related rules, related statutes, or in any of the commissioner's previous final orders. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 167 (2007).***

□ In the context of OAR 839-015-0520(3)(m), the forum concluded that the "plain, natural and ordinary meaning" of "misconduct" is "bad conduct, improper behavior." ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 168 (2007).***

□ A farm labor contractor's violation of any Oregon farm labor contractor laws or BOLI's administrative rules interpreting those laws is *per se* "misconduct" within the meaning of OAR 839-015-0520(3)(m) so long as the violation involves relations with "workers, farmers and others" with whom the farm labor contractor conducts business. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 168 (2007).***

□ A "course of misconduct" is a series of acts, each of which constitute misconduct. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 168 (2007).***

### 2.10 --- Misleading

□ For the purposes of ORS 658.440(2)(b), “misleading” generally means that the questioned representation is calculated or intended to lead astray or to lead into error, and may assume the speaker’s knowledge of the truth, or at least of the inaccuracy of representation. ----- ***In the Matter of Leonard Williams, 8 BOLI 57, 74 (1989).***

**2.11 --- Misrepresentation**

□ When respondents had entered into two consent judgments in the past, but neither remained recorded or docketed at the time respondents applied for a farm labor contractor license, and respondents certified on their application that there were no judgments or administrative orders of record against them, respondents, the forum concluded that respondents did not make a misrepresentation or false statement when they denied having such on their joint license application. ----- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 49 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ The forum applied the clear and convincing evidence standard to the agency’s five allegations that respondents made misrepresentations, false statements, and willfully concealed information on their joint farm labor license application. Such evidence is defined as “evidence that is free from confusion, fully intelligible and distinct and for which the truth of the facts asserted is highly probable.” ----- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 46 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ The legislature did not intend that a false assertion, such as an erroneous zip code on a license application, would be grounds for license denial. ----- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 46 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ A misrepresentation, for the purpose of ORS 658.440(3)(a), is “an assertion made by a license applicant which is not in accord with the facts, when the applicant knew or should have known the truth of the matter asserted, and when the assertion is of a substantive fact which is influential in the commissioner’s decision to grant or deny a license.” Misrepresentation does not include an intention to deceive or mislead. ----- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 45-46 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ A misrepresentation, for the purposes of ORS 658.440(3)(a) and OAR 839-15-520(1)(a), is an assertion made by a license applicant which is not in accord with the facts, when the applicant knew or should

have known the truth of the matter asserted, and when the assertion is of a substantive fact which is influential in the commissioner’s decision to grant or deny a license. ----- ***In the Matter of Alejandro Lumbreras, 12 BOLI 117, 125 (1993).*** See also *In the Matter of Amalia Ybarra, 10 BOLI 75, 82-83 (1991); In the Matter of Raul Mendoza, 7 BOLI 77, 82-83 (1988).*

□ The forum applied a clear and convincing evidentiary standard to the agency’s allegations that respondent made misrepresentations on her license application. ----- ***In the Matter of Amalia Ybarra, 10 BOLI 75, 83 (1991).***

**2.12 --- Recruit (see also 2.13)**

□ Respondents sought postponement of the hearing until the agency adopted rules defining recruiting, soliciting and supplying as used in ORS 658.405. Respondents argued that the formal rulemaking procedures set forth in ORS chapter 183 were required. Finding that “recruit” and “solicit” were previously defined in *In the Matter of Leonard Williams, 8 BOLI 57 (1989)*, the commissioner ruled that to be an example of rulemaking through a contested case decision. ----- ***In the Matter of Manuel Galan, 15 BOLI 106, 114, 133 (1996).***

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ Within the context of ORS 658.405(1), “to recruit” means to seek a worker or workers for the purpose of establishing a direct employer-employee relationship between the person being sought and another, including the recruiter. ----- ***In the Matter of JoAnn West, 13 BOLI 233, 244 (1994).***

□ When used as a means of recruitment or solicitation, advertising may violate the farm labor contractor licensing provisions, provided the content of an advertisement, in context, meets the definition of either “recruit” or “solicit.” ----- ***In the Matter of JoAnn West, 13 BOLI 233, 244 (1994).***

□ Respondent, an accountant, placed advertisements bearing her telephone number for her farm labor contractor clients. The advertisements offered contracting services to owners of Christmas tree lots and did not request the services of workers. The commissioner held that respondent was not recruiting or soliciting workers to perform labor for another in the production or harvest of farm products or in the forestation or reforestation of lands and did not act as a farm labor contractor. ----- ***In the Matter of JoAnn West, 13 BOLI 233, 241, 243 (1994).***

□ When an unlicensed farm labor contractor recruited workers in Oregon to perform forestation work on a USFS contract outside Oregon, the forum held that Oregon’s farm labor contractor law applied to this act and that the contractor violated ORS 658.410(1), 658.415(1), and 658.417(1) by acting as a farm labor contractor with regard to the forestation or reforestation of lands without a license. ----- ***In the Matter of Jose Linan, 13 BOLI 24, 36 (1994).***

□ “To recruit” means to seek a worker for the purpose

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of establishing a direct employer-employee relationship, or to seek a worker for the purpose of establishing a work relationship wherein the person sought, while initially seeking employment, eventually is intended to enter into a cooperative or profit-share arrangement with the person seeking workers. ---- *In the Matter of Leonard Williams, 8 BOLI 57, 73 (1989).*

□ "To recruit" means to advertise or give notice of, either orally or in writing, the availability of employment and the steps necessary to obtain it, and it might include persuasion. ---- *In the Matter of Leonard Williams, 8 BOLI 57, 73 (1989).*

### 2.13 --- Repeat

□ When respondent committed seven violations of ORS 658.440(3)(e) by assisting an unlicensed person to act as a farm labor contractor, the forum found that these were repeat violations in the sense that there were four violations on one contract and three violations on another, and also in the sense that the two contracts were about a year apart. The forum assessed a \$500 civil penalty for each violation, pursuant to OAR 839-15-512(2). ---- *In the Matter of Alexander Kuznetsov, 14 BOLI 185, 194 (1995).*

□ The agency charged that a respondent farm labor contractor committed two violations of each of three statutes, and sought a \$500 civil penalty for each violation as a "repeated" violation under OAR 839-15-512(2). The forum held: (1) In farm labor contractor cases, repeated violations have been charged when the agency was concerned with multiple or serial violations; (2) The forum has assessed the minimum civil penalty described in the rule without regard to which violation came first; (3) In farm labor contractor cases, the ordinary dictionary meaning of "repeated" as an adjective is "said, made, done, or happening again, or again and again." "Again" means "once more; a second time, anew." "Again and again" means "often, repeatedly." "Often" means "many times, repeatedly, frequently"; (4) Under the definition, a violation cannot be repeated unless it has occurred before; and (5) The first in a series of violations cannot be a repeated violation, but all like violations occurring thereafter are repeated violations. The forum held that the first violation of each statute was not a repeated one, assessing a \$300 civil penalty for each violation, and that the second violation of each statute was a repeat violation, assessing a minimum \$500 civil penalty for each of those violations. - ---- *In the Matter of Jefty Bolden, 13 BOLI 292, 300 (1994).*

□ When the agency proposes to assess a civil penalty for repeated violations, the exact number of violations is important since "a minimum of \$500 for each repeated violation will be imposed" under OAR 839-15-512(2). ---- *In the Matter of Xavier Carbajal, 8 BOLI 206, 223 (1990).*

□ When a contractor failed to post a notice of compliance of its obligation to maintain a bond on any of the many job sites where contractor's employees worked on the many contracts the contractor performed in 1984-85, the contractor repeatedly violated or failed to comply with ORS 658.415(15). Under OAR 839-15-520(3)(a), this constituted "repeated violations of" a section of ORS

658.405 to 658.475. ---- *In the Matter of Jesus Ayala, 6 BOLI 54, 66 (1987).*

□ When a contractor failed to submit a certified true copy of payroll records to the commissioner at least 13 times in 1984-85 when submission of those records was required, the contractor violated or failed to comply with ORS 658.417(3) at least 13 different times. This constituted a "repeated failure to file \* \* \* information required by 658.405 to 658.475" and OAR 839-15-000 to 839-15-530 and "repeated violations of" a section of 658.405 to 658.475, as those phrases are used in OAR 839-15-520(3)(a) and (f). ---- *In the Matter of Jesus Ayala, 6 BOLI 54, 66 (1987).*

### 2.14 --- Sham or Subterfuge

□ When the evidence contained nothing more than speculation that respondent and her corporation applied for a farm labor contractor license in anticipation of the "denial, suspension, revocation or refusal to renew" her husband's farm labor contractor license, the forum found that the agency had did not establish that respondents used the respondent corporation to perpetrate a sham or subterfuge within the meaning of OAR 839-015-0142, in violation of ORS 658.440(3)(a). ---- *In the Matter of Basilio Piatkoff, 28 BOLI 133, 164-65 (2007).*

□ Part of the agency's prima facie case to establish sham or subterfuge is to show that license applicants have applied for their license in anticipation of the "denial, suspension, revocation or refusal to renew" a license. ---- *In the Matter of Basilio Piatkoff, 28 BOLI 133, 165 (2007).*

□ "Sham" means to act intentionally so as to give a false impression." ---- *In the Matter of Basilio Piatkoff, 28 BOLI 133, 164 (2007).*

□ "Subterfuge" means "deception by artifice or stratagem in order to conceal, escape, or evade." ---- *In the Matter of Basilio Piatkoff, 28 BOLI 133, 164 (2007).*

□ The purpose of the "sham or subterfuge" rule is to uncover mere changes in business form that indicate that the entity making application for a license is, in reality, the same as another entity that previously had a license denied, suspended, revoked, or refused. ---- *In the Matter of Manuel Galan, Jr., 17 BOLI 112, 137 (1998).*

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ The factors the forum considers in determining whether sham or subterfuge is present are set forth by administrative rule. ---- *In the Matter of Manuel Galan, Jr., 17 BOLI 112, 137 (1998).*

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ One of the factors to be considered in determining whether sham or subterfuge is present is "The use of the same real property, fixtures or equipment or use of a similar business name of the former business." That factor can be established even if the new entity only

borrowes the equipment from the former entity. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 137 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ A finding of sham or subterfuge is supported by a finding that "The time period between the Bureau's denial, suspension, revocation or refusal to renew a license and application by the new business is less than one year." ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 137 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ A finding of sham or subterfuge is supported when there is "A lack of adequate consideration or value given for the former business or its property." When a business did not change hands, this factor cannot be established. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 137 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ The fact that a new business uses the same farm/forest workers as a debarred contractor used does not necessarily suggest that the new business is a sham or subterfuge for the debarred contractor, given the transient nature of farm/forest employment. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 141 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ Sham or subterfuge may be found when "A person financially interested in any capacity in the former business has a financial interest in any capacity in the new business." ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 137 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ A finding that "The amount of capitalization is inadequate to meet current obligations of the new business" supports a finding of sham or subterfuge when it shows some dependence or reliance on the former business for capitalization. The mere need for a surety does not establish undercapitalization for purposes of the "sham or subterfuge" test. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 138 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ A finding that "The formalities of a partnership or a corporation are disregarded by the new business when such business is a partnership or corporation" supports a finding of sham or subterfuge. This factor is established when the *de facto* leadership of the partnership or corporation emanates from the former business. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 138 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

**2.15 --- Solicit (see also 2.11)**

□ Respondents sought postponement of the hearing until the agency adopted rules defining recruiting, soliciting and supplying as used in ORS 658.405. Respondents argued that the formal rulemaking procedures set forth in ORS chapter 183 were required. Finding that "recruit" and "solicit" were previously defined in *In the Matter of Leonard Williams*, 8 BOLI 57 (1989), the commissioner ruled that to be an example of rulemaking through a contested case decision. ----- ***In the Matter of Manuel Galan, 15 BOLI 106, 114, 133 (1996).***

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ Within the context of ORS 658.405(1), "to solicit" means to proselytize or to appeal to a worker for the services of the worker in order to establish a direct employer-employee relationship. ----- ***In the Matter of JoAnn West, 13 BOLI 233, 244 (1994).***

□ When used as a means of recruitment or solicitation, advertising may violate the farm labor contractor licensing provisions, provided the content of an advertisement, in context, meets the definition of either "recruit" or "solicit." ----- ***In the Matter of JoAnn West, 13 BOLI 233, 244 (1994).***

□ Respondent, an accountant, placed advertisements bearing her telephone number for her farm labor contractor clients. The advertisements offered contracting services to owners of Christmas tree lots and did not request the services of workers. The commissioner held that respondent was not recruiting or soliciting workers to perform labor for another in the production or harvest of farm products or in the forestation or reforestation of lands and did not act as a farm labor contractor. ----- ***In the Matter of JoAnn West, 13 BOLI 233, 241, 243 (1994).***

□ "To solicit" means to actively try to obtain, to ask earnestly for, to proselytize or attempt to persuade a worker for, or to appeal to a worker for the services of the worker in order to establish either a direct employer-employee relationship or a cooperative or profit-share arrangement. ----- ***In the Matter of Leonard Williams, 8 BOLI 57, 73 (1989).***

□ "To solicit \* \* \* encompasses recruitment and necessarily includes an element of serious offer or persuasion." ----- ***In the Matter of Leonard Williams, 8 BOLI 57, 73 (1989).***

**2.16 --- Willful Concealment**

□ Willful concealment means, for the purpose of ORS 658.440(3)(a), "withholding something which an applicant knows and which the applicant, in duty, is bound to reveal, said withholding must be done knowingly, intentionally, and with free will \* \* \* and must be of a substantive matter which is influential in the commissioner's decision to grant or deny a license." ----- ***In the Matter of Rodrigo Ayala Ochoa, revised final***

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### **order on reconsideration, 25 BOLI 12, 46 (2003).**

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

See also *In the Matter of Alejandro Lumbreras*, 12 BOLI 117, 125 (1993); *In the Matter of Raul Mendoza*, 7 BOLI 77, 84 (1988).

□ A “willful concealment” occurs when an applicant for a license fails to reveal the existence of some fact known to the applicant. It was a misrepresentation and false statement, not a “willful concealment,” when respondents, a corporation and its owner, answered “no” to the application question – “Are you a defendant in any court action or proceeding?” – when the corporation had been served 26 days earlier with a complaint naming it as a defendant in a lawsuit. ---- *In the Matter of Alejandro Lumbreras*, 12 BOLI 117, 126 (1993).

### **2.17 --- Willful, Willfully**

□ “Willfully” means “action undertaken with actual knowledge of a thing to be done or omitted or action undertaken by a person who should have known the thing to be done or omitted. A person ‘should have known the thing to be done or omitted’ if the person has knowledge of facts or 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 acts knowingly or willfully if the person has the means to inform himself or herself but elects not to do so.” A farm labor contractor “is presumed to know the affairs of their business operations relating to farm \* \* \* labor contracting.” ---- *In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 48 (2003).*

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ Respondents’ concealment of “the name, address, and telephone number of all persons financially interested” in respondents’ operation was willful when respondents had actual knowledge of at least one other person’s financial interest in the business, and failed to disclose her identity and other pertinent information about her on the license application. ---- *In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 48(2003).*

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ Willfully” means “action undertaken with actual knowledge of a thing to be done” or “action undertaken by a person who should have known the thing to be done or omitted.” ---- *In the Matter of Basilio Piatkoff, 28 BOLI 133, 159 (2007).*

□ When respondents were required to provide the name and address of the owner of the land or operation on the agency’s WH-153S forms, and respondents wrote in their own name and address on every WH-153S form that respondents gave to the agency instead of stating the correct name and address, respondents’ violations were “willful.” ---- *In the Matter of Basilio Piatkoff, 28*

### **BOLI 133, 159 (2007).**

□ For the purposes of OAR 839-15-520(3)(h), under which a license application may be denied based on a willful misrepresentation, false statement, or concealment in the application, “willful” means “action undertaken with actual knowledge of a thing to be done or omitted or action undertaken by a person who should have know[n] the thing to be done or omitted. \* \* \* For purpose of this rule, the farm labor contractor \* \* \* is presumed to know the affairs of their business operations relating to farm respondent forest labor contracting.” ---- *In the Matter of Alejandro Lumbreras*, 12 BOLI 117, 126 (1993).

### **2.18 --- Worker**

□ A contractor argued that the prohibition against finding “workers” without a farm labor contractor license did not apply to him because he sought partners, rather than employees. The commissioner held that, in accordance with OAR 839-15-004(13), a “worker” includes employees and members of any cooperative or profit-share arrangement as well as of a cooperative corporation, and means any individual performing labor in the forestation or reforestation of lands. ---- *In the Matter of Leonard Williams*, 8 BOLI 57, 73 (1989).

## **3.0 LICENSE**

### **3.1 --- In General**

□ When an individual who was licensed as a farm labor contractor operated two corporations, one to contract and the other to lease employees to and do payroll for the first corporation, both corporations were required to be licensed as farm labor contractors because they each performed some activities that qualified them as farm labor contractors. ---- *In the Matter of Mike L. Sulfridge*, 18 BOLI 22, 46 (1999).

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ Respondent bid for and obtained a USF contract to apply big game repellent and entered into a subcontract with another licensed farm labor contractor to perform this contract before a rule change that made the application of big game repellent an activity that required a farm labor contractor license. The licensed subcontractor provided the workers and performed the contract before and after the rule change. The commissioner held that respondent was not a farm labor contractor within the definition of ORS 658.405(1) and OAR 839-15-004(4) and therefore did not act as a farm labor contractor without a license when the contract was completed after the rule change. ---- *In the Matter of Richard Cole*, 16 BOLI 221, 228-29 (1997).

□ The Farm Labor Contractors Act (ORS 658.405 to 658.503 and 658.830) applied to an unlicensed contractor entering into a subcontract in Oregon for the forestation of lands in another state. ---- *In the Matter of Manuel Galan*, 15 BOLI 106, 130-31 (1996).

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ When determining the fitness of farm labor contractors to be licensed, the commissioner may appropriately assess, on a case-by-case basis, whether sufficient workers' compensation insurance premium payments have been made when due, relying on such factors as the proportion between paid and unpaid premiums, the reason for underpayment, and the length of time the premiums went unpaid. ----- *In the Matter of Scott Nelson, 15 BOLI 168, 189 (1996).*

□ When the agency has adopted rules stating that the agency will consider whether the person made workers' compensation insurance premium payments when due (OAR 839-15-145(6)) when assessing a person's character, competence, and reliability, and providing that failure to make workers' compensation insurance premium payments when due demonstrates that the person is unfit to act as a farm labor contractor (OAR 839-15-520(3)(j)), and when the agency has interpreted these rules through a contested case hearing holding that, when determining a farm labor contractor's fitness to be licensed, the agency will consider whether the licensee made *sufficient* workers' compensation insurance premium payments when due, the phrase "sufficient payment" is not a nullity and does not permit purely *ad hoc* discretion, in violation of the Oregon and US constitutions. ----- *In the Matter of Scott Nelson, 15 BOLI 168, 182-83 (1996).*

□ Lifting seedlings for transplant, tree nettings, and tree planting are all forestation or reforestation activities subject to the Oregon's farm labor contractor laws. ----- *In the Matter of Bill Martinez, 14 BOLI 214, 220 (1995).*

□ Supplying workers to plant trees on the land of another is a forestation or reforestation activity that requires an Oregon farm labor contractor license. ----- *In the Matter of Bill Martinez, 14 BOLI 214, 221 (1995).*

□ When respondent, a licensed farm labor contractor, bid on two contracts with unlicensed partners, those partners acted in violation of ORS 658.405 to 658.503. Each partner in a farm labor contractor business must be licensed. By assisting his unlicensed partners to act in violation of the law, respondent violated ORS 658.440(3)(e). ----- *In the Matter of Alexander Kuznetsov, 14 BOLI 185, 192-93 (1995).*

□ Based on the dates of agreements between respondent and an unlicensed subcontractor, the commissioner found that respondent twice assisted an unlicensed person to act as a forestation contractor and imposed a civil penalty. ----- *In the Matter of Robert Gonzalez, 12 BOLI 181, 192, 194, 201 (1994).*

□ A licensed respondent employed her son, an unlicensed person who transported, recruited, solicited and supplied workers to perform work for another in the harvesting of Christmas trees, and who bid or submitted prices on the harvesting of Christmas trees. The commissioner found that respondent violated ORS 658.440(3)(e) and imposed a civil penalty. ----- *In the Matter of Clara Rodriguez, 12 BOLI 153, 174, 180 (1994).*

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818

(1995).

□ Respondent, while a licensed farm labor contractor in 1989, allowed his son, an unlicensed person, to recruit, solicit, supply, and employ workers for him and to bid and submit prices on contract offers on his behalf. The commissioner found that respondent assisted an unlicensed person to act as a farm labor contractor in violation of ORS 658.440(3)(e) and imposed a civil penalty. ----- *In the Matter of Clara Rodriguez, 12 BOLI 153, 162, 176, 180 (1994).*

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

□ ORS 658.410(1) requires that any person acting as a farm labor contractor possess a license issued by the commissioner. This section also requires that any person acting as a farm labor contractor with regard to the forestation/reforestation of lands possess a license with the forestation indorsement required by ORS 658.417(1). This juxtaposition suggests that the license required to engage lawfully in farm labor contractor activities consists of one part, the basic license alone, and that the license required to lawfully engage in farm labor contractor activities consists of two parts, the basic license plus an added indorsement. In the latter situation, the two parts form one license, the license needed for forestation activities. Consequently, when a person acts as a forest labor contractor and is unlicensed, the act is one simultaneous violation of Ors 658.410(1), the basic license, and ORS 658.417(1), the indorsement. ----- *In the Matter of Victor Ovchinnikov, 13 BOLI 123, 155-56 (1994).*

□ When an unlicensed farm labor contractor recruited workers in Oregon to perform forestation work on a USFS contract outside Oregon, the forum held that Oregon's farm labor contractor law applied to this act recruitment and that the contractor violated ORS 658.410(1), 658.415(1), and 658.417(1) by acting as a farm labor contractor with regard to the forestation or reforestation of lands without a license. ----- *In the Matter of Jose Linan, 13 BOLI 24, 36 (1994).*

□ Since licensure is at the heart of the state's effort to regulate farm labor contractors, the forum always regards acting as a farm labor contractor without a license to be a serious violation. ----- *In the Matter of Alejandro Lumbreras, 12 BOLI 117, 127 (1993).*

□ Recruiting, soliciting, or employing workers in Oregon to work in the forestation or reforestation of lands, wherever located, are activities requiring a farm labor contractor license with the appropriate indorsement. ----- *In the Matter of Alejandro Lumbreras, 12 BOLI 117, 125 (1993).*

□ When a business is in partnership form, each partner must have a farm labor contractor license with the appropriate indorsement. ----- *In the Matter of Ivan Skorohodoff, 11 BOLI 8, 19 (1992).*

□ When an unlicensed farm labor contractor recruited workers in Oregon to perform forestation work on a USFS contract outside Oregon, the forum held that Oregon's farm labor contractor law applied to this act and that the contractor violated ORS 658.410(1),

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658.415(1), and 658.417(1) by acting as a farm labor contractor with regard to the forestation or reforestation of lands without a license. ----- ***In the Matter of Jose Linan, 13 BOLI 24, 36 (1994).***

□ A financially interested associate in an applicant's operation includes anyone who has put up money, any kind of equipment, the equitable use of equipment, or anything that generally would be considered capitalization of a business. ----- ***In the Matter of Amalia Ybarra, 10 BOLI 75, 80 (1991).***

□ When respondent guided another person through the licensing process to obtain a "partial exempt" license, which requires that the licensee employ a maximum of two employees and be a sole proprietor with the only financial interest, and respondent thereafter financed and managed the enterprise and paid wages to more than three others, including the licensee, the commissioner found that respondent should have been licensed as a farm/forest labor contractor and was in violation of ORS 658.410, 658.415(1), and 658.417(1) and imposed a civil penalty. ----- ***In the Matter of Kenneth Vanderwall, 9 BOLI 148, 155-56 (1990).***

□ When a license applicant employed or used an agent in California whose Oregon farm labor contractor license had been denied, the commissioner held that the fact that the applicant worked with the agent outside of Oregon did not insulate him from the application of laws and rules, citing ORS 658.420, OAR 839-15-145(1)(g) and (h), and 839-15-520(3)(a) and (k). Evidence of an applicant's activities outside of Oregon shall be considered when deciding the applicant's fitness for an Oregon farm or forest labor contractor license. ----- ***In the Matter of Efim Zyryanoff, 9 BOLI 82, 90 (1990).***

□ When the agency proposes to deny, suspend, revoke, or refuse to renew a license, the exact number of violations is not critical. In such cases, it is the nature of the repeated violations and any aggravating or mitigating circumstances that are important. ----- ***In the Matter of Xavier Carbajal, 8 BOLI 206, 223 (1990).***

□ An application for a farm labor contractor license is considered to be pending until the license is either granted or denied. Thus, a decision to grant or deny a license is effective for the license year in which the decision is made, and not necessarily for the license year in which the application is received. ----- ***In the Matter of Xavier Carbajal, 8 BOLI 206, 226-27 (1990).***

□ When a contractor employed the services of an unlicensed person, the forum found the contractor in violation of either: (1) ORS 658.417(3) for failing to provide the commissioner with certified payroll records, if the person was an employee; or (2) ORS 658.440(3)(e) for assisting the unlicensed person to act as a farm/forest labor contractor, if the person was a subcontractor. The commissioner assessed a civil penalty for the contractor's violation of one or the other of the two statutes without determining whether the unlicensed person was an employee or a subcontractor. ----- ***In the Matter of Deanna Donaca, 6 BOLI 212, 237, 240 (1987).***

### 3.2 --- Licensees (see also 6.0)

□ When an individual and a corporation were jointly licensed, the status of the corporation's license hinged on the actions taken by the individual on her own behalf or on behalf of the corporation. ----- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 171 (2007).***

□ When an individual who was licensed as a farm labor contractor operated two corporations, one to contract and the other to lease employees to and do payroll for the first corporation, both corporations were required to be licensed as farm labor contractors because they each performed some activities that qualified them as farm labor contractors. ----- ***In the Matter of Mike L. Sulfridge, 18 BOLI 22, 46 (1999).***

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ The agency proposed to deny a farm/forest labor contractor license application when it believed the applicant was a sham or subterfuge for debarred farm/forest labor contractors. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 118-19, 136 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ When the agency alleged that an applicant was a sham or subterfuge for debarred farm/forest labor contractors, the agency had the initial burden of proving the presence of at least one factor demonstrating sham or subterfuge. Once the agency met that burden, the burden shifted to respondent to prove that it was not a sham or subterfuge for debarred contractors. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 139 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ The purpose of the "sham or subterfuge" rule is to uncover mere changes in business form that indicate that the entity making application for a license is, in reality, the same as another entity that previously had a license denied, suspended, revoked, or refused. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 137 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ The factors the forum considers in determining whether sham or subterfuge is present are set forth by administrative rule. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 137 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ One of the factors to be considered in determining whether sham or subterfuge is present is "The use of the same real property, fixtures or equipment or use of a similar business name of the former business." That factor can be established even if the new entity only borrows the equipment from the former entity. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 137 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ A finding of sham or subterfuge is supported by a finding that "The time period between the Bureau's denial, suspension, revocation or refusal to renew a license and application by the new business is less than one year." ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 137 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ A finding of sham or subterfuge is supported when there is "A lack of adequate consideration or value given for the former business or its property." When a business did not change hands, this factor cannot be established. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 137 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ The fact that a new business uses the same farm/forest workers as a debarred contractor used does not necessarily suggest that the new business is a sham or subterfuge for the debarred contractor, given the transient nature of farm/forest employment. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 141 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ Sham or subterfuge may be found when "A person financially interested in any capacity in the former business has a financial interest in any capacity in the new business." ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 137 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ A finding that "The amount of capitalization is inadequate to meet current obligations of the new business" supports a finding of sham or subterfuge when it shows some dependence or reliance on the former business for capitalization. The mere need for a surety does not establish undercapitalization for purposes of the "sham or subterfuge" test. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 138 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ A finding that "The formalities of a partnership or a corporation are disregarded by the new business when such business is a partnership or corporation" supports a finding of sham or subterfuge. This factor is established when the *de facto* leadership of the partnership or corporation emanates from the former business. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 138 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ The agency did not prove that the license applicant was a sham or subterfuge for debarred contractors when: (a) the applicant made application within one year of the debarred contractor's debarment; and (b) the applicant borrowed some of the debarred contractor's equipment; but (c) there was no showing that the debarred contractor had a financial interest in the applicant's business; (d) there was no showing that any business property changed hands without adequate compensation; (e) there was no showing that the business was undercapitalized; and (f) there was no showing that the debarred contractor was acting as a *de facto* business partner or corporate officer of the applicant. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 138-39 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ A corporation that engages in farm/forest labor activity and its majority shareholder(s) are equally liable for violations of the Farm Labor Contractors Act. Both must be licensed to operate as a farm labor contractor. The legislature has expressed its intent to hold a majority shareholder, together with the majority shareholder's corporation, responsible for farm/forest labor activities, including violations. The majority shareholder's license is a derivative of the license issued to the corporation. There is only one license, not two or more, when a corporation is the licensee. Limiting the penalty for unlicensed activity to the corporation would defeat the apparent purpose of the statute. ----- ***In the Matter of Manuel Galan, 15 BOLI 106, 114, 131-32 (1996).***

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ An individual respondent, licensed as majority shareholder of respondent corporation and facing a refusal to renew the corporation's license, argued that the violations found were corporate acts and not chargeable to his license, and that the signature of an authorized corporate representative other than himself was not chargeable to him. The commissioner found that ORS 658.410(2) sets out that the majority shareholder's license is derivative of that issued to the corporation, that there is but one license when a corporation is a licensee, and that the statute does not treat the corporation and the majority shareholder separately. ----- ***In the Matter of Robert Gonzalez, 12 BOLI 181, 198 (1994).***

□ When a business is in partnership form, each partner must have a farm labor contractor license with the appropriate indorsement. ----- ***In the Matter of Ivan Skorohodoff, 11 BOLI 8, 19 (1992)***

□ When respondent, a licensed farm labor contractor, bid on two contracts with unlicensed partners, those partners acted in violation of ORS 658.405 to 658.503. Each partner in a farm labor contractor business must be licensed. By assisting his unlicensed partners to act in violation of the law, respondent violated ORS 658.440(3)(e). ----- ***In the Matter of Alexander Kuznetsov, 14 BOLI 185, 192-93 (1995).***

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### 3.3 --- Application (see also 3.6)

□ When the evidence contained nothing more than speculation that respondent and her corporation applied for a farm labor contractor license in anticipation of the “denial, suspension, revocation or refusal to renew” her husband’s farm labor contractor license, the forum found that the agency did not establish that respondents used the respondent corporation to perpetrate a sham or subterfuge within the meaning of OAR 839-015-0142, in violation of ORS 658.440(3)(a). ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 164-65 (2007).***

□ The agency has promulgated OAR 839-015-0142 related to licensing and evidence of sham or subterfuge. The purpose of the inquiry set out in the rule is to uncover mere changes in business form that indicate that the entity now making application is really the same entity that anticipated a negative licensing action or actually suffered a denied, suspended, revoked or refuse license while doing business in a different form. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 163-64 (2007).***

□ The agency alleged that a respondent had “failed to pay all debts owed including debts to the Oregon Department of Revenue” and those respondents’ applications for farm/forest labor contractor licenses should be denied and their current licenses should not be renewed. Based on undisputed evidence that respondent obtained a certificate of compliance from DOR, contingent on a payment plan for a debt owed to DOR, for the purpose of obtaining his farm labor contractor license in December 2004, and that respondent was out of compliance with the payment plan from April 2005 through at least September 26, 2005, but no actual judgment was entered on the debt, the forum was unable to conclude that respondent failed “to promptly satisfy any or all judgments levied against” him. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 163 (2007).***

□ ORS 658.420 provides that the commissioner shall investigate each applicant’s character, competence and reliability and any other matter relating to the manner and method by which the applicant proposes to conduct and has conducted operations as a farm labor contractor. The commissioner shall issue a license only if satisfied as to the applicant’s character, competence, and reliability. ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 49 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ Respondents, while previously licensed, repeatedly failed to timely file certified payroll reports and more recently submitted untimely, inaccurate, and uncertified payroll reports on six contracts. This action demonstrated that respondents did not have the requisite character, competence and reliability to act as farm labor contractors. ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 49-50 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212

(2004).

□ Respondents’ willful concealment of information and two misrepresentations on their farm labor license application and failure on two occasions to comply with state wage and hour laws demonstrated that respondents did not have the requisite character, competence and reliability to act as farm labor contractors. ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 50 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ Respondents violated a prior consent order that provided in part: “[Respondents] further understand and agree that any violation of \* \* \* this consent order shall be a breach of a legal and valid agreement entered into with the commissioner, the penalty for which \* \* \* shall be the denial of a farm/forest labor contractor to [Respondents] \* \* \* which denial shall, for a period of three years from the date of the breach of this agreement, operate to further bar any application for a farm/forest labor contractor license by [respondents] \* \* \*.” The agency sought denial of respondent’s right to apply “for an additional three year period from the date the commissioner finds [respondents] in breach.” The commissioner imposed a penalty of further suspension of three years from the date of the breach in accordance with the plain language of the consent order. ---- ***In the Matter of Manuel Galan, 15 BOLI 106, 114, 131-33 (1996).***

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ Respondents argued that the quantum of proof should be “clear and convincing” rather than a preponderance when one of the sanctions sought by the agency was further denial of the right to apply for a farm/forest labor contractor’s license based on respondent’s misrepresentation. The commissioner held that the issue was application or qualification for a license, not revocation of an existing license, and that a preponderance was the proper evidentiary standard. ---- ***In the Matter of Manuel Galan, 15 BOLI 106, 114, 133 (1996).***

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ When the agency alleged that one respondent had concealed and failed to disclose, on her application for a farm labor contractor license, a partnership with the other respondents, and when the evidence did not show a partnership agreement, a sharing of profits or loss, or any other partnership element, and at least one of the alleged partners was a salaried employee, the commissioner found no concealment or failure to disclose on respondent’s application. ---- ***In the Matter of Clara Rodriguez, 12 BOLI 153, 176-77 (1994).***

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

- The forum applies the “clear and convincing” evidentiary standard to alleged violations of ORS 658.440(3)(a), which prohibits a farm labor contractor license applicant from making “any misrepresentation, false statement or willful concealment” in the application. ---- ***In the Matter of Alejandro Lumbreras, 12 BOLI 117, 126 (1993).***
- Pursuant to ORS 658.415(1)(a), an applicant for a farm labor contractor license is required to provide the applicant’s name, Oregon address, and all other temporary and permanent addresses the applicant uses or knows will be used in the future. Compliance with this requirement is a substantive matter that is influential in the commissioner’s decision to grant or deny a license. - ---- ***In the Matter of Amalia Ybarra, 10 BOLI 75, 80 (1991).***
- Pursuant to ORS 658.415(1)(b), an applicant for a farm labor contractor license is required to provide information about all motor vehicles to be used by an applicant in operations as a farm labor contractor, including license number and state of licensure, vehicle number, and the name and address of the vehicle owner for all vehicles used. Compliance with this requirement is a substantive matter that is influential in the commissioner’s decision to grant or deny a license. ---- ***In the Matter of Amalia Ybarra, 10 BOLI 75, 81 (1991).*** See also *In the Matter of Rogelio Loa, 9 BOLI 139, 145, 147 (1990).*
- Pursuant to ORS 658.415(1)(d), an applicant for a farm labor contractor license is required to provide the names and addresses of all persons financially interested, whether as partners, shareholders, associates, or profit-sharers, in the applicant’s proposed operations as a farm labor contractor, together with the amount of their respective interests, and whether or not, to the best of the applicant’s knowledge, any of these persons was ever denied a license under ORS 658.405 to 658.503 and 658.830 within the preceding three years, or had such a license denied, revoked, or suspended within the preceding three years in this or any other jurisdiction. Compliance with this requirement is a substantive matter that is influential in the commissioner’s decision to grant or deny a license. ---- ***In the Matter of Amalia Ybarra, 10 BOLI 75, 81 (1991).***
- Respondent’s violations of ORS 658.440(3)(a) – making misrepresentations on her application for a license – demonstrated her unfitness to act as a farm labor contractor. ---- ***In the Matter of Amalia Ybarra, 10 BOLI 75, 82 (1991).***
- When respondent made misrepresentations on her license application and the agency proposed to deny her a license, and one of those misrepresentations involved her failure to reveal a business address on her application, the forum considered respondent’s failure to notify the agency of her change of address, as required by ORS 658.440(1)(b), as aggravating evidence that was relevant in determining the appropriate sanction for respondent’s violations. ---- ***In the Matter of Amalia Ybarra, 10 BOLI 75, 83 (1991).***
- Respondent’s license application was pending from the time it was filed, and a denial of the application took effect as of the date of the final order. Respondent was prohibited from reapplying for three years thereafter. ---- ***In the Matter of Stancil Jones, 9 BOLI 233, 240 (1991).***
- Whether a license applicant will use a vehicle in the operation of a farm/forest labor contracting business and transport workers are substantive matters that are influential in the commissioner’s decision to grant or deny a license. ---- ***In the Matter of Rogelio Loa, 9 BOLI 139, 145, 147 (1990).***
- In order to properly administer and enforce the farm labor contractor’s law, the commissioner must know whom she is licensing. Accordingly, the disclosure of who is financially interested in an applicant’s proposed operations as a farm labor contractor is a substantive matter, influential in the decision to grant or deny a license. ---- ***In the Matter of Rogelio Loa, 9 BOLI 139, 146 (1990).***
- When evidence showed that a license applicant acted as a contractor on several occasions after he had been notified that the agency proposed to deny him a license, the commissioner found that these facts, although outside of the allegations of the charging document, were aggravating circumstances that may be weighed when determining an appropriate sanction for the violations. ---- ***In the Matter of Rogelio Loa, 9 BOLI 139, 146 (1990).***
- When a license applicant employed or used an agent in California whose Oregon farm labor contractor license had been denied, the commissioner held that the fact that the applicant worked with the agent outside of Oregon did not insulate him from the application of laws and rules, citing ORS 658.420, OAR 839-15-145(1)(g) and (h), and 839-15-520(3)(a) and (k). Evidence of an applicant’s activities outside of Oregon shall be considered when deciding the applicant’s fitness for an Oregon farm or forest labor contractor license. ---- ***In the Matter of Efim Zyryanoff, 9 BOLI 82, 90 (1990).***
- Pursuant to OAR 839-15-140, when an application for a license has been denied, that denial shall operate to prevent a reapplication for a period of three years from the date of denial. ---- ***In the Matter of Demetrio Ivanov, 7 BOLI 126, 133 (1988).*** See also *In the Matter of Raul Mendoza, 7 BOLI 77, 85 (1988).*
- An application for a farm/forest labor contractor license is considered to be pending until such license is either granted or denied. Thus, a decision to grant or deny a license is effective for the license year in which the decision is made, and not necessarily for the license year in which the application is received. ---- ***In the Matter of Demetrio Ivanov, 7 BOLI 126, 133 (1988).*** See also *In the Matter of Raul Mendoza, 7 BOLI 77, 83 (1988).*

### 3.4 --- Temporary Permit

### 3.5 --- Exemptions

- Respondent, a licensed farm/forest labor contractor, submitted to the agency an "Application for Exemption from Financial Responsibility and Payroll Submission Requirements for Contractors Engaged in Reforestation Activities" in which he asserted that he would employ no

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more than two workers in forestation or reforestation activities. Based on that assertion, the agency issued respondent an exemption that meant he did not have to comply with ORS 658.417(3), which requires contractors to file certified payroll records with the agency. Despite his contrary representation to the agency, respondent employed three workers in forestation or reforestation activities and, therefore, lost his exemption from the requirements of ORS 658.417(3). By failing to provide the commissioner with certified payroll records when he did not have an exemption, respondent violated ORS 658.417(3). ---- ***In the Matter of Lambertus Sandker, 18 BOLI 277, 289 (1999).***

□ A respondent farmer temporarily employed two individuals as supervisors for his harvest without viewing their farm labor contractor license when they told him they were exempt from the licensing requirement under OAR 839-15-130(5). The commissioner found that they were not exempt because they arranged lodging for migrant workers and because the workers they recruited were not permanent residents of the local area. The commissioner assessed a civil penalty of \$500 on the respondent farmer for violating ORS 658.437. ---- ***In the Matter of Boyd Yoder, 12 BOLI 223, 231-32 (1994).***

Affirmed without opinion, *Yoder v. Bureau of Labor and Industries*, 134 Or App 627, 896 P2d 19 (1995).

□ When respondent acted as a farm labor contractor engaged in the forestation of lands with an exemption from the commissioner from the provisions of ORS 658.415(3) and 658.417(3) and employed more than two individuals in the performance of work performed in the license year, respondent violated ORS 658.415(3), 658.417(3), and 658.418(3). ---- ***In the Matter of Miguel Espinoza, 10 BOLI 96, 99 (1991).***

□ When respondent guided another person through the licensing process to obtain a "partial exempt" license, which requires that the licensee employ a maximum of two employees and be a sole proprietor with the only financial interest, and respondent thereafter financed and managed the enterprise and paid wages to more than three others, including the licensee, the commissioner found that respondent should have been licensed as a farm/forest labor contractor and was in violation of ORS 658.410, 658.415(1), and 658.417(1) and imposed a civil penalty. ---- ***In the Matter of Kenneth Vanderwall, 9 BOLI 148, 155-56 (1990).***

□ A contractor was granted the exemption provided for by ORS 658.418 based on his sworn statement that he would comply with that statute's requirements. On his first and only contract, the contractor hired five workers. At that point, the contractor was required to notify the agency that he had hired five workers since that was a change in circumstances under which his license, and particularly the exemption, was granted. At the time the contractor hired his third employee, he no longer met the requirements of the exemption provided for in ORS 658.418 and was required to immediately comply with the provisions of ORS 658.415(3) and 658.417(3). His failure to file that information with the agency was a violation of ORS 658.440(1)(e). ---- ***In the Matter of Francis Kau, 7 BOLI 45, 52-53 (1987).***

□ ORS 658.417(3) requires a contractor to provide a

certified true copy of all payroll records of all work done as a farm labor contractor to the commissioner if the contractor paid or was to pay his employees on his contracts directly. Specifically as implemented by OAR 839-15-300, ORS 658.417(3) requires the contractor to submit such a wage certification at least once every 35 days from the time that work first begins on a contract. A contractor who lost his ORS 658.418 exemption was required to submit a wage certification at least once every 35 days from the time he lost his exemption. By failing to provide a certified true copy of all payroll records to the commissioner, the contractor violated ORS 658.417(3). ---- ***In the Matter of Francis Kau, 7 BOLI 45, 52-53 (1987).***

□ ORS 658.415(3) requires each applicant for a license to submit and maintain proof of financial ability to promptly pay the wages of employees and other obligations specified by that section. The proof required must be in the form of a corporate surety bond, a cash deposit, or a deposit the equivalent of cash. In this case, once the contractor lost his exemption under ORS 658.418, he was required to comply with ORS 658.415(3). His failure to submit and maintain proof of his financial ability was a violation of ORS 658.415(3). -- ***In the Matter of Francis Kau, 7 BOLI 45, 52 (1987).***

□ When the agency alleged that a contractor assisted an unlicensed person, the contractor claimed the defense that she believed the unlicensed person was exempt because his business was family-owned. OAR 839-15-130(15) provides a "family business exception" to Oregon's farm/forest labor contractor licensing requirements that has two explicit limitations pertinent to this case. First, the exemption applies only to individuals who are working by themselves or with only the assistance of their spouse, son, daughter, brother, sister, mother or father. Second, the exemption applies only when the contract or agreement under which the allegedly exempt individual is working is between that individual and the farmer, owner, or lessee of the land involved. When the evidence revealed that the unlicensed person had a subcontract with the contractor, and the unlicensed person employed at least one non-family employee, the forum concluded that the unlicensed person was not exempt under OAR 839-15-130(15). The forum held that the contractor was charged with knowledge of the law, noting that even a quick reading of OAR 839-15-130(15), or an inquiry to the agency, would have apprised contractor of the fact that a subcontractor cannot qualify for this exemption. - ***In the Matter of Deanna Donaca, 6 BOLI 212, 239 (1987).***

### 3.6 --- Denial (see also 3.3)

□ Three of the criteria in OAR 839-015-0145 relating to character, competence and reliability applied to an applicant for a farm labor contractor license and demonstrated that she and her corporation were unfit to act as a farm labor contractor. First, she and her corporation engaged in a course of misconduct by entering into a subcontract that she knew was in violation of a tree planting contract and by not giving WH-151S and WH-153S forms to three workers. Second, she and her corporation demonstrated unreliability in adhering to the terms and conditions of a

contract between herself and her corporation and someone with whom she conducted business by violating the subcontracting provision of the tree planting contract. Third, she and her corporation committed three violations of ORS 658.440(1)(f), three violations of ORS 658.440(1)(g), one violation of ORS 658.410, and two violations of ORS 658.440(3)(b). Under OAR 839-015-0520(3), the same actions independently demonstrated that the individual and her corporation's character, competence and reliability made them unfit to act as a farm or forest labor contractor. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 170-72 (2007).***

□ Four of the criteria in OAR 839-015-0145 relating to character, competence and reliability applied to an applicant for a farm labor contractor license and demonstrated that he was unfit to act as a farm labor contractor. First, he engaged in a course of misconduct by entering into a subcontract that he knew was in violation of a tree planting contract and by not giving WH-151S and WH-153S forms to a worker whom he earlier employed. Second, he demonstrated his unreliability in adhering to the terms and conditions of a contract between himself and someone with whom he conducted business by violating the subcontracting provision of the tree planting contract. Third, although he eventually paid a debt to the Oregon Department of Revenue, he was untimely in doing so. Fourth, he violated ORS 658.440(1)(f) & (g) with regard to a worker by not giving that worker WH-151S and WH-153S forms when he employed that worker. Under OAR 839-015-0520(3), the same actions demonstrated that the applicant's character, competence and reliability made him unfit to act as a farm or forest labor contractor, with each action separately demonstrating that he was unfit to act as a farm labor contractor. Accordingly, the commissioner denied the applicant's license application. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 170-72 (2007).***

□ When respondents committed eight violations of Oregon's farm labor contractor laws by failing to furnish three workers with statement of workers rights and remedies forms, failing to execute written agreements with three workers, acting as a farm labor contractor without a license; and failing to comply with terms and provisions of a contract entered into in respondents' capacity as farm/forest labor contractors, these violations constituted a series of acts and a "course of misconduct" within the meaning of OAR 839-015-0520(3)(m) and were grounds for denying a farm labor contractor license to respondents. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 168, 170-71 (2007).***

□ A farm labor contractor's violation of any Oregon farm labor contractor laws or BOLI's administrative rules interpreting those laws is *per se* "misconduct" within the meaning of OAR 839-015-0520(3)(m) so long as the violation involves relations with "workers, farmers and others" with whom the farm labor contractor conducts business. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 168 (2007).***

□ "A course of misconduct in relations with workers, farmers and others with whom the person conducts business" as set forth in OAR 839-015-0520(3)(m) is grounds for denying a license. ---- ***In the Matter of***

***Basilio Piatkoff, 28 BOLI 133, 166-67 (2007).***

□ When the evidence contained nothing more than speculation that respondent and her corporation applied for a farm labor contractor license in anticipation of the "denial, suspension, revocation or refusal to renew" her husband's farm labor contractor license, the forum found that the agency had did not establish that respondents used the respondent corporation to perpetrate a sham or subterfuge within the meaning of OAR 839-015-0142, in violation of ORS 658.440(3)(a). ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 164-65 (2007).***

□ The agency alleged that a respondent had "failed to pay all debts owed including debts to the Oregon Department of Revenue" and those respondents' applications for farm/forest labor contractor licenses should be denied and their current licenses should not be renewed. Based on undisputed evidence that respondent obtained a certificate of compliance from DOR, contingent on a payment plan for a debt owed to DOR, for the purpose of obtaining his farm labor contractor license in December 2004, and that respondent was out of compliance with the payment plan from April 2005 through at least September 26, 2005, but no actual judgment was entered on the debt, the forum was unable to conclude that respondent failed "to promptly satisfy any or all judgments levied against" him. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 163 (2007).***

□ The commissioner denied respondents' joint application for a farm labor contractor license for a period of three years, effective the date the final order was issued, based on multiple violations that demonstrated that respondents lacked the character, competence, and reliability to act as a farm labor contractor. ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 50 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ When the agency established that respondents willfully concealed information and made two misrepresentations on their license application and failed on two occasions to comply with state wage and hour laws, the commissioner held that each of those violates were of such magnitude or seriousness that respondents may be denied a farm labor contractor license. ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 50 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ When an applicant has made a misrepresentation, false statement, or willful concealment on a license application, or has failed to comply with federal, state, or local laws relating to the payment of wages, such violations are considered to be of such magnitude and seriousness that the commissioner may propose to deny the license application. ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 50 (2003).***

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Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ When respondents repeatedly failed to timely file certified true and accurate copies of payroll reports in accordance with ORS 658.417(3) and filed other payroll reports that were defective, this demonstrated that respondents did not have the requisite character, competence and reliability to act as farm labor contractors. ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 49-50 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ ORS 658.420 provides that the commissioner shall investigate each applicant's character, competence and reliability and any other matter relating to the manner and method by which the applicant proposes to conduct and has conducted operations as a farm labor contractor. The commissioner shall issue a license only if satisfied as to the applicant's character, competence, and reliability. In making the determination, the commissioner must consider whether an applicant has violated any provision of ORS 658.405 to 658.503 or the applicable rules. ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 49 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ The agency proposed to deny a farm/forest labor contractor license application when it believed the applicant was a sham or subterfuge for debarred farm/forest labor contractors. ---- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 118-19, 136 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ The forum denied an application for a farm/forest labor contractor's license when the applicant committed at least two violations of the farm/forest labor contracting laws that demonstrated that his character, competence and reliability made him unfit to act as a contractor. ---- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 141 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ When the commissioner denies a license to act as a farm/forest labor contractor, the commissioner may extend the "denial period" for three years from the date of the commissioner's final order denying the license application, or for three years from the date the agency initially denied the license. ---- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 141 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ The commissioner denied an application for a farm/forest labor contractor's license for a period of three

years from the initial date of denial by the agency, instead of a period three years from the date of the commissioner's final order, when the initial denial was based largely on factors that were not established at hearing, and the applicant already had been unable to operate as a licensed contractor for the two years during which the proceeding was pending. ---- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 141 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ Whether a licensee is providing workers' compensation insurance coverage is a substantive matter that is influential in the commissioner's decision to grant or deny a license. ---- ***In the Matter of Scott Nelson, 15 BOLI 168, 183 (1996).*** See also *In the Matter of Efrain Corona, 11 BOLI 44, 58 (1992)*, affirmed without opinion, *Corona v. Bureau of Labor and Industries*, 124 Or App 211, 861 P2d 1046 (1993); *In the Matter of Z & M Landscaping, Inc., 10 BOLI 174, 181 (1992).*

□ Respondents violated a prior consent order that provided in part: "[Respondents] further understand and agree that any violation of \* \* \* this consent order shall be a breach of a legal and valid agreement entered into with the commissioner, the penalty for which \* \* \* shall be the denial of a farm/forest labor contractor to [Respondents] \* \* \* which denial shall, for a period of three years from the date of the breach of this agreement, operate to further bar any application for a farm/forest labor contractor license by [respondents] \* \* \*." The agency sought denial of respondent's right to apply "for an additional three year period from the date the commissioner finds [respondents] in breach." The commissioner imposed a penalty of further suspension of three years from the date of the breach in accordance with the plain language of the consent order. ---- ***In the Matter of Manuel Galan, 15 BOLI 106, 114, 131-32 (1996).***

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ Respondents argued that the quantum of proof should be "clear and convincing" rather than a preponderance when one of the sanctions sought by the agency was further denial of the right to apply for a farm/forest labor contractor's license based on respondent's misrepresentation. The commissioner held that the issue was application or qualification for a license, not revocation of an existing license, and that a preponderance was the proper evidentiary standard. ---- ***In the Matter of Manuel Galan, 15 BOLI 106, 114, 133 (1996).***

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ When a corporation and its majority shareholder were joint applicants for a farm labor contractor license and were jointly named in a notice of intent to deny the license application and, following service on each, the corporate applicant defaulted by failing to answer, a motion for summary denial of the license application of

the shareholder applicant was granted by the forum. The core of the forum's ruling was ORS 183.310(2), which precludes the need to present a prima facie case on the record when a party – in this case, the corporate applicant —fails to request a hearing. Since the application of the corporation could be denied without further proceedings, and since the shareholder applicant could not then become licensed from the joint application, the forum concluded that the shareholder's application could be denied on summary judgment. ----- ***In the Matter of Victor Ovchinnikov, 13 BOLI 123, 128 (1994).***

□ When respondent acted three times as a farm labor contractor without a license, failed to comply with a contract with his insurance company to pay his workers' compensation insurance premiums when due, had an unsatisfied judgment based on his failure to pay his insurance premiums, and twice failed to comply with an agreement with the commissioner by twice breaching to terms of a consent order, the forum was not satisfied as to respondent's character, competence, and reliability and found him unfit to act as a farm labor contractor and denied him a license. ----- ***In the Matter of Jose Linan, 13 BOLI 24, 26, 46-47 (1994).***

□ When respondent had multiple violations of ORS 658.417(3), 658.440(1)(e), and 658.440(1)(d), the latter based on breach of a consent order resolving previous accusations of violations of the farm labor contractor law, the commissioner was not satisfied with respondent's character, competence, and reliability and denied renewal of a license to act as a farm or forest liability contractor. ----- ***In the Matter of Robert Gonzalez, 12 BOLI 181, 199 (1994).***

□ When respondents, an individual and his corporation, violated several provisions of the farm labor contractor law, including acting as a contractor without a license, filing to make workers' compensation insurance premium payments when due, and making a willful misrepresentation on a license application, and when the corporate respondent had an unsatisfied judgment, the forum was not satisfied as to respondents' character, competence, and reliability and found them unfit to act as farm labor contractors and denied them a license, pursuant to ORS 658.420. ----- ***In the Matter of Alejandro Lumbreras, 12 BOLI 117, 128-29 (1993).***

□ When respondents repeatedly failed to timely and accurately provide certified payroll records to the commissioner, in violation of ORS 658.417(3), the commissioner held that such actions demonstrated that the respondents' character, competence, and reliability made them unfit to act as farm labor contractors and denied them a license. ----- ***In the Matter of John Mallon, 12 BOLI 92, 101-02 (1993).***

□ Pursuant to ORS 658.415(1)(c), OAR 839-15-140(1)(c), and 839-15-520(4), the commissioner will not issue an applicant a license for a period of three years from the date of denial when an application for a farm or forest labor contractor license has been denied. ----- ***In the Matter of Efrain Corona, 11 BOLI 44, 60 (1992).***

Affirmed without opinion, *Corona v. Bureau of Labor and Industries*, 124 Or App 211, 861 P2d 1046 (1993).

□ When respondent's farm labor contractor license expired and he failed to take action to extend it in accordance with a statutory change in license year, despite repeated attempts by the agency's licensing unit to have him file the proper bond and reapplication, then respondent continued to operate his farm labor contractor business and operated farm labor camps without the required license indorsement or registration, and committed other infractions for which the commissioner assessed civil penalties totaling \$7,500, the commissioner found respondent unfit to act as a farm labor contractor and denied his application for a farm labor contractor license for a period of three years. ----- ***In the Matter of Jose Rodriguez, 11 BOLI 110, 125-26 (1992).***

□ When respondent acted as a farm labor contractor without a license and made a false statement on its application, in violation of ORS 658.440(3)(a), the forum found that these violations demonstrated that respondent was unfit to act as a farm labor contractor and denied respondent a license. ----- ***In the Matter of Z & M Landscaping, Inc., 10 BOLI 174, 182 (1992).***

□ When respondent made misrepresentations on her license application and the agency proposed to deny her a license, and one of those misrepresentations involved her failure to reveal a business address on her application, the forum considered respondent's failure to notify the agency of her change of address, as required by ORS 658.440(1)(b), as aggravating evidence that was relevant in determining the appropriate sanction for respondent's violations. ----- ***In the Matter of Amalia Ybarra, 10 BOLI 75, 83 (1991).***

□ Respondent's violations of ORS 658.440(3)(a) – making misrepresentations on her application for a license – demonstrated her unfitness to act as a farm labor contractor. ----- ***In the Matter of Amalia Ybarra, 10 BOLI 75, 82 (1991).***

□ Respondent's license application was pending from the time it was filed, and a denial of the application took effect as of the date of the final order. Respondent was prohibited from reapplying for three years thereafter. ----- ***In the Matter of Stancil Jones, 9 BOLI 233, 240 (1991).***

□ When an applicant for a farm labor contractor license acted as a contractor without a license and made incorrect statements regarding his use of vehicles and financially interested persons on his application with knowledge of the incorrectness and with the intention of misleading or deceiving the agency, the commissioner found that the applicant's character, competence, and reliability made him unfit to be a farm labor contractor and denied him a license. ----- ***In the Matter of Rogelio Loa, 9 BOLI 139, 147 (1990).***

□ The names and addresses of all persons financially interested in an applicant's proposed operation as a farm/forest labor contractor is a substantive matter that is influential in the commissioner's decision to grant or deny a license. ----- ***In the Matter of Rogelio Loa, 9 BOLI 139, 147 (1990).***

□ Whether a license applicant will use a vehicle in the operation of a farm/forest labor contracting business and

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transport workers are substantive matters that are influential in the commissioner's decision to grant or deny a license. ---- ***In the Matter of Rogelio Loa, 9 BOLI 139, 145, 147 (1990).***

□ When evidence showed that a license applicant acted as a contractor on several occasions after he had been notified that the agency proposed to deny him a license, the commissioner found that these facts, although outside of the allegations of the charging document, were aggravating circumstances that may be weighed when determining an appropriate sanction for the violations. ---- ***In the Matter of Rogelio Loa, 9 BOLI 139, 146 (1990).***

□ When an applicant for a farm labor contractor's license had three violations of acting as a contractor without a license and had employed or used an agent that had had a forest labor contractor license denied, the commissioner found that the applicant's character, competence, and reliability made him unfit to act as a forest labor contractor and denied him a license. ---- ***In the Matter of Efim Zyryanoff, 9 BOLI 82, 90 (1990).***

□ When a license applicant assisted an unlicensed person to act as a farm labor contractor, knowing that the unlicensed person needed a license, and when the applicant failed to post a notice of compliance in violation of ORS 658.415(15) and repeatedly failed to furnish written statements WH-151 and WH-153 to each worker, and when he knew or should have known that his actions violated farm labor contractor laws, the commissioner found that the applicant's character, competence, and reliability made him unfit to act as a farm labor contractor and denied him a license. ---- ***In the Matter of Xavier Carbajal, 8 BOLI 206, 226 (1990).***

□ An application for a farm labor contractor license is considered to be pending until the license is either granted or denied. Thus, a decision to grant or deny a license is effective for the license year in which the decision is made, and not necessarily for the license year in which the application is received. ---- ***In the Matter of Xavier Carbajal, 8 BOLI 206, 226-27 (1990).*** See also ***In the Matter of Demetrio Ivanov, 7 BOLI 126, 133 (1988).***

□ When an application for a farm labor contractor license has been denied, the commissioner will not issue the applicant a license for a period of three years from the date of the denial. ---- ***In the Matter of Xavier Carbajal, 8 BOLI 206, 227 (1990).*** See also ***In the Matter of Demetrio Ivanov, 7 BOLI 126, 133 (1988); In the Matter of Raul Mendoza, 7 BOLI 77, 85 (1988).***

□ A farm labor contractor license applicant who was previously licensed for three years and who, while licensed, was found to have (1) repeatedly failed to file certified copies of payroll records, in violation of ORS 658.417(3); (2) repeatedly failed to furnish his workers with the statements required under ORS 658.440(1); and (3) failed to report changes in circumstances under which his license was issued regarding motor vehicles and insurance. The forum held that the applicant demonstrated unfitness to act as a farm labor contractor under OAR 839-15-520(3) and denied him a license. ---- ***In the Matter of Demetrio Ivanov, 7 BOLI 126, 132-33***

***(1988).***

### 3.7 --- Refusal to Renew

□ When the evidence contained nothing more than speculation that respondent and her corporation applied for a farm labor contractor license in anticipation of the "denial, suspension, revocation or refusal to renew" her husband's farm labor contractor license, the forum found that the agency had did not establish that respondents used the respondent corporation to perpetrate a sham or subterfuge within the meaning of OAR 839-015-0142, in violation of ORS 658.440(3)(a). ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 164-65 (2007).***

□ The agency alleged that a respondent had "failed to pay all debts owed including debts to the Oregon Department of Revenue" and those respondents' applications for farm/forest labor contractor licenses should be denied and their current licenses should not be renewed. Based on undisputed evidence that respondent obtained a certificate of compliance from DOR, contingent on a payment plan for a debt owed to DOR, for the purpose of obtaining his farm labor contractor license in December 2004, and that respondent was out of compliance with the payment plan from April 2005 through at least September 26, 2005, but no actual judgment was entered on the debt, the forum was unable to conclude that respondent failed "to promptly satisfy any or all judgments levied against" him. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 163 (2007).***

□ The agency sought to refuse to renew respondent's farm/forest labor contractor's license when the commissioner previously had ordered respondent to pay civil penalties for violating the farm/forest labor laws and respondent had not paid those penalties. The forum found that respondent was precluded from relitigating whether he had committed the violations. The forum granted the agency's motion for summary judgment, holding that respondent's previous violations and his failure to pay the civil penalties established, as a matter of law, that his character, reliability or competence made him unfit to act as a farm labor contractor. ---- ***In the Matter of Lambertus Sandker, 20 BOLI 1, 5-6 (2000).***

□ When a licensee demonstrates that his or her character, competence, or reliability makes the licensee unfit to act as a farm labor contractor, the commissioner may refuse to renew the license. ---- ***In the Matter of Tomas Benitez, 15 BOLI 19, 24 (1996).***

□ The commissioner refused to renew the license of a farm/forest labor contractor who was previously licensed for five years and who, while licensed, was found to have failed to file certified copies of payroll records on three U.S. Forest Service contracts in violation of ORS 658.417. ---- ***In the Matter of Alvaro Linan, 9 BOLI 44, 48 (1990).***

□ A contractor who repeatedly fails to observe agency rules by failing to file certified payroll records demonstrates that he is unreliable and should not be allowed to renew his license. ---- ***In the Matter of Alvaro Linan, 9 BOLI 44, 48 (1990).***

□ When a contractor with a lapsed license failed to file

information with the agency, failed to submit and maintain proof of his financial ability to pay wages, failed to file a wage certification, failed to furnish each worker with a statement of the worker's right and remedies, failed to comply with the terms and conditions of his employment agreements, failed to comply with the terms and conditions of his contract with the U.S. Forest Service, and there were no mitigating circumstances, the forum held that respondent's 13 total violations were very substantial and were of a magnitude and seriousness that the forum would have refused to renew the contractor's license if he had applied for renewal. ---- **In the Matter of Francis Kau, 7 BOLI 45, 54-55 (1987).**

□ When a contractor permitted his license to expire without applying for its renewal, and this occurred after he had been given notice by the agency of its intent to refuse to renew the contractor's license because of multiple violations of farm/forest labor contractor laws, the forum held that the commissioner had the authority, when the contractor had been given full and fair opportunity to respond to the modification in the action from refusing to renew a license to assessing civil penalties, to assess civil penalties for the violations. The forum also held that the commissioner would have the authority to, and would, refuse to renew the contractor's farm/forest labor contractor license, if he had such a license. ---- **In the Matter of Jose Solis, 5 BOLI 180, 199, 202-03 (1986).**

□ When the agency notified a licensed contractor on March 4, 1983, that the agency proposed to refuse to renew the contractor's license for the 1983 license year, which ran from February 1, 1983, through January 31, 1984, a hearing was conducted on October 20-21, 1984, and the commissioner's final order was issued on May 8, 1984, the forum found that the commissioner had the authority, under the facts and circumstances of the record, to refuse to renew the contractor's license. ---- **In the Matter of Highland Reforestation, 4 BOLI 185, 203-04 (1984).**

□ When the agency notified a licensed contractor on February 14, 1983, that the agency proposed to refuse to renew the contractor's license for the 1983 license year, which ran from February 1, 1983, through January 31, 1984, a hearing was conducted on September 13-14, 1983, and the commissioner's final order was issued on April 5, 1984, the forum found that the commissioner had the authority, under the facts and circumstances of the record, to refuse to renew the contractor's license. --- **In the Matter of Desiderio Salazar, 4 BOLI 154, 172 (1984).**

### 3.8 --- Suspension

□ Respondents violated a prior consent order that provided in part: "[Respondents] further understand and agree that any violation of \* \* \* this consent order shall be a breach of a legal and valid agreement entered into with the commissioner, the penalty for which \* \* \* shall be the denial of a farm/forest labor contractor to [Respondents] \* \* \* which denial shall, for a period of three years from the date of the breach of this agreement, operate to further bar any application for a farm/forest labor contractor license by [respondents] \* \*

\*." The agency sought denial of respondent's right to apply "for an additional three year period from the date the commissioner finds [respondents] in breach." The commissioner imposed a penalty of further suspension of three years from the date of the breach in accordance with the plain language of the consent order. ---- **In the Matter of Manuel Galan, 15 BOLI 106, 114, 131-33 (1996).**

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

### 3.9 --- Revocation

□ The constitutional prohibitions against *ex post facto* laws are generally confined to penal statutes. The prohibitions do not apply in an administrative hearing to revoke a farm labor contractor license. ---- **In the Matter of Scott Nelson, 15 BOLI 168, 189 (1996).**

□ When respondents intentionally, over a period of years, circumvented Oregon's worker's compensation insurance system by misclassifying and misreporting Oregon workers as California workers, thereby reducing their Oregon workers' compensation insurance costs, and underpaying one Oregon insurer more than \$400,000, the forum held that respondents failed to make sufficient workers' compensation insurance premium payments when due and that their character, competence, and reliability demonstrated that they were unfit to act as a farm labor contractor. Accordingly, pursuant to ORS 658.445(3) and OAR 839-15-520(3)(j), revocation of their license was the appropriate sanction. ---- **In the Matter of Scott Nelson, 15 BOLI 168, 185-86 (1996).**

□ At the start of the hearing, respondent moved for a ruling that the quantum of proof required to impose the suspension of respondent's right to apply for a forest/farm labor contractor license should be "clear and convincing," rather than a "preponderance." The commissioner held that the issue was application or qualification for a license, and not revocation of an existing license, and that preponderance was the proper evidentiary standard. ---- **In the Matter of Manuel Galan, 15 BOLI 106, 114, 133 (1996).**

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ In a license revocation case, the forum granted the agency's motion to change the hearing procedures from those provided in OAR chapter 839, division 50, to the expedited procedures provided in OAR chapter 839, division 33, when the forum had previously granted summary judgment to the agency in a farm labor contractor case, respondent had not responded to the summary judgment motion, the agency could have initially requested the expedited procedure, both procedures provide for summary judgment, the agency was seeking revocation of a license that would soon expire, and the agency sought to avoid a future license denial action based on the same allegations. ---- **In the Matter of Alexander Kuznetsov, 14 BOLI 185, 191-92 (1995).**

□ When respondent committed seven violations of

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ORS 658.440(3)(e) – assisting an unlicensed person to act as a farm labor contractor – the forum found that these violations were of such magnitude and seriousness that respondent's farm labor contractor license was revoked. ----- ***In the Matter of Alexander Kuznetsov, 14 BOLI 185, 194 (1995).***

□ The forum revoked respondent's farm labor contractor license after he admittedly failed to maintain the required bond in violation of ORS 658.415(3), entered into a consent order and agreed to pay a civil penalty in lieu of having his license revoked, paid for the civil penalty with a bad check, and then failed to honor the check, which breached the consent order in violation of ORS 658.440(1)(d). The forum held that respondent's character, competence, and reliability made him unfit to act as a farm labor contractor under ORS 658.445 and OAR 839-15-520(3). ----- ***In the Matter of Jesus Guzman, 14 BOLI 1, 5 (1995).***

□ When respondent violated wage and hour laws by failing to pay hundreds of her workers, willfully violated a contract with a farmer, assisted an unlicensed person to act as a contractor without a license, repeatedly failed to execute WH-153 forms with her workers, and employed an agent whose farm labor contractor license had been denied, the hearings referee found respondent unfit to act as a farm labor contractor and revoked her license, pursuant to ORS 658.445(1) and (3), OAR 839-15-145, and 839-15-520(1)-(3). ----- ***In the Matter of Clara Perez, 11 BOLI 181, 195-96 (1993).***

□ In a farm labor contractor license revocation case, because ORS 658.453 and OAR 839-15-520(8) provide for the imposition of civil penalties, and because the rules provide that the commissioner may consider mitigating and aggravating circumstances when determining the amount of any civil penalty to be imposed, the hearings referee may take evidence on such circumstances in order to determine which sanction is appropriate, such as a license suspension instead of revocation. ----- ***In the Matter of Clara Perez, 11 BOLI 181, 195-96 (1993).***

□ When respondent failed to pay hundreds of workers as agreed, each failure was a violation of ORS 658.440(1)(d). When the agency proposed to revoke a license, the exact number of violations is not critical. The violations were considered by the commissioner to be of such magnitude and seriousness that revocation of respondent's license is appropriate. ----- ***In the Matter of Clara Perez, 11 BOLI 181, 195 (1993).***

□ Pursuant to OAR 839-140(1)(c) and 839-15-520(4), when a farm labor contractor license has been revoked, the commissioner will not issue the contractor a license for a period of three years from the date of the revocation. ----- ***In the Matter of Clara Perez, 11 BOLI 181, 197 (1993).***

□ When respondent failed to comply with the terms, conditions, and representations of a consent order entered into with the agency, thus violating ORS 658.440(1)(d), the forum revoked respondent's license and deprived respondent and its principals of the ability to apply for a license for a period of three years from the revocation, pursuant to the terms of the consent order

and ORS 658.45(1) and (3). ----- ***In the Matter of Azul Corporation, Inc., 10 BOLI 156, 160-62 (1992).***

### 3.10 --- Character, Competence, Reliability

□ Three of the criteria in OAR 839-015-0145 relating to character, competence and reliability applied to an applicant for a farm labor contractor license and demonstrated that she and her corporation were unfit to act as a farm labor contractor. First, she and her corporation engaged in a course of misconduct by entering into a subcontract that she knew was in violation of a tree planting contract and by not giving WH-151S and WH-153S forms to three workers. Second, she and her corporation demonstrated unreliability in adhering to the terms and conditions of a contract between herself and her corporation and someone with whom she conducted business by violating the subcontracting provision of the tree planting contract. Third, she and her corporation committed three violations of ORS 658.440(1)(f), three violations of ORS 658.440(1)(g), one violation of ORS 658.410, and two violations of ORS 658.440(3)(b). Under OAR 839-015-0520(3), the same actions independently demonstrated that the individual and her corporation's character, competence and reliability made them unfit to act as a farm or forest labor contractor. ----- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 170-72 (2007).***

□ Four of the criteria in OAR 839-015-0145 relating to character, competence and reliability applied to an applicant for a farm labor contractor license and demonstrated that he was unfit to act as a farm labor contractor. First, he engaged in a course of misconduct by entering into a subcontract that he knew was in violation of a tree planting contract and by not giving WH-151S and WH-153S forms to a worker whom he earlier employed. Second, he demonstrated his unreliability in adhering to the terms and conditions of a contract between himself and someone with whom he conducted business by violating the subcontracting provision of the tree planting contract. Third, although he eventually paid a debt to the Oregon Department of Revenue, he was untimely in doing so. Fourth, he violated ORS 658.440(1)(f) & (g) with regard to a worker by not giving that worker WH-151S and WH-153S forms when he employed that worker. Under OAR 839-015-0520(3), the same actions demonstrated that the applicant's character, competence and reliability made him unfit to act as a farm or forest labor contractor, with each action separately demonstrating that he was unfit to act as a farm labor contractor. ----- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 170-71 (2007).***

□ ORS 658.420 provides that the commissioner shall investigate each applicant's character, competence and reliability and any other matter relating to the manner and method by which the applicant proposes to conduct and has conducted operations as a farm labor contractor. The commissioner shall issue a license only if satisfied as to the applicant's character, competence, and reliability. ----- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 49 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ Respondents, while previously licensed, repeatedly failed to timely file certified payroll reports and more recently submitted untimely, inaccurate, and uncertified payroll reports on six contracts. This action demonstrated that respondents did not have the requisite character, competence and reliability to act as farm labor contractors. ----- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 49-50 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ Respondents' willful concealment of information and two misrepresentations on their farm labor license application and failure on two occasions to comply with state wage and hour laws demonstrated that respondents did not have the requisite character, competence and reliability to act as farm labor contractors. ----- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 50 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ Acting as a contractor without a license reflects negatively on a respondent's character, competence, and reliability to act as a farm/forest labor contractor. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 139 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ A contractor's failure to provide workers with workers' compensation coverage seriously affects the commissioner's view of the contractor's character, competence, and reliability. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 140 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ The forum denied an application for a farm/forest labor contractor's license where the applicant committed at least two violations of the farm/forest labor contracting laws that demonstrated that his character, competence and reliability made him unfit to act as a contractor. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 141 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ When the agency has adopted rules stating that, when assessing a person's character, competence, and reliability, the agency will consider whether the person made workers' compensation insurance premium payments when due and providing that failure to make workers' compensation insurance premium payments when due demonstrates that the person is unfit to act as a farm labor contractor, and when the agency has interpreted these rules through a contested case hearing holding that, when determining a farm labor contractor's fitness to be licensed, the agency will consider whether

the licensee made *sufficient* workers' compensation insurance premium payments when due, the phrase "sufficient payment" is not a nullity and does not permit purely *ad hoc* discretion, in violation of the Oregon and US constitutions. ----- ***In the Matter of Scott Nelson, 15 BOLI 168, 182-83 (1996).***

□ When respondents intentionally, over a period of years, circumvented Oregon's worker's compensation insurance system by misclassifying and misreporting Oregon workers as California workers, thereby reducing their Oregon workers' compensation insurance costs, and underpaying one Oregon insurer more than \$400,000, the forum held that respondents failed to make sufficient workers' compensation insurance premium payments when due and that their character, competence, and reliability demonstrated that they were unfit to act as a farm labor contractor. Accordingly, pursuant to ORS 658.445(3) and OAR 839-15-520(3)(j), revocation of their license was the appropriate sanction. ----- ***In the Matter of Scott Nelson, 15 BOLI 168, 185-86 (1996).***

□ Properly paying for workers' compensation insurance is a matter the agency will consider when assessing a licensee's character, competence, and reliability. ----- ***In the Matter of Scott Nelson, 15 BOLI 168, 183 (1996).***

□ A licensed farm labor contractor's unsatisfied judgments exceeding \$100,000 that involved failures to pay unemployment compensation tax, federal and state income taxes, and other taxes, fees, and assessments in compliance with state and federal law demonstrate that the contractor's character, competence, and reliability make him unfit to act as a farm labor contractor. ----- ***In the Matter of Tomas Benitez, 15 BOLI 19, 23-24 (1996).***

□ When respondents, an individual and his corporation, supplied workers to plant trees when they were unlicensed, in violation of ORS 658.410(1) and 658.417(1), and failed to comply with the terms and provisions of three contracts they entered into in their capacity as a farm labor contractor, in violation of ORS 658.440(1)(d), the commissioner found their character, competence, and reliability made them unfit to act as a farm labor contractor. ----- ***In the Matter of Bill Martinez, 14 BOLI 214, 222-23 (1995).***

□ The forum revoked respondent's farm labor contractor license after he admittedly failed to maintain the required bond in violation of ORS 658.415(3), entered into a consent order and agreed to pay a civil penalty in lieu of having his license revoked, paid for the civil penalty with a bad check, and then failed to honor the check, which breached the consent order in violation of ORS 658.440(1)(d). The forum held that respondent's character, competence, and reliability made him unfit to act as a farm labor contractor under ORS 658.445 and OAR 839-15-520(3). ----- ***In the Matter of Jesus Guzman, 14 BOLI 1, 5 (1995).***

□ When respondent acted three times as a farm labor contractor without a license, failed to comply with a contract with his insurance company to pay his workers' compensation insurance premiums when due, had an

## F/FLC -- 3.0 LICENSE

unsatisfied judgment based on his failure to pay his insurance premiums, and twice failed to comply with an agreement with the commissioner by twice breaching to terms of a consent order, the forum was not satisfied as to respondent's character, competence, and reliability and found him unfit to act as a farm labor contractor and denied him a license. ---- ***In the Matter of Jose Linan, 13 BOLI 24, 26, 46-47 (1994).***

□ When respondent committed multiple violations of ORS 658.417(3), 658.440(1)(e), and 658.440(1)(d), the latter involving breach of a consent order resolving previous allegations of violations of Oregon's farm labor contractor law, the commissioner was not satisfied with respondents' character, competence, and reliability and denied renewal of a license to act as a farm respondent forest labor contractor. ---- ***In the Matter of Robert Gonzalez, 12 BOLI 181, 199 (1994).***

□ When respondents, an individual and his corporation, violated several provisions of the farm labor contractor law, including acting as a contractor without a license, filing to make workers' compensation insurance premium payments when due, and making a willful misrepresentation on a license application, and when the corporate respondent had an unsatisfied judgment, the forum was not satisfied as to respondents' character, competence, and reliability and found them unfit to act as farm labor contractors and denied them a license, pursuant to ORS 658.420. ---- ***In the Matter of Alejandro Lumbreras, 12 BOLI 117, 128-29 (1993).***

□ Respondents' repeated failure to timely and accurately provide certified payroll records to the commissioner, in violation of ORS 658.417(3), demonstrated that respondents' character, competence, and reliability made them unfit to act as farm labor contractors, and the commissioner denied them a license. ---- ***In the Matter of John Mallon, 12 BOLI 92, 101-02 (1993).***

□ Respondent's employment of her husband, whose farm labor contractor license had been denied by the commissioner, demonstrated that her character and reliability made her unfit to act as a farm labor contractor. ---- ***In the Matter of Clara Perez, 11 BOLI 181, 196 (1993).***

□ When evidence presented at hearing proved several statutory violations that were not alleged in the agency's notice of intent, the hearings referee found the evidence reflected aggravating circumstances relevant to the assessment of respondent's character, competence, and reliability to act as a farm labor contractor and also to determining the proper sanction. ---- ***In the Matter of Clara Perez, 11 BOLI 181, 196 (1993).***

□ When respondent violated former ORS 658.440(2)(e) by assisting an unlicensed person to act in violation of Oregon's farm labor contractor law and failed to make \$600,000 in workers' compensation insurance premium payments when due, the forum found that respondent's character and reliability made him unfit to act as a farm labor contractor. ---- ***In the Matter of Efrain Corona, 11 BOLI 44, 58 (1992).***

Affirmed without opinion, *Corona v. Bureau of Labor and Industries*, 124 Or App 211, 861 P2d 1046

(1993).

□ When respondent violated several provisions of ORS 658.405 to 658.485, including acting as a farm labor contractor without a license, the forum found that respondent's character, competence, and reliability made him unfit to act as a farm labor contractor and denied him a license. ---- ***In the Matter of Miguel Espinoza, 10 BOLI 96, 101 (1991).***

□ Respondent, an applicant for a farm/forest labor contractor license, recruited workers through employees who were also unlicensed, failed while acting as a farm/forest labor contractor to comply with the terms and provisions of his contract with a payroll service, and failed to furnish the workers hired with required written statements of the working agreement and their rights. The commissioner held that such infractions reflected adversely on respondent's character, competence, and reliability, making him unfit to be licensed as a farm/forest labor contractor. ---- ***In the Matter of Stancil Jones, 9 BOLI 233, 240 (1991).***

□ When an applicant for a farm labor license acted as a contractor without a license and made incorrect statements regarding his use of vehicles and financially interested persons on his application with knowledge of the incorrectness, and with the intention of misleading or deceiving the agency, the commissioner found that the applicant's character, competence, and reliability made him unfit to be a farm labor contractor and denied him a license. ---- ***In the Matter of Rogelio Loa, 9 BOLI 139, 147 (1990).***

□ When an applicant for a farm labor contractor's license had three violations of acting as a contractor without a license and had employed or used an agent that had had a forest labor contractor license denied, the commissioner found that the applicant's character, competence, and reliability made him unfit to act as a forest labor contractor and denied him a license. ---- ***In the Matter of Efim Zyryanoff, 9 BOLI 82, 90 (1990).***

□ A contractor who repeatedly fails to observe agency rules by failing to file certified payroll records demonstrates that he is unreliable and should not be allowed to renew his license. ---- ***In the Matter of Alvaro Linan, 9 BOLI 44, 48 (1990).***

□ When a license applicant assisted an unlicensed person to act as a farm labor contractor, knowing that the unlicensed person needed a license, and when the applicant failed to post a notice of compliance in violation of ORS 658.415(15) and repeatedly failed to furnish written statements WH-151 and WH-153 to each worker, and when he knew or should have known that his actions violated farm labor contractor laws, the commissioner found that the applicant's character, competence, and reliability made him unfit to act as a farm labor contractor and denied him a license. ---- ***In the Matter of Xavier Carbajal, 8 BOLI 206, 226 (1990).***

□ When a contractor presented evidence that he had complied with all the provisions of ORS chapter 658 that he had been found to have violated, except ORS 658.440(2)(d), since he understood their requirements; and contractor argued that this should be viewed as evidence that his character, reliability, and fitness did not

## F/FLC -- 4.0 PROHIBITED ACTIVITIES (ORGANIZED BY STATUTE NUMBER) (SEE ALSO 5.2)

make him unfit to act as a forest labor contractor; the forum found that this evidence might be relevant to a future request by contractor for a farm/forest labor contractor license, but that this evidence, even if found to be fact, would not change the findings and conclusions that he had violated or failed to comply with numerous provisions of ORS 658.405 to 658.475 and that his character, competence, and reliability made him unfit to act as a licensed contractor. ----- *In the Matter of Jesus Ayala, 6 BOLI 54, 70 (1987)*.

□ According to OAR 839-15-520(3)(a) and (f), either the repeated violations of any section of ORS 658.405 to 658.475 by a forest labor contractor, or the repeated failure of that contractor to file all information required by ORS 658.405 to 658.475 and division 15 of OAR chapter 839, demonstrates by itself that contractor's character, competence, and reliability make the contractor unfit to act as a farm labor contractor. Accordingly, when a contractor repeatedly violated ORS 658.440(2)(d), 658.415(15), and 658.417(3), and repeatedly failed to file all information required by ORS 658.417(3) and OAR 839-15-300, the contractor's character, competence, and reliability made him unfit to act as a forest labor contractor. ----- *In the Matter of Jesus Ayala, 6 BOLI 54, 67 (1987)*.

### 4.0 PROHIBITED ACTIVITIES (ORGANIZED BY STATUTE NUMBER) (see also 5.2)

#### 4.1 --- Acting as a Contractor Without a License (ORS 658.410(1) and 658.415(1))

□ Respondents acted as contractors without a license by using an agent to bid on a reforestation contract before respondents were licensed as farm labor contractors. ----- *In the Matter of Basilio Piatkoff, 28 BOLI 133, 162-63 (2007)*.

□ The forum found that respondent committed six violations of ORS 658.410(1) when the participants stipulated that respondent had acted as a farm labor contractor on six occasions since his license was revoked and the evidence supported that stipulation. ----- *In the Matter of Tomas Benitez, 19 BOLI 142, 158 (2000)*.

□ When respondents did not have farm labor contractor's licenses, they violated ORS 658.410(1) by entering into a subcontract with another for the clearing and piling of slash and brush and recruiting and soliciting workers to perform labor on a forestation/reforestation contract. ----- *In the Matter of Charles Hurt, 18 BOLI 265, 274 (1999)*.

□ Agency policy stated that, when bids were sought for forestation or reforestation work on federally owned lands, "the Bureau will not require [persons] to obtain a [farm labor contractor] license or temporary permit until such time as the contract is awarded. The mere act of bidding on such contracts does not require a permit or license." That policy statement bound the agency. Consequently, the respondents did not violate ORS 658.410(1) by submitting a bid on a BLM forestation/reforestation contract. ----- *In the Matter of Charles Hurt, 18 BOLI 265, 274-75 (1999)*.

□ Licensure is at the heart of the state's effort to regulate farm labor contractors and the forum always regards acting as a farm labor contractor without a license to be a serious violation. ----- *In the Matter of Charles Hurt, 18 BOLI 265, 275 (1999)*.

□ Acting as a contractor without a license reflects negatively on a respondent's character, competence, and reliability to act as a farm/forest labor contractor. ---- *In the Matter of Manuel Galan, Jr., 17 BOLI 112, 139 (1998)*.

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ Respondent bid for and obtained a USF contract to apply big game repellent and entered into a subcontract with another licensed farm labor contractor to perform this contract before a rule change that made the application of big game repellent an activity that required a farm labor contractor license. The licensed subcontractor provided the workers and performed the contract before and after the rule change. The commissioner held that respondent was not a farm labor contractor within the definition of ORS 658.405(1) and OAR 839-15-004(4), and therefore did not act as a farm labor contractor without a license when the contract was completed after the rule change. ----- *In the Matter of Richard Cole, 16 BOLI 221, 228-29 (1997)*.

□ Respondent obtained a USFS contract to apply herbicide in June 1996. Effective July 1, 1996, OAR 839-15-0004(8) was amended to include herbicide application among the activities that the agency required a farm labor contractor license to perform, and respondent was aware of this change. In July 1996, respondent recruited, transported, and employed at least three workers in Oregon to perform the USFS herbicide application contract in California. The commissioner held that respondent acted as a farm labor contractor with regard to the forestation or reforestation of lands without a farm labor contractor's license or forestation indorsement, in violation of ORS 658.410(1) and 658.417(1), and assessed a civil penalty for these violations. ----- *In the Matter of Manuel Galan, 16 BOLI 51, 62-64, 65-66 (1997)*.

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 154 Or App 762 (2000), 763 P2d 755, rev den 327 Or 553, 971P2d 409 (1998).

□ The Farm Labor Contractor's Act applied to respondent when he recruited workers in Oregon and transported them for reforestation work in California. ----- *In the Matter of Manuel Galan, 16 BOLI 51, 66 (1997)*.

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 154 Or App 762 (2000), 763 P2d 755, rev den 327 Or 553, 971P2d 409 (1998).

□ When respondent employed workers to perform labor for another in the production and harvesting of Christmas trees and acted as a farm labor contractor for at least eight farmers in Oregon in 1993 and 1994 while not licensed to do so, respondent violated ORS 658.410 and OAR 839-15-125 eight times and the commissioner assessed civil penalties. ----- *In the Matter of Odon Salinas, 16 BOLI 42, 49 (1997)*.

## F/FLC -- 4.0 PROHIBITED ACTIVITIES (ORGANIZED BY STATUTE NUMBER) (SEE ALSO 5.2)

□ When an unlicensed respondent denied employing workers in Oregon in 1994, two Oregon farmers hired and paid directly several workers who had also worked for respondent in California, and one of respondent's foremen stated that there was work in Oregon in 1994 but not for either of those farmers, the agency failed to establish, by a preponderance of evidence, that respondent recruited, solicited, or supplied workers to either farmer or otherwise acted as a contractor without a license. ----- ***In the Matter of Mohammad Khan, 15 BOLI 191, 209 (1996).***

□ The Farm Labor Contractor's Act applied to an unlicensed contractor entering into a subcontract in Oregon for the forestation of lands in another state. ----- ***In the Matter of Manuel Galan, 15 BOLI 106, 130-31 (1996).***

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ When a person who was not the employee of the respondent farmer supplied workers to harvest the respondent farmer's Christmas trees, that person was acting as a farm labor contractor and should have had a valid farm labor contractor's license. ----- ***In the Matter of Melvin Babb, 14 BOLI 230, 237 (1995).***

□ Respondents, an individual and his corporation, violated ORS 658.410(1) and 658.417(1) by supplying workers to plant trees while respondents were unlicensed. ----- ***In the Matter of Bill Martinez, 14 BOLI 214, 221 (1995).***

□ When respondent, a farm labor contractor, supplied workers to four farms at a time when he lacked a farm labor contractor license, the forum found four violations of ORS 658.410(1) and assessed civil penalties. ----- ***In the Matter of Juan Gonzalez, 14 BOLI 27, 32-33 (1995).***

□ When used as a means of recruitment or solicitation, advertising may violate the farm labor contractor licensure provisions, provided the content of an advertisement, in context, meets the definition of either "recruit" or "solicit." ----- ***In the Matter of JoAnn West, 13 BOLI 233, 244 (1994).***

□ Respondent, an accountant, placed advertisements bearing her telephone number for her farm labor contractor clients. The advertisements offered contracting services to owners of Christmas tree lots and did not request the services of workers. The commissioner held that respondent was not recruiting or soliciting workers to perform labor for another in the production or harvest of farm products or in the forestation or reforestation of lands and did not act as a farm labor contractor. ----- ***In the Matter of JoAnn West, 13 BOLI 233, 241, 243 (1994).***

□ ORS 658.410(1) requires that any person acting as a farm labor contractor be in possession of a license issued by the commissioner. This section also requires that any person acting as a farm labor contractor with regard to the forestation/reforestation of lands be in possession of a license with the forestation indorsement required by ORS 658.417(1). This juxtaposition suggests that the license required to engage lawfully n

farm labor contractor activities consists of one part, the basic license alone, and that the license required to lawfully engage in farm labor contractor activities consists of two parts, the basic license plus an added indorsement. In the latter situation, the two parts form one license, the license needed for forestation activities. Consequently, when a person acts as a forest labor contractor and is unlicensed, the act is one simultaneous violation of ORS 658.410(1), the basic license, and ORS 658.417(1), the indorsement. ----- ***In the Matter of Victor Ovchinnikov, 13 BOLI 123, 155-56 (1994).***

□ A respondent who lodged workers, located work for them in the production or harvest of farm products, and transported and supplied them to harvest crops for framers engaged in the production of farm products was acting as a farm labor contractor and was required to be licensed under the provisions of ORS 658.410(1) and 658.415(1). ----- ***In the Matter of Javier Garcia, 13 BOLI 93, 109-110 (1994).***

□ Respondent violated ORS 658.410(1), 658.415(1), and 658.417(1) when he employed workers to labor upon a forestation subcontract after his temporary permit expired and without a license. ----- ***In the Matter of Jose Linan, 13 BOLI 24, 26, 44 (1994).***

□ When an unlicensed farm labor contractor recruited workers in Oregon to perform forestation work on a USFS contract outside Oregon, the forum held that Oregon's farm labor contractor law applied to this recruiting and that the contractor violated ORS 658.410(1), 658.415(1), and 658.417(1) by acting as a farm labor contractor with regard to the forestation or reforestation of lands without a license. ----- ***In the Matter of Jose Linan, 13 BOLI 24, 36 (1994).***

□ Oregon's farm labor contractor law applies to the recruitment of workers in Oregon to perform work outside of Oregon. Regulation of such recruitment is within the constitutional power of Oregon to regulate and is not preempted by federal law. ----- ***In the Matter of Jose Linan, 13 BOLI 24, 36 (1994).***

□ When an unlicensed respondent recruited and employed workers to harvest Christmas trees for a licensed respondent, the unlicensed respondent violated ORS 658.410 by acting as a farm labor contractor and the commissioner imposed a civil penalty. ----- ***In the Matter of Clara Rodriguez, 12 BOLI 153, 171-72, 174, 180 (1994).***

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

□ When an unlicensed respondent transported, recruited, solicited, and supplied workers and bid and submitted prices on contract offers to harvest Christmas trees for a licensed respondent, the unlicensed respondent violated ORS 658.410 by acting as a farm labor contractor and the commissioner imposed a civil penalty on the unlicensed respondent. ----- ***In the Matter of Clara Rodriguez, 12 BOLI 153, 171-72, 176, 180-81 (1994).***

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

## F/FLC -- 4.0 PROHIBITED ACTIVITIES (ORGANIZED BY STATUTE NUMBER) (SEE ALSO 5.2)

- When an unlicensed farm labor contractor recruited workers in Oregon for the purpose of forestation or reforestation of lands in Idaho, the commissioner found the contractor in violation of ORS 658.410, 658.415, and 658.417, holding that recruiting, soliciting, or employing workers in Oregon to work in the forestation or reforestation of lands, wherever located, is an activity requiring a farm labor contractor license with the appropriate indorsement. ----- ***In the Matter of Alejandro Lumbreras, 12 BOLI 117, 125 (1993).***
- When respondent's farm labor contractor license expired and he failed to take action to extend it in accordance with a statutory change in license year, despite repeated attempts by the agency's licensing unit to have him file the proper bond and reapplication, then respondent continued to operate his farm labor contractor business and operated farm labor camps without the required license indorsement or registration, the commissioner imposed civil penalties and denied respondent's application for a farm labor contractor license for a period of three years. ----- ***In the Matter of Jose Rodriguez, 11 BOLI 110, 125-26, 128 (1992).***
- When respondent submitted a price on a contract offer to supply workers to another person to work in connection with the production of farm products, then later recruited and supplied such workers, the commissioner found that respondent acted as a farm labor contractor in violation of ORS 658.410(1) and 658.415(1). ----- ***In the Matter of René Garcia, 11 BOLI 85, 90-91 (1992).***
- When respondent acted as a farm labor contractor on four USFC contracts without a license with a partner who had a license, the forum found four violations of ORS 658.410(1), 658.415(1), and 658.417(1). ----- ***In the Matter of Ivan Skorhodoff, 11 BOLI 8, 16 (1992).***
- An unlicensed respondent who bid or submitted prices on contract offers and subcontracted with another for the forestation or reforestation of lands, including brush piling and fire trail building, acted as a farm labor contractor with regard to the forestation or reforestation of lands in violation of ORS 658.410(1), 658.415(1), and 658.417(1). ----- ***In the Matter of Z & M Landscaping, Inc., 10 BOLI 174, 179-80 (1992).***
- A respondent who employed forestation workers to labor on a BLM contract when he did not possess a valid farm labor contractor license with a reforestation indorsement violated ORS 658.410(1), 658.415(1), and 658.417(1). ----- ***In the Matter of Miguel Espinoza, 10 BOLI 96, 97 (1991).***
- The urgencies of contract bidding and completion do not excuse or mitigate a failure to obtain a license before acting as a farm labor contractor. ----- ***In the Matter of Miguel Espinoza, 10 BOLI 96, 100 (1991).***
- When respondent guided another person through the licensing process to obtain a "partial exempt" license, which requires that the licensee employ a maximum of two employees and be a sole proprietor with the only financial interest, and respondent thereafter financed and managed the enterprise and paid wages to more than three others, including the licensee, the commissioner found that respondent should have been licensed as a farm/forest labor contractor and was in violation of ORS 658.410, 658.415(1), and 658.417(1) and imposed a civil penalty. ----- ***In the Matter of Kenneth Vanderwall, 9 BOLI 148, 155-56 (1990).***
- When an unlicensed contractor bid or submitted prices on three reforestation projects in Oregon, the contractor violated ORS 658.410(1), 658.415(1), and former OAR 839-15-125. ----- ***In the Matter of Efim Zyryanoff, 9 BOLI 82, 87 (1990).***
- Two contractors, an unlicensed stepfather and his licensed stepson, worked together recruiting farm workers and furnishing lodging for the workers. The commissioner held that the stepfather was acting as a contractor without a license in violation of ORS 658.410 and 658.415, and the stepson was assisting an unlicensed person to act in violation of ORS 658.440(2)(e). ----- ***In the Matter of Xavier Carbajal, 8 BOLI 206, 220 (1990).***
- A person acts as a farm labor contractor if the person "recruits, solicits, supplies or employs" a worker for the purpose of forestation or reforestation of lands. Such activity by a person without a farm labor contractor license must take place in Oregon in order for a violation to occur. ----- ***In the Matter of Leonard Williams, 8 BOLI 57, 72-73 (1989).***
- A contractor "recruited" within the meaning of the statute by placing a job order with the Employment Division. By offering a worker employment with the assurance of an hourly rate plus profit-sharing, the contractor "solicited" within the meaning of the statute. -- ***In the Matter of Leonard Williams, 8 BOLI 57, 73 (1989).***
- To recruit or solicit workers in Oregon to work in the forestation or reforestation of lands, whether for the purpose of establishing a direct employer-employee relationship, or a profit-share or partnership between the person being sought and another, including the recruiter, is a farm labor contractor activity requiring a valid farm labor contractor license with the appropriate indorsement. Such activity without a license is a violation of ORS 658.410(1) and 658.415(1). ----- ***In the Matter of Leonard Williams, 8 BOLI 57, 73 (1989).***
- To recruit or solicit workers in Oregon to work in the forestation or reforestation of lands, wherever situated, is a farm labor contractor activity requiring a valid farm labor contractor license with the appropriate indorsement. ----- ***In the Matter of Leonard Williams, 8 BOLI 57, 73-74 (1989).***
- When evidence showed that a contractor bid on three USFS contracts to clear, pile, and dispose of brush and slash and, for an agreed remuneration or rate of pay, employed workers to perform labor on at least two of the contracts awarded to him, and when, despite his being apprised repeatedly by the agency of the licensing requirements of the law, the contractor neither applied for nor obtained a farm/forest labor contractor license, the forum found this uncontroverted evidence clearly constituted a prima facie case that the contractor violated ORS 658.410 and 658.415(1). ----- ***In the Matter of Michael Burke, 5 BOLI 47, 52 (1985).***

**F/FLC -- 4.0 PROHIBITED ACTIVITIES (ORGANIZED BY STATUTE NUMBER) (SEE ALSO 5.2)**

**4.6 --- Failure to Disclose Applicant's Name and Addresses on License Application (ORS 658.415(1)(a))**

□ No violation of ORS 658.415(1)(a) was found when respondent's inconsistent use of various addresses did not amount to willful concealment of an address. ----- *In the Matter of Manuel Galan, Jr., 17 BOLI 112, 140 (1998).*

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

**4.3 --- Failure to Disclose Information on All Motor Vehicles (ORS 658.415(1)(b))**

**4.4 --- Failure to Disclose Previous License Denials (ORS 658.415(1)(c))**

**4.5 --- Failure to Disclose Names of All Financially Interested Persons (ORS 658.415(1)(d))**

□ An applicant for a farm labor contractor license has a duty to reveal to the agency the identity of all persons financially interested in the business. ----- *In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 48-49 (2003).*

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ A license applicant is required to disclose the name of any business partners. ----- *In the Matter of Manuel Galan, Jr., 17 BOLI 112, 139 (1998).*

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ When a person is not financially interested in a license applicant's business, the license applicant is not required to disclose that person's name. ----- *In the Matter of Manuel Galan, Jr., 17 BOLI 112, 139 (1998).*

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ The forum applied the definition of "partnership" in ORS 68.110(1) to determine whether the license applicant was required to disclose the names of certain individuals whom the agency alleged were partners. The forum continued: "Partnerships are not assumed. Whether a partnership exists, in the absence of a contract, may be inferred from the conduct of the parties, whether they intended to establish a partnership, and whether each has a right to share in the profits, the ability to share losses, and the right to exert some control over the enterprise." ----- *In the Matter of Manuel Galan, Jr., 17 BOLI 112, 142 (1998).*

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

**4.6 --- Failure to Furnish Bond, Post Notice of Bond (ORS 658.415(3))**

**and (15))**

□ The requirements of obtaining and maintaining a bond and posting a notice of bond are at the heart of Oregon's farm labor contractor regulatory scheme for protecting workers. ----- *In the Matter of Lambertus Sandker, 18 BOLI 277, 289 (1999).*

□ When the respondent had not obtained a bond as required by ORS 658.415(3), it was impossible for him to post the notice specifying compliance with the bond requirement, as mandated by ORS 658.415(15). ----- *In the Matter of Lambertus Sandker, 18 BOLI 277, 290 (1999).*

□ When a respondent farm labor contractor obtained a license after obtaining a \$10,000 bond based on his representation that he would employ no more than 20 employees and he later admitted employing 68 employees, which required a \$60,000 bond, the forum held that the admitted failure to maintain the required bond violated ORS 658.415(3). ----- *In the Matter of Jesus Guzman, 14 BOLI 1, 3-5 (1995).*

□ The commissioner imposed a civil penalty when unlicensed persons acting as farm labor contractors each failed to post notice of a surety bond or cash deposit on the premises where workers were to be employed. ----- *In the Matter of Clara Rodriguez, 12 BOLI 153, 172, 176, 180-81 (1994).*

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

□ When respondent failed to post a notice of his compliance with the bond requirements of the law, but claimed that he gave the notice to his workers to post, the commissioner held that, even if his claim were true, it would not negate the violation of ORS 658.415(15). Respondent is ultimately responsible for complying with the statute's requirements and cannot avoid liability for a failure to do so by delegating such responsibilities to his workers. ----- *In the Matter of Andres Ivanov, 11 BOLI 253, 260-61, 264 (1993).*

□ When respondent acted as a farm labor contractor engaged in the forestation of lands with an exemption from the commissioner from the provisions of ORS 658.415(3) and 658.417(3), and employed more than two individuals in the performance of work performed in the license year, respondent violated ORS 658.415(3), 658.417(3), and 658.418(3). ----- *In the Matter of Miguel Espinoza, 10 BOLI 96, 99 (1991).*

□ ORS 658.415(3) requires each applicant for a license to submit and maintain proof of financial ability to promptly pay the wages of employees and other obligations specified by that section. The proof required must be in the form of a corporate surety bond, a cash deposit, or a deposit the equivalent of cash. In this case, once the contractor lost his exemption under ORS 658.418, he was required to comply with ORS 658.415(3). His failure to submit and maintain proof of his financial ability was a violation of ORS 658.415(3). -- *In the Matter of Francis Kau, 7 BOLI 45, 52 (1987).*

□ When a contractor failed to post a notice of compliance of its obligation to maintain a bond on any of

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the many job sites where contractor's employees worked on the many contracts the contractor performed in 1984-85, the contractor repeatedly violated or failed to comply with ORS 658.415(15). This constituted "repeated violations of" a section of ORS 658.405 to 658.475, under OAR 839-15-520(3)(a). ----- *In the Matter of Jesus Ayala, 6 BOLI 54, 66 (1987).*

### 4.7 --- Failure to Obtain Special Indorsement for Forest Labor Contractor (ORS 658.417(1))

□ Respondent obtained a USFS contract to apply herbicide in June 1996. Effective July 1, 1996, OAR 839-15-0004(8) was amended to include herbicide application among the activities that the agency required a farm labor contractor license to perform, and respondent was aware of this change. In July 1996, respondent recruited, transported, and employed at least three workers in Oregon to perform the USFS herbicide application contract in California. The commissioner held that respondent acted as a farm labor contractor with regard to the forestation or reforestation of lands without a farm labor contractor's license or forestation indorsement, in violation of ORS 658.410(1) and 658.417(1) and assessed a civil penalty for these violations. ----- *In the Matter of Manuel Galan, 16 BOLI 51, 62-64, 65-66 (1997).*

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 154 Or App 762 (2000), 763 P2d 755, rev den 327 Or 553, 971P2d 409 (1998).

□ Respondent, an individual and his corporation, violated ORS 658.40 and 658.417(1) by supplying workers to plant trees on the land of another while respondents were unlicensed. ----- *In the Matter of Bill Martinez, 14 BOLI 214, 221 (1995).*

□ ORS 658.410(1) requires that any person acting as a farm labor contractor be in possession of a license issued by the commissioner. This section also requires that any person acting as a farm labor contractor with regard to the forestation/reforestation of lands be in possession of a license with the forestation indorsement required by ORS 658.417(1). This juxtaposition suggests that the license required to engage lawfully in farm labor contractor activities consists of one part, the basic license alone, and that the license required to lawfully engage in farm labor contractor activities consists of two parts, the basic license plus an added indorsement. In the latter situation, the two parts form one license, the license needed for forestation activities. Consequently, when a person acts as a forest labor contractor and is unlawful discrimination, the act is one simultaneous violation of ORS 658.410(1), the basic license, and ORS 658.417(1), the indorsement. ----- *In the Matter of Victor Ovchinnikov, 13 BOLI 123, 155-56 (1994).*

□ When an unlicensed farm labor contractor recruited workers in Oregon to perform forestation work on a USFS contract outside Oregon, the forum held that Oregon's farm labor contractor law applied to this act and that the contractor violated ORS 658.410(1), 658.415(1), and 658.417(1) by acting as a farm labor contractor with regard to the forestation or reforestation of lands without a license. ----- *In the Matter of Jose*

*Linan, 13 BOLI 24, 36 (1994).*

□ An unlicensed respondent who bid or submitted prices on contract offers and subcontracted with another for the forestation or reforestation of lands, including brush piling and fire trail building, acted as a farm labor contractor with regard to the forestation or reforestation of lands in violation of ORS 658.410(1), 658.415(1), and 658.417(1). ----- *In the Matter of Z & M Landscaping, Inc., 10 BOLI 174, 179-80 (1992).*

□ When respondent guided another person through the licensing process to obtain a "partial exempt" license, which requires that the licensee employ a maximum of two employees and be a sole proprietor with the only financial interest, and respondent thereafter financed and managed the enterprise and paid wages to more than three others, including the licensee, the commissioner found that respondent should have been licensed as a farm/forest labor contractor and was in violation of ORS 658.410, 658.415(1), and 658.417(1) and imposed a civil penalty. ----- *In the Matter of Kenneth Vanderwall, 9 BOLI 148, 155-56 (1990).*

### 4.8 --- Failure to Provide BOLI with Certified Payroll Records (ORS 658.417(3))

□ To prove a violation of ORS 658.417(3), the agency was required to prove that (1) respondents, while acting jointly as a farm labor contractor, (2) engaged in the forestation of lands, and (3) respondents or respondents' agent paid employees directly and (4) failed to file certified payroll records that contained all of the information required in the agency's form WH-141 in accordance with OAR 839-015-0300. ----- *In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 34-35 (2003).*

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ Respondents used the agency's form WH-141 to file certified payroll reports for eight payroll periods during the contract periods, but repeatedly failed to provide all of the required information. In some cases, the reports were timely filed but either were not certified or lacked required information. In other cases, the reports were not timely filed, not certified, and lacked required information. At no time did respondents submit timely reports that contained all of the required information. The forum found eight violations. ----- *In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 35 (2003).*

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ The requirement of filing certified payroll records is at the heart of Oregon's farm labor contractor regulatory scheme for protecting workers. ----- *In the Matter of Lambertus Sandker, 18 BOLI 277, 290 (1999).*

□ Respondent, a licensed farm/forest labor contractor, submitted to the agency an "Application for Exemption from Financial Responsibility and Payroll Submission Requirements for Contractors Engaged in Reforestation

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Activities" in which he asserted that he would employ no more than two workers in forestation or reforestation activities. Based on that assertion, the agency issued the respondent an exemption that meant he did not have to comply with ORS 658.417(3), which requires contractors to file certified payroll records with the agency. Despite his contrary representation to the agency, the respondent employed three workers in forestation or reforestation activities and, therefore, lost his exemption from the requirements of ORS 658.417(3). By failing to provide the commissioner with certified payroll records when he did not have an exemption, the respondent violated ORS 658.417(3). ----- ***In the Matter of Lambertus Sandker, 18 BOLI 277, 289 (1999).***

□ When respondent's first certified payroll record was due on June 2, 1998, and he filed no payroll records by that date, the forum found a single violation of ORS 658.417(3) and OAR 839-015-0300. ----- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 240-41 (1999).***

□ When the agency alleged that respondent's timely filed certified payroll record did not contain all the required elements of a form WH-141, and no copy of that form was in the record, the agency investigator did not describe precisely what information the WH-141 requires farm/forest labor contractors to include in their certified payroll reports, and it was not clear if respondent's allegedly deficient certified payroll record was in the record, the forum did not find a violation of ORS 658.417(3). ----- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 240-41 (1999).***

□ When an individual who was licensed as a farm labor contractor was the majority shareholder of a corporation doing business as an unlicensed farm labor contractor and did not submit any certified payroll records for work performed on forestation/reforestation work, the individual and the corporation were both in violation of ORS 658.417(3) and were jointly and severally liable for the civil penalties associated with the violations. ----- ***In the Matter of Mike L. Sulfridge, 18 BOLI 22, 43 (1999).***

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ An individual who was licensed as a farm labor contractor and his corporation did not submit four certified payroll records until months after they were due. The forum found the individual and his corporation both in violation of ORS 658.417(3) and jointly and severally liable for the civil penalties associated with the violations. ----- ***In the Matter of Mike L. Sulfridge, 18 BOLI 22, 43-44 (1999).***

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ When a respondent farm labor contractor submitted certified payroll records from a forestation contract with the BLM 65 days late and the only payroll record submitted underreported the number of workers on the contract, the forum held that respondent violated ORS 658.417(3) and OAR 839-15-300. ----- ***In the Matter of***

***Tolya Meneyev, 14 BOLI 6, 12 (1995).***

□ OAR 839-15-300(2) requires a farm labor contractor to submit certified payroll records at least once every 35 days from the time the contractor begins work on each contract. ----- ***In the Matter of Tolya Meneyev, 14 BOLI 6, 15 (1995).***

□ A respondent farm labor contractor who failed to file certified payroll records on each of two contracts committed two violations of ORS 658.417(3) and OAR 839-15-300. ----- ***In the Matter of Jeffy Bolden, 13 BOLI 292, 297 (1994).***

□ When respondents' filings of certified payroll records on four separate contracts over a three month period were from 14 to 33 days late, the commissioner found four violations of ORS 658.417(3) and imposed a civil penalty. ----- ***In the Matter of Robert Gonzalez, 12 BOLI 181, 197-98, 201 (1994).***

□ During the performance of five contracts, respondents failed seven times, to provide the commissioner with certified true copies all payroll records, committing seven violations of ORS 658.417(3) and OAR 839-15-300(2). ----- ***In the Matter of John Mallon, 12 BOLI 92, 99-100 (1993).***

□ OAR 839-15-300(2) requires farm labor contractors to submit certified payroll records "at least once every 35 days starting from the time work first began on the forestation or reforestation of lands. More frequent submissions may be made." Agency policy regarding the method of calculating the 35 day period states: "(1) Contractors must submit wage certification reports at least once every 35 days from the time the contractor begins work on each contract; (2) The first report is due no later than 35 days from the time the contractor begins work on each contract and must include whatever payrolls the contractor has paid out at the time of the report; (3) The second report is due no later than 35 days following the end of the first 35 days period on each contract and must include whatever payrolls had been issued as of the time of the report; (4) If the contract lasts for more than 70 days, succeeding wage certification reports must include whatever payrolls the contractor paid out at the time of the report, with the reports due at successive 35 day intervals, e.g., 105 days and 140 days from the time the contractor begins work on the contract." ----- ***In the Matter of Andres Ivanov, 11 BOLI 253, 265 (1993).***

□ When respondent submitted two certified payroll records 27 days late in violation of ORS 658.417(3), the commissioner found the magnitude and seriousness to be moderate. ----- ***In the Matter of Andres Ivanov, 11 BOLI 253, 265 (1993).***

□ When respondents performed work on a reforestation subcontract from February 19 to April 2 and provided certified payroll records on April 24 for the period between February 19 and March 16, and on April 29 for the period between March 1 and April 2, the hearings referee took official notice that 35 days after February 19 was March 26, and 35 days after that was April 30. The hearings referee found that respondents violated ORS 658.417(3) and OAR 839-15-300 once by filing the first payroll 29 days late, but that respondents

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were not late with the second payroll. ---- *In the Matter of Cristobal Lumbreras, 11 BOLI 167, 170-71 (1993).*

□ When respondent worked on a BLM reforestation project under a subcontract and twice failed to provide timely certified payroll records to the commissioner for work his employees performed, the commissioner granted summary judgment against respondent for two violations of ORS 658.417(3) and OAR 839-15-300 and assessed civil penalties for each violation. ---- *In the Matter of Iona Pozdeev, 11 BOLI 146, 150 (1993).*

□ When respondent acted as a farm labor contractor engaged in the forestation of lands with an exemption from the commissioner from the provisions of ORS 658.415(3) and 658.417(3), and employed more than two individuals in the performance of work performed in the license year, respondent violated 658.417(3) when he failed to file certified payroll reports. ---- *In the Matter of Miguel Espinoza, 10 BOLI 96, 99 (1991).*

□ ORS 658.417(3) required contractor to provide a certified true copy of all payroll records to the commissioner for work done as a farm labor contractor if he directly paid or was to directly pay his employees on his contracts. As implemented by OAR 839-15-300, ORS 658.417(3) required the contractor to submit such a wage certification at least once every 35 days from the time work first began on the contract. In this case, the contractor was required to submit a wage certification at least once every 35 days from the time the contractor was no longer exempt from this requirement under ORS 658.418. By failing to provide such payroll records to the commissioner, the contractor violated ORS 658.417(3). - ---- *In the Matter of Francis Kau, 7 BOLI 45, 54 (1987).*

□ When a contractor employed the services of an unlicensed person, the forum found the contractor in violation of either ORS 658.417(3) for failing to provide the commissioner with certified payroll records, if the person was an employee; or ORS 658.440(3)(e) for assisting the unlicensed person to act as a farm/forest labor contractor, if the person was a subcontractor, and assessed civil penalties. ---- *In the Matter of Deanna Donaca, 6 BOLI 212, 237, 240 (1987).*

□ When a contractor failed to submit a certified true copy of payroll records to the commissioner at least 13 times in 1984-85 when submission of those records was required, the contractor violated respondent failed to comply with ORS 658.417(3) at least 13 different times. This constituted a "repeated failure to file \* \* \* information required by 658.405 to 658.475" and OAR 839-15-000 to 839-15-530 and "repeated violations of" a section of 658.405 to 658.475, as those phrases are used in OAR 839-15-520(3)(a) and (f). ---- *In the Matter of Jesus Ayala, 6 BOLI 54, 66 (1987).*

□ The requirements of ORS 658.417(3) and OAR 839-15-300, a temporary rule at the time, to submit certified true copies of payroll records to the agency are triggered by the commencement of work, not when wages have been paid. ---- *In the Matter of Jose Solis, 5 BOLI 180, 201 (1986).*

□ A contractor's two failures to comply with ORS 658.417(3) by filing to provide certified payroll records to the agency constituted two violations of that statute for

purposes of ORS 658.453(1)(e). ---- *In the Matter of Jose Solis, 5 BOLI 180, 202 (1986).*

□ A contractor who failed to file certified payroll records when due stated that he intended to file them as soon as he recovered the records from his foreman, who had left the country. The forum found that this prospective filing would not cure the contractor's violations of ORS 658.417(3) because facts remained that the wage certifications were not filed within the 35 day period required by OAR 839-15-300. In addition, such a filing or intent to file did not and would not mitigate the violations or the civil penalty to be assessed. ---- *In the Matter of Jon Paauwe, 5 BOLI 168, 174 (1986).*

□ When a contractor failed to file six wage certifications required by ORS 658.417(3), the forum found that each failure constituted one violation of ORS 658.417(3). ---- *In the Matter of Jon Paauwe, 5 BOLI 168, 173 (1986).*

### 4.9 --- Failure to Provide Workers' Compensation Insurance (ORS 658.417(4))

□ The requirement that farm labor contractors carry workers' compensation insurance is a critical component of the statutory scheme regulating farm labor contractors. The seriousness of the violation is illustrated by the fact that failure to carry workers' compensation insurance is a sufficient ground for denial or revocation of a license. ---- *In the Matter of Charles Hurt, 18 BOLI 265, 275-76 (1999).*

□ The commissioner considers violations of the requirement to provide workers' compensation coverage to be serious even when workers are without coverage only for a brief period of time. ---- *In the Matter of Manuel Galan, Jr., 17 BOLI 112, 140 (1998).*

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ Whether a licensee is providing workers' compensation insurance coverage is a substantive matter that is influential in the commissioner's decision to grant or deny a license. ---- *In the Matter of Scott Nelson, 15 BOLI 168, 183 (1996).* See also *In the Matter of Efrain Corona, 11 BOLI 44, 58 (1992)*, affirmed without opinion, *Corona v. Bureau of Labor and Industries*, 124 Or App 211, 861 P2d 1046 (1993); *In the Matter of Z & M Landscaping, Inc., 10 BOLI 174, 181 (1992).*

□ When uncontroverted evidence showed that a respondent farm labor contractor employed about 40 workers on a USFS contract without providing workers' compensation insurance and that the Workers' Compensation Division fined respondent \$1,000 for his failure to provide coverage and he did not appeal that fine, the forum granted the agency's motion for summary judgment, finding that no genuine issue of fact existed and the agency was entitled to judgment as a matter of law on the agency's allegation that respondent violated ORS 658.417(4). ---- *In the Matter of Tolya Meneyev, 14 BOLI 6, 8-9, 13, 14 (1995).*

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### 4.10 --- Using a Contractor Without Examining and Retaining Copy of License (ORS 658.437(2))

□ To establish that a person acted as a farm labor contractor by supplying workers to another, the agency had to prove that the alleged contractor supplied workers to respondent either “for an agreed remuneration or rate of pay” or as respondent's agent. ---- *In the Matter of Thomas L. Fery, 18 BOLI 220, 235 (1999).*

□ When the evidence established that respondent and an alleged unlicensed contractor mutually agreed that the contractor should act on respondent's behalf, and respondent had the right to control the contractor's action in supplying four workers, the forum concluded that the contractor had acted as respondent's agent and that respondent had violated ORS 658.437(2) by having the contractor supply workers on his behalf without first examining and retaining a copy of the contractor's license. The forum assessed civil penalties. ---- *In the Matter of Thomas L. Fery, 18 BOLI 220, 236 (1999).*

□ When a respondent farmer asked a person providing farm workers for Christmas tree harvest for identification but failed to examine or obtain a copy of an Oregon farm labor contractor license before work began, the commissioner found that respondent had used an unlicensed farm labor contractor without complying with ORS 658.437. ---- *In the Matter of Melvin Babb, 14 BOLI 230, 237 (1995).*

□ The requirement for farmers to verify a farm labor contractor's license status furthers the important statutory purpose of protecting migrant agricultural workers from unlicensed contractors. Allowing farmers to condone or encourage unlicensed recruitment for production or harvesting work would not accomplish the statutory purpose. ---- *In the Matter of Melvin Babb, 14 BOLI 230, 239 (1995).*

□ Whether or not a farm labor contractor actually has a farm labor contractor license is not an element of an alleged violation of ORS 658.437(2) and is immaterial in determining whether a violation occurred. When the person to whom the labor is to be provided fails to verify the license of the person acting as a farm labor contractor before work begins, a violation of ORS 658.437(2) is complete. ---- *In the Matter of Melvin Babb, 14 BOLI 230, 239 (1995).*

□ A respondent farmer temporarily employed two individuals as supervisors for his harvest without viewing their farm labor contractor license when they told him they were exempt from the licensing requirement under OAR 839-15-130(5) and was aware that neither had a farm labor contractor's license. Both individuals recruited, solicited, supplied, and arranged or furnished lodging for migrant workers who were not permanent residents of the local area. The commissioner found that both individuals were not exempt from the farm labor contractor licensing requirement and imposed a civil penalty of \$500 on the respondent farmer for violating ORS 658.437. ---- *In the Matter of Boyd Yoder, 12 BOLI 223, 231-32 (1994).*

Affirmed without opinion, *Yoder v. Bureau of Labor and Industries*, 134 Or App 627, 896 P2d 19 (1995).

□ Respondent, a licensed farm labor contractor, had a duty to check with a subcontractor for a farm labor contractor license before allowing work to begin on a subcontract. ---- *In the Matter of Efrain Corona, 11 BOLI 44, 60 (1992).*

Affirmed without opinion, *Corona v. Bureau of Labor and Industries*, 124 Or App 211, 861 P2d 1046 (1993).

### 4.11 --- Failure to Carry and Exhibit License (ORS 658.440(1)(a))

□ When a preponderance of the evidence did not establish that an unlicensed respondent acted as a farm labor contractor in Oregon in 1994, respondent was not required to carry an Oregon farm labor contractor license and did not violate ORS 658.440(1)(a). ---- *In the Matter of Mohammad Khan, 15 BOLI 191, 206 (1996).*

□ When respondent acted as a farm labor contractor without first being licensed, the forum found that respondent could not have been carrying a farm labor contractor's license while so acting and concluded that respondent violated ORS 658.440(1)(a) and assessed a civil penalty. ---- *In the Matter of Javier Garcia, 13 BOLI 93, 110 (1994).*

□ When unlicensed individuals acting as farm labor contractors each violated ORS 658.437(1)(a) and (b) by failing to display and furnish a copy of a license or temporary permit to the person to whom workers were to be provided prior to starting work, the commissioner did not impose civil penalties against the individuals because ORS 658.453(1)(f) only provides for a civil penalty against the person to whom workers were provided. ---- *In the Matter of Clara Rodriguez, 12 BOLI 153, 172, 175-76, 178-79 (1994).*

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

### 4.12 --- Failure to Notify BOLI and Post Office of Address Change (ORS 658.440(1)(b))

□ When respondent made misrepresentations on her license application and the agency proposed to deny her a license, and one of those misrepresentations involved her failure to reveal a business address on her application, the forum considered respondent's failure to notify the agency of her change of address, as required by ORS 658.440(1)(b), as aggravating evidence that was relevant in determining the appropriate sanction for respondent's violations. ---- *In the Matter of Amalia Ybarra, 10 BOLI 75, 83 (1991).*

### 4.13 --- Failure to Pay Promptly (ORS 658.440(1)(c))

□ To prove a violation of ORS 658.440(1)(c), the agency was required to show that respondents (1) acted jointly as a farm labor contractor in or about April and May 2000; (2) were entrusted with money for the purpose of paying workers; and (3) failed to promptly pay, when due, the money to which workers were entitled. ---- *In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 36 (2003).*

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Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ When \$55 was withheld from each of two paychecks issued to one of its employees in May 2000 to pay for raingear purchased by the employee, and a respondent acknowledged there was no evidence to show the employee signed an authorization for the deduction, but there was no evidence that respondents were acting jointly as a farm labor contractor in April or May 2000 or that a farm labor contract was in effect at that time and that money was entrusted to Respondent for the purpose of paying employees, the forum found that respondent did not violate ORS 658.440(1)(c). ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 36 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ Respondent's failure to promptly pay all wages due to at least 24 workers constituted 24 violations of ORS 658.440(1)(c) and 652.145 and respondent was assessed a civil penalty for each violation. ---- ***In the Matter of Odon Salinas, 16 BOLI 42, 49 (1997).***

□ When the agency investigator interviewed 22 of respondent's workers who stated that they had not been fully paid, respondent had been paid for their labor, and 19 of those workers were included in an uncontested action against respondent's bond, the commissioner found 19 violations of ORS 658.440(1)(c). ---- ***In the Matter of Mohammad Khan, 15 BOLI 191, 210 (1996).***

□ When a Christmas tree grower paid a respondent contractor for the harvest of trees and respondent failed to pay at least 187 workers who harvested trees when their wages were due, the commissioner found a violation of ORS 658.440(1)(c) and imposed a civil penalty. ---- ***In the Matter of Clara Rodriguez, 12 BOLI 153, 174, 180 (1994).***

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

□ When money in payment for the harvest of Christmas trees was paid to a licensed contractor who was respondent's employer and not respondent's partner, and the money was not entrusted to the unlicensed respondent, the unlicensed respondent did not fail to pay money entrusted to him for payment of workers and did not violate ORS 658.440(1)(c). ---- ***In the Matter of Clara Rodriguez, 12 BOLI 153, 172, 176, 179 (1994).***

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

□ Respondent violated ORS 652.120, 652.145, and 658.440(1)(c) and (d) when she failed to pay workers wages when due or to pay them at all. ---- ***In the Matter of Clara Perez, 11 BOLI 181, 190-91 (1993).***

□ When a contractor failed to promptly pay money to two subcontractors who were entitled to the money, the forum found the contractor violated ORS 658.440(1)(c)

and (d) and assessed civil penalties. ---- ***In the Matter of Deanna Donaca, 6 BOLI 212, 236-37 (1987).***

### 4.14 --- Failure to Comply with Agreement/Contracts (ORS 658.440(1)(d))

□ Respondents violated ORS 658.440(1)(d) by subcontracting work to another contractor when the original forestation contract between respondents and the owner of the land prohibited subcontracting. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 160-61 (2007).***

□ When respondent obtained two permits to collect cones on federal land from the USFS, no license was necessary to obtain a special use permit for cone gathering, there was no evidence that respondent gathered any other wild forest products, and respondent paid workers for cones harvested for use in respondent's nursery business, the forum concluded that cone collecting was not a regulated activity requiring a farm labor contractor license and that respondents therefore did not act in their capacity as farm labor contractors and did not violate ORS 658.440(1)(d). ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 36-37 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ To establish a violation of ORS 658.440(1)(d), the agency was required to prove that respondents (1) acting jointly as a farm labor contractor, (2) entered into legal and valid contracts with the USFS, (3) entered into the contracts in their capacity as a farm labor contractor, and (4) violated the provisions of the contracts. ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 36 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ Forestation contracts with government agencies are legal and valid contracts within the meaning of ORS 658.440(1)(d). ---- ***In the Matter of Charles Hurt, 18 BOLI 265, 276 (1999).***

□ The respondents' contract with BLM was terminated because respondents failed to complete work on a BLM contract within the required 30 days and because they had not obtained an Oregon farm/forest labor contractor's license. Respondents violated ORS 658.440(1)(d) by failing to comply with the terms and provisions of that contract. ---- ***In the Matter of Charles Hurt, 18 BOLI 265, 276 (1999).***

□ A substantial underpayment of workers' compensation insurance premiums because of underreporting payroll constitutes a failure to make workers' compensation payments when due. ---- ***In the Matter of Scott Nelson, 15 BOLI 168, 190 (1996).*** See also *In the Matter of Efrain Corona, 11 BOLI 44, 57-60 (1992)*, affirmed without opinion, *Corona v. Bureau of Labor and Industries*, 124 Or App 211, 861 P2d 1046 (1993).

□ Respondents violated a prior consent order that

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provided in part: “[Respondents] further understand and agree that any violation of \* \* \* this consent order shall be a breach of a legal and valid agreement entered into with the commissioner, the penalty for which \* \* \* shall be the denial of a farm/forest labor contractor to [Respondents] \* \* \* which denial shall, for a period of three years from the date of the breach of this agreement, operate to further bar any application for a farm/forest labor contractor license by [respondents] \* \* \*.” The agency sought denial of respondent’s right to apply “for an additional three year period from the date the commissioner finds [respondents] in breach.” The commissioner imposed a penalty of further suspension of three years from the date of the breach in accordance with the plain language of the consent order. ----- ***In the Matter of Manuel Galan, 15 BOLI 106, 114, 131-33 (1996).***

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ Respondent’s failures to complete contracts for lifting seedlings for transplant, for tree netting, and for tree planting each constituted a failure to comply with a legal and valid contract entered into by respondent in his capacity as a farm labor contractor and a violation of ORS 658.440(1)(d). ----- ***In the Matter of Bill Martinez, 14 BOLI 214, 221 (1995).***

□ Respondents, an individual and his corporation, violated ORS 658.440(1)(d) when they failed to comply with the terms and provisions of a forestation contract with the USFS and the USFS terminated the contract,. -- ***In the Matter of Jose Carmona, 14 BOLI 195, 212-213 (1995).***

□ Uncontroverted evidence showed that a respondent farm labor contractor entered into a timber thinning contract with the USFS, then failed to show up at prework meetings or to proceed with the work and the USFS terminated the contract for default. Respondent neither appealed that action nor filed an alternative action. The forum granted the agency’s motion for summary judgment, finding that no genuine issue of fact existed and the agency was entitled to judgment as a matter of law on the agency’s allegation that respondent violated ORS 658.440(1)(d). ----- ***In the Matter of Tolya Meneyev, 14 BOLI 6, 9, 12-13, 14 (1995).***

□ A respondent farm labor contractor entered into a consent order in which he admitted that he employed 68 workers while maintaining a bond that would cover only 20 workers, violating ORS 658.415(3), and agreed to pay a civil penalty of \$1,000 in lieu of license revocation. When respondent’s check for the civil penalty was dishonored due to insufficient funds and respondent failed to honor the check, the forum held that respondent’s failure to pay the agreed upon civil penalty breached the consent order and violated ORS 658.440(1)(d). ----- ***In the Matter of Jesus Guzman, 14 BOLI 1, 4-5 (1995).***

□ A contractor signed a consent order with the commissioner in which he agreed to comply with ORS chapter 658 and the commissioner’s rules issued pursuant thereto and understood that any violation of the consent order would be considered a breach of a valid

and legal agreement entered into in his capacity as a farm labor contractor. The forum found that the contractor breached his agreement, in violation of ORS 658.440(1)(d), by acting as a contractor without a license in violation of ORS 658.410, 658.415, and 658.417. ----- ***In the Matter of Jose Linan, 13 BOLI 24, 41 (1994).***

□ When a contractor failed to make workers’ compensation insurance premium payments when due and the insurance company obtained a judgment against him for the unpaid premiums and interest, the forum held that the contractor breached a valid and legal agreement entered into in his capacity as a farm labor contractor, in violation of ORS 658.440(1)(d). ----- ***In the Matter of Jose Linan, 13 BOLI 24, 42 (1994).***

□ When respondent alleged that his failure to make workers’ compensation insurance premium payments when due was because of his lack of funds, the forum stated that the reasons behind his breach of agreement, although relevant to the sanction to be imposed, did not change the fact that a violation occurred. ----- ***In the Matter of Jose Linan, 13 BOLI 24, 26, 42 (1994).***

□ When respondent alleged that his failure to make workers’ compensation insurance premium payments when due was because of his lack of funds, the forum stated that the reasons behind his breach of agreement, although relevant to the sanction to be imposed, did not change the fact that a violation occurred. ----- ***In the Matter of Jose Linan, 13 BOLI 24, 26, 42 (1994).***

□ In a prior contested case, respondents had been allowed to continue operating as a forest labor contractor based on assurances entered into with the agency in a consent order. Respondents then breached the agreement and argued that ORS 658.440(1)(d) was not intended to encompass consent orders. The commissioner held that the corporate respondent’s execution of the consent order agreement was done in the corporation’s capacity as a farm labor contractor, that the statute applied to all agreements or contracts in connection with the forestation business, including consent orders, and that breach of a consent order violated the statute. ----- ***In the Matter of Robert Gonzalez, 12 BOLI 181, 200-01 (1994).***

□ When respondents argued that a consent order disposing of prior accusations of forest labor violations was intended to cover all offenses up to the time of the consent order, the commissioner found that the words of the order dealt only with pending allegations “of which the commissioner has notice” and did not preclude agency action on pre-existing but after-discovered violations. ----- ***In the Matter of Robert Gonzalez, 12 BOLI 181, 199-200 (1994).***

□ In a prior contested case, respondents had been allowed to continue operating as a forest labor contractor based on assurances entered into with the agency in a consent order, including assurances that respondents would notify the agency on a monthly basis whenever respondents used a subcontractor on a forestation contract. When respondents failed to timely notify the agency on nine occasions, the forum found that respondents breached the agreement, violating ORS 658.440(1)(d) nine times, and imposed civil penalties. ---

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-- *In the Matter of Robert Gonzalez, 12 BOLI 181, 200 (1994).*

□ When respondent contractor failed to pay wages, when due, to at least 187 workers who harvested Christmas trees, the commissioner found that respondent's failure to honor the wage agreements with the workers violated ORS 658.440(1)(d) and imposed a civil penalty. ---- *In the Matter of Clara Rodriguez, 12 BOLI 153, 176, 179 (1994).*

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

□ When money in payment for the harvest of Christmas trees was paid to a licensed contractor who was respondent's employer and not respondent's partner, the unlicensed respondent did not fail to honor wage agreements with workers and pay money entrusted to him for payment of workers and did not violate ORS 658.440(1)(d). ---- *In the Matter of Clara Rodriguez, 12 BOLI 153, 172, 176, 179 (1994).*

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

□ When a corporate respondent failed to pay its workers' compensation insurance premiums when due and the insurance company obtained a judgment against it for the unpaid premiums and interest, the commissioner held that respondent failed to comply with the terms and conditions of a legal and valid agreement entered into by it in its capacity as a farm labor contractor, in violation of ORS 658.440(1)(d). ---- *In the Matter of Alejandro Lumbreras, 12 BOLI 117, 126-27 (1993).*

□ Respondent violated ORS 652.120, 652.145, and 658.440(1)(c) and (d) when she failed to pay workers wages when due or to pay them at all. ---- *In the Matter of Clara Perez, 11 BOLI 181, 190-91 (1993).*

□ Respondent had a contract with one farmer, then later entered into a second contract with another farmer that required respondent to work exclusively for the second farmer during the performance of the contract. When respondent worked for both farmers at the same time, respondent willfully violated ORS 658.440(1)(d) by filing to comply with the terms and provisions of all legal and valid agreements or contracts entered into in her capacity as a farm labor contractor. ---- *In the Matter of Clara Perez, 11 BOLI 181, 191 (1993).*

□ Respondent violated ORS 658.440(1)(d) by filing to comply with the terms of a consent order entered into with the agency. ---- *In the Matter of Azul Corporation, Inc., 10 BOLI 156, 160, 162 (1992).*

□ When respondent, while acting as a farm/forest labor contractor, failed to comply with the terms and provisions of a legal and valid contract with a payroll service by failing to provide agreed to information and payments, the commissioner found respondent in violation of ORS 658.440(1)(d). ---- *In the Matter of Stancil Jones, 9 BOLI 233, 238-39 (1991).*

□ When a contractor completed a contract with the USFS during his first extension of time in a manner

satisfactory to the USFS, which imposed its own sanction – short of termination – to address the late completion, the commissioner found no violation of ORS 658.440(1)(d), distinguishing the case from *In the Matter of Francis Kau*, in which the commissioner found a violation of ORS 658.440(1)(d) when the USFS terminated a contractor's contract after he failed to complete it after two extensions of time. ---- *In the Matter of Leonard Williams, 8 BOLI 57, 79 (1989).*

□ Respondent's failure to comply with the terms and provisions of his legal and valid agreement or contract entered into with the USFS in his capacity as a forest labor contractor with the USFS was a violation of ORS 658.440(1)(d). ---- *In the Matter of Francis Kau, 7 BOLI 45, 53 (1987).*

□ By failing to pay his five employees wages for work they performed on his USFS contract, respondent failed to comply with the terms and provisions of the legal and valid employment agreements the contractor had entered into in his capacity as a farm/forest labor contractor, thereby violating ORS 658.440(1)(d) five times. ---- *In the Matter of Francis Kau, 7 BOLI 45, 53, 55 (1987).* See also *In the Matter of Jose Solis, 5 BOLI 180, 202 (1986).*

□ Respondent, who breached a contract with a subcontractor, asserted the defense that the breach was justified because the subcontractor had breached a different contract with respondent. The forum held that this did not excuse respondent's breach of contract and found a violation of ORS 658.440(1)(d). ---- *In the Matter of Deanna Donaca, 6 BOLI 212, 238 (1987).*

□ When a contractor failed to promptly pay money to two subcontractors who were entitled to the money, the forum found the contractor violated ORS 658.440(1)(c) and (d). The forum assessed civil penalties for each of the contractor's two violations of ORS 658.440(1)(c), and two violations of ORS 658.440(1)(d). ---- *In the Matter of Deanna Donaca, 6 BOLI 212, 236-37, 239-240 (1987).*

### 4.15 --- Failure to File Information with BOLI (ORS 658.440(1)(e))

□ The respondent, a licensed farm/forest labor contractor, submitted to the agency an "Application for Exemption from Financial Responsibility and Payroll Submission Requirements for Contractors Engaged in Reforestation Activities" in which he asserted that he would employ no more than two workers in forestation or reforestation activities. Based on that assertion, the agency issued the respondent an exemption that meant he was not required to comply with ORS 658.415(3) and 658.417(3). Respondent subsequently employed three workers in forestation or reforestation activities and did not inform the agency that he was employing more than two workers. By failing to inform the agency that he had employed three individuals, the respondent violated ORS 658.440(1)(e), which requires contractors to file with the agency "information concerning changes in the circumstances under which the license was issued." ---- *In the Matter of Lambertus Sandker, 18 BOLI 277, 289 (1999).*

□ When respondent argued that civil penalties of \$500

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each for two admitted violations of ORS 658.440(1)(e) – failure to file annual report of contracts – was an unconscionable abuse of agency discretion for “technical, paperwork violations,” the commissioner found that ORS 658.453 authorized imposition of up to \$2,000 in civil penalties for each violation and that the penalties imposed were reasonable. ---- *In the Matter of Mohammad Khan, 15 BOLI 191, 210 (1996).*

### 4.16 --- Failure to Furnish Workers with Statement of Rights, Failure to Execute Written Agreement (ORS 658.440(1)(f) and (g))

□ When three workers spoke only Spanish, respondents were respectively obligated to provide those workers with WH-151S and WH-153S forms at the time they were hired, recruited, or solicited. ---- *In the Matter of Basilio Piatkoff, 28 BOLI 133, 155 (2007).*

□ When one of respondent’s workers was killed on the way to his first day of work while being transported to respondent’s job, and respondent admitted that he asked the worker’s family to sign the worker’s name to the forms after the worker’s death, the forum inferred that the worker was never given a WH-151S or WH-153S and had violated ORS 658.440(1)(f) & (g). ---- *In the Matter of Basilio Piatkoff, 28 BOLI 133, 155 (2007).*

□ When respondents provided three separate WH-151S and WH-153S forms for a worker that was purportedly signed as “Alaniz” by the worker, each form had different information handwritten on it by respondents, the worker provided an affidavit attesting that respondents had never given those three forms to him, and the agency established, by means of a handwriting exemplar, that the worker signed his name as “Alanis,” the forum concluded that respondents had never given the 151S and WH-153S forms to the worker and had violated ORS 658.440(1)(f) & (g). ---- *In the Matter of Basilio Piatkoff, 28 BOLI 133, 156 (2007).*

□ When a worker credibly testified that he had never met respondent before he started work, that respondents never gave him WH-151S or WH-153S forms, and that he did not sign the forms respondents provided to the agency, and respondents gave the agency three separate WH-151S or WH-153S forms, each of which had different information handwritten on it by respondents, the forum concluded that respondents had never given the 151S and WH-153S forms to the worker and had violated ORS 658.440(1)(f) & (g). ---- *In the Matter of Basilio Piatkoff, 28 BOLI 133, 155-56 (2007).*

□ ORS 658.440(1)(f) requires any person acting as a farm labor contractor to furnish each worker with a written statement of certain rights. Respondent committed 88 violations of the statute by failing to provide any of the 88 workers on a farm labor contract with a written statement of rights that included all information required by statute. ---- *In the Matter of Tomas Benitez, 19 BOLI 142, 158-59 (2000).*

□ Respondent committed 88 violations of ORS 658.440(1)(g) by failing to provide any of the 88 workers on a farm labor contract with written agreements of any sort, much less agreements including all the statutorily

required information. ---- *In the Matter of Tomas Benitez, 19 BOLI 142, 158-59 (2000).*

□ Respondent committed ten violations of ORS 658.440(1)(f) when he merely made available to his workers, in lieu of providing a WH-151 form, an employee handbook that did not contain all the information required by ORS 658.440(1)(f) and expressly reserved respondent’s right to change or revoke the policies outlined in the handbook. ---- *In the Matter of Thomas L. Fery, 18 BOLI 220, 238 (1999).*

□ The forum rejected respondent’s affirmative defense that penalties for any violations of ORS 658.440(1)(f) should be suspended because the violations were corrected within 15 days of the date on which respondent was put on notice of them. ---- *In the Matter of Thomas L. Fery, 18 BOLI 220, 238 (1999).*

□ The forum found ten violations of ORS 658.440(1)(g) when respondent admitted in his answer that he failed to execute written agreements with ten workers and also admitted in his testimony that he had not done this. ---- *In the Matter of Thomas L. Fery, 18 BOLI 220, 239 (1999).*

□ When an individual who was licensed as a farm labor contractor was the majority shareholder of a corporation doing business as an unlicensed farm labor contractor and did not enter into written agreements with four workers regarding a private reforestation contract as required by ORS 658.440(1)(g), the individual and the corporation were both in violation of ORS 658.440(1)(g)) and were jointly and severally liable for the civil penalties associated with the violations. ---- *In the Matter of Mike L. Sulfridge, 18 BOLI 22, 43 (1999).*

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ An individual farm labor contractor and his corporation did not enter into a written agreement with one employee and entered into written agreements with other employees that did not include all the elements required by ORS 658.440(1)(g), thereby committing 15 violations of that statute. The individual and his corporation were held jointly and severally liable for the penalties associated with the violations. ---- *In the Matter of Mike L. Sulfridge, 18 BOLI 22, 44-45 (1999).*

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ When respondent demonstrated a lack of attention to bookkeeping and the legal requirement that he retain written employment agreements for three years, the forum found that when the record contained no agreement for a particular worker, that worker never entered into a written agreement with respondent. ---- *In the Matter of Mike L. Sulfridge, 18 BOLI 22, 30 (1999).*

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

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□ Respondents' claim that their written agreements with workers properly identified the "Owner of the Operation" as respondents' individual owner lacked merit because ORS 658.440(1) requires that workers be told who owns the land on which they perform labor, not merely who owns the company that employs or supplies them. ----- ***In the Matter of Mike L. Sulffridge, 18 BOLI 22, 46 (1999).***

Affirmed without opinion, *Mike Sulffridge dba Mike Sulffridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ When respondents failed to provide five workers with written agreements prepared using the agency's form WH-153 but alleged they had substantially complied with ORS 658.440(1)(g) by having the workers sign form WH-151 and copies of respondents' personnel policy manual, the forum found that respondents violated ORS 658.440(1)(g) five times because neither document constituted a written agreement between respondents and the workers and neither document contained all the information required by ORS 658.440(1)(g). ----- ***In the Matter of Paul A. Washburn, 17 BOLI 212, 222-25 (1998).***

□ Violations of ORS 658.440(1)(g) "go to the heart of farm labor contractor statutes" because they deny workers the ability to protect themselves in the event of a dispute. ----- ***In the Matter of Paul A. Washburn, 17 BOLI 212, 225 (1998).***

□ When respondent failed to furnish 41 employees with a written statement of the terms and conditions of employment as required by ORS 658.440(1)(f) and OAR 839-015-0310 and failed to execute written agreements with the 41 employees as required by ORS 658.440(1)(g) and OAR 839-015-0360(4), the commissioner found 41 violations of each statute and assessed civil penalties. ----- ***In the Matter of Andres Bermudez, 16 BOLI 229, 242-43, 245 (1998).***

□ By failing to furnish the written information contained in form WH-151, or its equivalent, to at least three workers at the time of hiring and prior to the workers performing any work, respondent violated ORS 658.440(1)(g) three times and the commissioner assessed civil penalties. ----- ***In the Matter of Manuel Galan, 16 BOLI 51, 64-65 (1997).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 154 Or App 762 (2000), 763 P2d 755, rev den 327 Or 553, 971P2d 409 (1998).

□ By failing to execute a written agreement such as form WH-153 or its equivalent, between himself and each of at least three workers at the time of hiring and prior to the workers performing any work, respondent violated ORS 658.440(1)(g) three times and the commissioner assessed civil penalties. ----- ***In the Matter of Manuel Galan, 16 BOLI 51, 64-65 (1997).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 154 Or App 762 (2000), 763 P2d 755, rev den 327 Or 553, 971P2d 409 (1998).

□ Respondent's foreman recruited 14 workers in and around Medford, Oregon, and transported them to California to work in forestation for the respondent

corporation. At the time they were hired and before work began, respondent failed to execute a written agreement with each worker describing the terms and conditions of employment. The respondent corporation violated ORS 658.440(1)(g) 14 times and the commissioner assessed civil penalties. ----- ***In the Matter of Manuel Galan, 15 BOLI 106, 124, 127, 138 (1996).***

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ On two contracts, a respondent farm labor contractor failed to furnish workers at the time they were hired, recruited, or solicited, with a written statement disclosing the terms and conditions of employment or a written statement describing the workers' rights and remedies. Respondent violated ORS 658.440(1)(f) twice and the commissioner assessed civil penalties. ----- ***In the Matter of Jefty Bolden, 13 BOLI 292, 297-98 (1994).***

□ On two contracts, a respondent farm labor contractor failed to execute written agreements between himself and his worker containing the working conditions at the time the workers were hired and before the worker performed any work on each contract. Respondent violated ORS 658.440(1)(g) twice and the commissioner assessed civil penalties. ----- ***In the Matter of Jefty Bolden, 13 BOLI 292, 297-98 (1994).***

□ When a farm labor contractor failed to furnish forms WH-151 and WH-153 regarding the rights of workers to four workers, the commissioner found four violations of ORS 658.440(1)(f) and assessed civil penalties. ----- ***In the Matter of Andres Ivanov, 11 BOLI 253, 259-60, 263-64 (1993).***

□ The magnitude and seriousness of an ORS 658.440(1)(f) violation is high, since the disclosure forms WH-151 and WH-153 serve the fundamental aspect of the statutory scheme of protecting the workers. ----- ***In the Matter of Andres Ivanov, 11 BOLI 253, 264 (1993).***

□ When respondent gave some, but not all workers, WH-153 forms at the time each worker came for his first pay check, respondent repeatedly violated ORS 658.440(1)(g), which requires the execution of such agreements at the time of hiring and prior to the workers performing any work for the farm labor contractor. ----- ***In the Matter of Clara Perez, 11 BOLI 181, 192, 196 (1993).***

□ When respondent, while acting as a farm/forest labor contractor, failed to provide agency forms WH-151 and WH-153 or comparable written forms in the language in which respondent or his agents communicated with the employees to his workers, the commissioner found respondent in violation of ORS 658.440(1)(f). ----- ***In the Matter of Stancil Jones, 9 BOLI 233, 230 (1991).***

□ A farm/forest labor contractor's failure to furnish workers with written agreements and statements of rights, at either recruitment or hire, is a violation of ORS 658.440(1)(f) as to each worker involved. ----- ***In the Matter of Stancil Jones, 9 BOLI 233, 230 (1991).***

□ ORS 658.440(1)(f) states, in part, that each

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contractor shall furnish to each worker, at the time of hiring, recruiting, soliciting or supplying, whichever occurs first, a written statement that contains a description of the worker's rights and remedies. Contractor's failure to furnish such a statement to four workers, at any of the times listed above, constituted four violations of ORS 658.440(1)(f). ---- *In the Matter of Francis Kau, 7 BOLI 45, 53, 55 (1987)*. See also *In the Matter of Jose Solis, 5 BOLI 180, 202 (1986)*.

□ "Furnish to each worker," as used in ORS 658.440(1)(f), means to physically give to each worker for that worker to retain. When a contractor did not furnish to any of its workers, at the time it hired, recruited, or solicited them, whichever occurred first, a written statement that met the requirements of ORS 658.440(1)(f), the contractor failed to comply with ORS 658.440(1)(f). ---- *In the Matter of Highland Reforestation, Inc., 4 BOLI 185, 203, 210 (1984)*.

□ The addition of the phrase "recruiting, soliciting or supplying, whichever occurs first," to ORS 658.440(1)(f) in 1981 changed the statute to require a contractor to give the required information to not only its workers, but to its potential workers. That is, the written statement clearly must be furnished not just by the time a person starts working for the contractor, but when the work relationship is initiated. In other words, a contractor must give a person the required written statement as soon as that person and the contractor make contact for employment-related purposes. ---- *In the Matter of Highland Reforestation, Inc., 4 BOLI 185, 210 (1984)*.

□ ORS 658.440(1)(f) imposes an absolute duty on a farm labor contractor to furnish to each of its workers a written statement containing certain information. The legislative history of this provision clearly indicates that by enacting that statute, the legislature intended to require a written agreement between the contractor and the worker that would make it clear what the conditions of employment would be. The purpose of this requirement was to protect the workers by clearly defining and making known to them the terms under which they would be working and by giving them an enforceable agreement concerning those terms. Accordingly, the forum concluded that ORS 658.440(1)(f) requires that a farm labor contractor physically give the requisite written statement to each worker for the worker to retain. Posting a notice giving the required information will not suffice. ---- *In the Matter of Highland Reforestation, Inc., 4 BOLI 185, 210 (1984)*.

### 4.17 --- Failure to Furnish Workers with Statement of Earnings (ORS 658.440(1)(h))

□ When respondent made deductions from four workers' paychecks for items such as food, gas, oil, saws, and chains, but failed to itemize the deductions on the workers' written pay statements and also failed to furnish any worker with a written statement stating the applicable prevailing wage under the Service Contract Act or related federal or state law, the commissioner found eight violations of ORS 658.440(1)(h) – two paychecks for each worker -- and assessed civil penalties. ---- *In the Matter of Andres Ivanov, 11 BOLI*

*253, 258, 260, 262 (1993)*.

### 4.18 --- Failure to Supply Worker Lodging and Food (ORS 658.440(2)(c))

### 4.19 --- Make Misrepresentations on License Application (ORS 658.440(3)(a))

□ Respondent N. Piatkoff stated on her application for a farm labor contractor's license that she was the 100% owner of her corporation, Northwest, that was a joint applicant for a farm labor contractor's license. The agency alleged her husband, B. Piatkoff, was a joint owner. When the only evidence the agency presented was that B. Piatkoff let N. Piatkoff and Northwest use his van to transport workers, but there was no evidence of what claim or title, if any, that Northwest's use of B. Piatkoff's van conferred on B. Piatkoff, the forum concluded that the agency had failed to prove that B. Piatkoff had an ownership interest in Northwest. ---- *In the Matter of Basilio Piatkoff, 28 BOLI 133, 165-66 (2007)*.

□ A misrepresentation, for the purpose of ORS 658.440(3)(a), is "an assertion made by a license applicant which is not in accord with the facts, when the applicant knew or should have known the truth of the matter asserted, and when the assertion is of a substantive fact which is influential in the commissioner's decision to grant or deny a license." Misrepresentation does not include an intention to deceive or mislead. ---- *In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 45-46 (2003)*.

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ Willful concealment means, for the purpose of ORS 658.440(3)(a), "withholding something which an applicant knows and which the applicant, in duty, is bound to reveal, said withholding must be done knowingly, intentionally, and with free will \* \* \* and must be of a substantive matter which is influential in the commissioner's decision to grant or deny a license." ---- *In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 46 (2003)*.

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ A false statement, for the purpose of ORS 658.440(3)(a), is "an incorrect statement made with knowledge of the incorrectness or with reckless indifference to the actual facts, and with the intention to mislead or deceive." As with a misrepresentation, the false statement must also be about a substantive matter that is influential in the decision to grant or deny a license. ---- *In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 46 (2003)*.

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ The forum applied the clear and convincing evidence standard of proof to the agency's five

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allegations that respondents made misrepresentations, false statements, and willfully concealed information on their joint farm labor license application. ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 46 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ The agency alleged that respondents' statement and certification that respondent Ochoa owned 50 percent of respondent Ochoas' Greens, Inc. constituted a misrepresentation or a false statement. No evidence was offered to show that respondents' assertion was incorrect or not in accord with the facts at the time the assertion was made on the application. In the absence of clear and convincing evidence to the contrary, the forum concluded that respondents did not make a misrepresentation or false statement when stating and certifying that respondent Ochoa owned 50 percent of the corporation. ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 47 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ When respondent Ochoa stated on his farm labor contractor application that no other person had a financial interest in respondent Ochoas' Greens, Inc., and Ochoa stated on his application that he owned only 50 percent of the business and also acknowledged that his wife was a co-owner of the family business, the forum found this to be a misrepresentation in violation of ORS 658.440(3)(a). ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 47-48 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ When respondent had actual knowledge that his wife had a financial interest in respondent's business, but failed to disclose her identity and other pertinent information about her on his farm labor contractor license application, the forum concluded that respondent withheld that information knowingly, intentionally, and with free will, in violation of ORS 658.440(3)(a). ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 48 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ When respondents certified that there were no judgments or administrative orders of record against respondents, one respondent entered into a consent judgment in U.S. district court in 1994, and both respondents entered into a stipulated consent order with BOLI in 1999, the forum found that respondents did not make a misrepresentation or false statement because the consent judgment and consent order were not recorded or docketed in a court or with the agency and no judgment lien was pending. ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 48-49 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ When respondents knew or should have known they were not giving correct information when responding to questions on a farm labor contractor application about the financial composition of their business, the forum found by clear and convincing evidence that respondents made a misrepresentation when they certified all of the information on the license application was true and correct and concluded that respondents violated ORS 658.440(3)(a). ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 49 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ When the agency alleged that one respondent, on her application for a farm labor contractor license, had concealed and failed to disclose a partnership with the other respondents, and when the evidence did not show a partnership agreement, a sharing of profits or loss, or any other partnership element, and at least one of the alleged partners was a salaried employee, the commissioner found no concealment or failure to disclose on respondent's application. ---- ***In the Matter of Clara Rodriguez, 12 BOLI 153, 176-77 (1994).***

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

□ When respondents, a corporation and its owner, answered "no" to the application question – "Are you a defendant in any court action or proceeding?" – and the corporation had been served 26 days earlier with a complaint naming it as a defendant in a lawsuit, the commissioner held that respondents willfully made a misrepresentation and false statement on their application, in violation of ORS 658.440(3)(a), not a "willful concealment," ---- ***In the Matter of Alejandro Lumbreras, 12 BOLI 117, 126 (1993).***

□ A false statement, for the purposes of ORS 658.440(3)(a) and OAR 839-15-520(1)(a), is an incorrect statement made with knowledge of the incorrectness or with reckless indifference to the actual facts, and with the intention to mislead or deceive. The false statement must be about a substantive matter that is influential in the decision to grant or deny a license. ---- ***In the Matter of Alejandro Lumbreras, 12 BOLI 117, 125 (1993).*** See also *In the Matter of Z & M Landscaping, Inc.*, 10 BOLI 174, 181 (1992); *In the Matter of Rogelio Loa*, 9 BOLI 139, 146 (1990); *In the Matter of Raul Mendoza*, 7 BOLI 77, 83 (1988).

□ A misrepresentation, for the purposes of ORS 658.440(3)(a) and OAR 839-15-520(1)(a), is an assertion made by a license applicant which is not in accord with the facts, when the applicant knew or should have known the truth of the matter asserted, and when the assertion is of a substantive fact which is influential in the commissioner's decision to grant or deny a license." ---- ***In the Matter of Alejandro Lumbreras, 12 BOLI 117, 125 (1993).*** See also *In the Matter of Amalia Ybarra*, 10 BOLI 75, 82-83 (1991); *In the Matter of Raul*

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*Mendoza, 7 BOLI 77, 82-83 (1988).*

□ Willful concealment means, for the purpose of ORS 658.440(3)(a), withholding something which an applicant knows and which the applicant, in duty, is bound to reveal; said withholding must be done knowingly, intentionally, and with free will. The “willful concealment” must be of a substantive matter that is influential in the commissioner’s decision to grant or deny a license. ----- ***In the Matter of Alejandro Lumbreras, 12 BOLI 117, 125 (1993).*** See also *In the Matter of Raul Mendoza, 7 BOLI 77, 84 (1988).*

□ When respondent provided information to the agency showing the respondent had workers’ compensation insurance and its owners knew respondent did not have such insurance, respondent made a false statement in its application for a license in violation of ORS 658.440(3)(a). ----- ***In the Matter of Z & M Landscaping, Inc., 10 BOLI 174, 180 (1992).***

□ On her license application, respondent failed to give a business address, failed to list two vehicles used in her operations as a farm labor contractor, and failed to reveal all persons financially interested in her operations. The forum found that she failed to provide on her application information required by ORS 658.415(1), and that she violated ORS 658.440(3)(a) by making misrepresentations in her application for a license to act as a farm labor contractor. ----- ***In the Matter of Amalia Ybarra, 10 BOLI 75, 81-82 (1991).***

### **4.20 --- Make Misrepresentations Concerning Terms of Employment (ORS 658.440(3)(b))**

□ When one of the terms and conditions of employment included the identity and address of the owner/operator of the property where respondents’ workers would be planting trees, respondents were required to provide the name and address of the owner of the land or operation on the agency’s WH-153S forms, and respondents wrote in their own name and address on every WH-153S form that respondents gave to the agency instead of stating the correct name and address, respondents made a “false representation” on every form. ----- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 159 (2007).***

□ Respondents’ workers and BOLI’s employees all fit within the meaning of the phrase “any person” in ORS 658.440(3)(b). ----- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 159 (2007).***

□ Respondents committed 20 separate violations with respect to their workers and three violations with respect to three BOLI employees by giving their workers false information about the name and address of the owner of the land or operation where the workers would be working and giving that same information to the three different BOLI employees. ----- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 159 (2007).***

□ Respondent’s foreman recruited 14 workers in and around Medford, Oregon, and transported them to California to work in forestation for respondent corporation, telling the workers that respondent corporation would pay their hotel expenses in California.

When respondent corporation deducted the hotel expenses from their pay, respondent corporation violated ORS 658.440(3)(b) by misrepresenting the terms and conditions of the employment. ----- ***In the Matter of Manuel Galan, 15 BOLI 106, 124, 127 (1996).***

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ Respondent did not violate ORS 658.440(3)(b) when he made false statements to the agency because that subsection does not apply to false statements made by a farm labor contractor to the agency. ----- ***In the Matter of Andres Ivanov, 11 BOLI 253, 262 (1993).***

□ To willfully make a false, fraudulent or misleading representation concerning the terms, conditions or existence of employment must mean that the representation in question is false or fraudulent or misleading, or any combination thereof, and that it was made willfully, that is, knowingly, intentionally, and with free will. The forum’s definition of “willful” is contained in *In the Matter of Sheila Wood, 5 BOLI 240 (1986)*. Willfulness is not at issue unless there is first established a representation that is false or fraudulent or misleading. ----- ***In the Matter of Leonard Williams, 8 BOLI 57, 74 (1989).***

□ When the agency contends that representations were false, fraudulent, and misleading, the agency must establish such motivations by a preponderance of the evidence. ----- ***In the Matter of Leonard Williams, 8 BOLI 57, 75 (1989).***

### **4.21 --- Solicit/Induce the Violation of a Contract of Employment (ORS 658.440(3)(c))**

### **4.22 --- Knowingly Employ Illegal Alien (ORS 658.440(3)(d))**

□ A contractor knew that nine of his workers were not legally present or employable in the United States in January 1985, when the INS returned the workers to Mexico, but he reemployed six of them within six weeks with nothing but a token effort to ascertain if their status had changed. The forum found that the contractor actually knew that those six aliens were not legally present or employable when he reemployed them. ----- ***In the Matter of Jesus Ayala, 6 BOLI 54, 69-70 (1987).***

□ A contractor testified that, after he learned that he had employed nine aliens not legally employable or present in the United States, he took the new step of asking his hires to answer questions as to whether they were legally employable and could provide documentation of status in the United States. The forum held that that action itself, even if taken, would not rise to the level of diligence of the least diligent of the examples set out in OAR 839-15-530(2) and therefore must be viewed as a token step. ----- ***In the Matter of Jesus Ayala, 6 BOLI 54, 69-69 (1987).***

□ When a contractor violated ORS 658.440(2)(d) 16 times by knowingly employing nine aliens not legally employable or present in the United States during one period, then reemploying seven aliens not legally employable or present in the United States, this

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constituted a repeated violation or failure to comply with ORS 658.440(2)(d). ----- ***In the Matter of Jesus Ayala, 6 BOLI 54, 67 (1987).***

□ A contractor who employs an alien not legally present or employable in the U.S. does so knowingly under ORS 658.440(2)(d) if: (a) the contractor actually knows (in this case, through imputing the actual knowledge of the contractor's supervisory employee to the contractor) the alien's status; or (b) the contractor would know this fact if he made efforts to ascertain the alien's status that would be reasonably diligent under the circumstances as he knows them. ----- ***In the Matter of Jose Solis, 5 BOLI 180, 198-99 (1986).*** See also *Highland Reforestation, Inc., 4 BOLI 185, 206-07 (1984); In the Matter of Desiderio Salazar, 4 BOLI 154, 173 (1984); In the Matter of Alfonso Gonzalez, 1 BOLI 121, 128 (1978), affirmed without opinion, Gonzalez v. Bureau of Labor, 39 Or App 407, 593 P2d 232 (1979).*

□ A contractor who knowingly employed six aliens not legally present or employable in the U.S. violated ORS 658.440(2)(d) six times for purposes of ORS 658.453(1)(c). ----- ***In the Matter of Jose Solis, 5 BOLI 180, 202 (1986).***

□ When a contractor employed six aliens not legally present or employable in the U.S.; the contractor failed to make a diligent inquiry into the means of complying with ORS 658.440(2)(d); and contractor's employee-supervisor of the six aliens had actual and personal knowledge that the aliens were not legally present or employable in the U.S.; the forum concluded that the contractor had knowledge that he was employing six aliens not legally present or employable in the U.S., as a matter of law that within the meaning of the word "knowingly" as used in ORS 658.440(2)(d). The forum would reach the same conclusion even without finding that the supervisor actually knew that the six aliens were not legally present or employable. ----- ***In the Matter of Jose Solis, 5 BOLI 180, 198-99 (1986).***

□ Because a contractor can comply with both ORS 658.440(2)(d) and Title VII of the Civil Rights Act of 1964, as amended, 42 USC §2000e *et seq.*, at the same time, ORS 658.440(2)(d) is not preempted by Title VII by virtue of any conflict with Title VII. ----- ***Highland Reforestation, Inc., 4 BOLI 185, 204, 208-10 (1984).***

□ ORS 658.440(2)(d) does not put an unreasonable burden on a contractor. ----- ***Highland Reforestation, Inc., 4 BOLI 185, 208 (1984).***

□ When ORS 658.440(2)(d) was enacted as Senate Bill 404 in 1975, the word "knowingly" was added to it by the House Committee on Labor and Business Affairs, the last committee to act on SB 404 before the Legislature completed its enactment. Only two conclusions emerge from a careful evaluation of the legislative record of SB 404, particularly that which concerns the addition of "knowingly:" (a) The two committees that acted on SB 404 did contemplate requiring farm labor contractors to make reasonably diligent efforts to ascertain whether their workers were legally present and employable in the United States by whatever mechanisms might be available, including requiring some sort of documentation of that status; and

(b) The committee that considered and approved the addition of "knowingly" gave discretion to the administrator of the agency to make judgments as to whether a particular combination of circumstances constitute the knowing employment of aliens legally present and employable or in the United States. ----- ***Highland Reforestation, Inc., 4 BOLI 185, 207 (1984).***

□ Nothing in the language of ORS 658.440(2)(d) or in its existing legislative history indicates that a contractor has made a reasonably diligent inquiry into its hires' status in the United States when the contractor merely requires or tries to require its hires to sign a form that says that the hiree is legally in the United States and holds a social security number and card. A contractor who does no more than this, particularly under aggravating circumstances consisting of the contractor's employment of 90 illegal aliens who the INS apprehended on 11 different occasions and who were returned to Mexico, has failed to use reasonable diligence to ascertain whether it is employing aliens not legally present or legally employable in the United States. ----- ***Highland Reforestation, Inc., 4 BOLI 185, 207 (1984).***

□ The forum rejected respondent's contention that ORS 658.440(2)(d) was preempted by the INA because it conflicts with the INA. ----- ***Highland Reforestation, Inc., 4 BOLI 185, 204-06 (1984).***

□ The contractor's employment during times material of at least 90 aliens not legally present or legally employable in the U.S.; its failure to require or even request documentation from any of its hires or workers that showed they were legally present and legally employable in the U.S.; its failure to take any step at any time to detect or discourage illegal aliens among its hires and workers, other than trying to have each hiree sign a form stating that he was not violating the law by being in the U.S. and that he had a social security card and number; its failure, at any time during the nearly four years encompassed by the 11 occasions on which INS apprehended to above-mentioned 90 employees, to make any additional effort to detect or discourage hires not legally present or legally employable in the U.S., including its failure to ask the aid or advice of the appropriate federal agency; its rehiring of persons whom it knew had been apprehended as illegal aliens while in the contractor's employ and whom it should have assumed were not legally present or legally employable in the U.S.; and its hiring in at least three instances of persons whom it actually knew were not legally present or legally employable in the U.S. together constitute, as a matter of law, the contractor's knowledge that it was employing alien workers not legally present or legally employable in the U.S., within the meaning of the word "knowingly" as used in ORS 658.440(2)(d). ----- ***Highland Reforestation, Inc., 4 BOLI 185, 203-04 (1984).***

□ The contractor's failure during times material to request documentation from his alien hires that showed they were legally present and legally employable in the U.S.; the contractor's employment, on the three occasions INS checked his employees between July 28, 1982, and February 16, 1983, inclusively, of 41 aliens not legally present or legally employable in the U.S. – 82

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percent of those checked; the contractor's failure, after he discovered that every member of the crew he employed on July 28, 1982, was an illegal alien, to take any additional steps before February 18, 1983, to discourage or detect the presence of illegal aliens among his hires and workers, including seeking the aid of the appropriate federal agency; the contractor's failure before February 16, 1983, to take the reasonable step that he demonstrated on February 18, 1983, could detect virtually all illegal aliens among his workers; the contractor's failure to do anything more to check the status of workers he already employed who he suspected were illegal aliens other than ask them if they were "legal"; and the contractor's reemployment of workers who he knew had been illegal aliens and had been arrested and returned to their country of citizenship while in his employ, after they showed him the same identification – a birth certificate, in some instances – that they had shown to him before their arrests; together constituted, as a matter of law, knowledge on the part of the contractor that he was employing alien workers not legally present and legally employable in the U.S., within the meaning of the word "knowingly" as used in ORS 658.440(2)(d). ----- ***In the Matter of Desiderio Salazar, 4 BOLI 154, 172 (1984).***

□ When a contractor had reason to know and actually knew that some of his employees were not legally present or employable in the U.S., he needed to make inquiries reasonably calculated to determine the legal employability status of his employees or applicants for employment to avoid a violation of ORS 658.440(2)(d). A contractor's failure to make any inquiry at all as to the employability status of his employees constitutes, as a matter of law, knowledge within the meaning of the word "knowingly" as used in ORS 658.440(2)(d). Knowledge of facts and circumstances that would put a reasonable man on his inquiry is tantamount to knowledge of such facts as a reasonably diligent inquiry would reveal. ----- ***In the Matter of Alfonso Gonzalez, 1 BOLI 121, 126, 128 (1978).***

Affirmed without opinion, *Gonzalez v. Bureau of Labor*, 39 Or App 407, 593 P2d 232 (1979).

### 4.23 --- Assist an Unlicensed Contractor (ORS 658.440(3)(e))

□ When an unlicensed person bid for and obtained a USFS contract to apply big game repellent before a rule change that made the application of big game repellent an activity that required a farm labor contractor license, then entered into a subcontract with respondent, a licensed farm labor contractor, to perform the contract, and respondent provided the workers and performed the contract before and after the rule change, the commissioner held that the unlicensed person was not a farm labor contractor within the definition of ORS 658.405(1) and OAR 839-15-004(4), and respondent therefore did not assist the person to act as a farm labor contractor without a license when respondent performed part of the subcontract after the rule change. ----- ***In the Matter of Andres Bermudez, 16 BOLI 229, 241-42 (1998).***

□ When respondent, a licensed farm labor contractor, bid on two contracts with unlicensed partners, those

partners acted in violation of ORS 658.405 to 658.503. Each partner in a farm labor contractor business must be licensed. By assisting his unlicensed partners to act in violation of the law, respondent violated ORS 658.440(3)(e). ----- ***In the Matter of Alexander Kuznetsov, 14 BOLI 185, 192-93 (1995).***

□ When respondent bid on one contract with four unlicensed partners and bid on another contract with three unlicensed partners, respondent committed seven violations of ORS 658.440(3)(e). ----- ***In the Matter of Alexander Kuznetsov, 14 BOLI 185, 192-93 (1995).***

□ Based on the dates of agreements between respondent and an unlicensed subcontractor, the commissioner found that respondent twice assisted an unlicensed person to act as a forestation contractor. ----- ***In the Matter of Robert Gonzalez, 12 BOLI 181, 192, 194, 201 (1994).***

□ When a licensed respondent employed her husband, an unlicensed person who recruited, solicited, and supplied workers to perform work for another in the harvesting of Christmas trees, the commissioner found that respondent violated ORS 658.440(3)(e) and imposed a civil penalty. ----- ***In the Matter of Clara Rodriguez, 12 BOLI 153, 162, 176, 180 (1994).***

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

□ A licensed respondent employed her son, an unlicensed person who transported, recruited, solicited and supplied workers to perform work for another in the harvesting of Christmas trees, and who bid or submitted prices on the harvesting of Christmas trees. The commissioner found that respondent violated ORS 658.440(3)(e) and imposed a civil penalty. ----- ***In the Matter of Clara Rodriguez, 12 BOLI 153, 174, 180 (1994).***

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

□ When respondent, while a licensed farm labor contractor in 1989, allowed his son, an unlicensed person, to recruit, solicit, supply and employ workers for him and to bid and submit prices on contract offers on his behalf, the commissioner found that respondent assisted an unlicensed person to act as a farm labor contractor in violation of ORS 658.440(3)(e). ----- ***In the Matter of Clara Rodriguez, 12 BOLI 153, 172, 176, 180 (1994).***

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

□ When respondent, an unlicensed person, assisted his father, an unlicensed person, to recruit, solicit, supply and employ workers to perform work for another in harvesting farm products, the commissioner found that respondent assisted an unlicensed person to act as a farm labor contractor in violation of ORS 658.440(3)(e). - ----- ***In the Matter of Clara Rodriguez, 12 BOLI 153, 172, 176, 180 (1994).***

Affirmed without opinion, *Rodriguez v. Bureau of*

*Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

□ When respondent's son, who worked as respondent's manager and foreman, recruited, solicited, and hired workers on behalf of respondent without a farm labor contractor license, respondent violated ORS 658.440(3)(e) by assisting an unlicensed person to act in violation of the farm labor contractor laws. ---- ***In the Matter of Clara Perez, 11 BOLI 181, 190, 193 (1993).***

□ When a licensed respondent entered into a subcontract with an unlicensed person, the respondent assisted the unlicensed person to act in violation of ORS 658.405 to 658.503, thereby violating former ORS 658.440(2)(e) (now ORS 658.440(3)(e)). ---- ***In the Matter of Efrain Corona, 11 BOLI 44, 51, 52 (1992).***

Affirmed without opinion, *Corona v. Bureau of Labor and Industries*, 124 Or App 211, 861 P2d 1046 (1993).

□ A respondent's belief that an unlicensed person has applied for and is qualified for a license is no defense to a violation of a charge of assisting an unlicensed person to act in violation of Oregon's farm labor contractor law. - ---- ***In the Matter of Efrain Corona, 11 BOLI 44, 55 (1992).***

Affirmed without opinion, *Corona v. Bureau of Labor and Industries*, 124 Or App 211, 861 P2d 1046 (1993).

□ When a licensed farm labor contractor became a partner with an unlicensed person, and the partners thereafter acted as farm labor contractors, the forum found that the licensee assisted the unlicensed partner to act as a farm labor contractor without a license, in violation of ORS 658.440(3)(e). The forum found four such violations when the partnership worked on four USFS contracts. ---- ***In the Matter of Ivan Skorhodoff, 11 BOLI 8, 15 (1992).***

□ Respondent, while acting as a farm/forest labor contractor, used his employees who were unlicensed persons to recruit workers for respondent's farm/forest labor contractor activities. The commissioner found respondent in violation of ORS 658.440(3)(e). ---- ***In the Matter of Stancil Jones, 9 BOLI 233, 238 (1991).***

□ When two contractors, a stepfather and a stepson, worked together recruiting farm workers and furnishing lodging for the workers, and only the stepson was licensed, the commissioner held that the stepfather was acting as a contractor without a license in violation of ORS 658.410 and 658.415, and the stepson was assisting an unlicensed person to act in violation of ORS 658.440(3)(e). ---- ***In the Matter of Xavier Carbajal, 8 BOLI 206, 218, 220 (1990).***

□ When a contractor employed the services of an unlicensed person, the forum found the contractor in violation of either ORS 658.417(3) for failing to provide the commissioner with certified payroll records, if the person was an employee; or ORS 658.440(3)(e) for assisting the unlicensed person to act as a farm/forest labor contractor, if the person was a subcontractor. ---- ***In the Matter of Deanna Donaca, 6 BOLI 212, 237, 240 (1987).***

□ When the agency alleged that a contractor assisted an unlicensed person, the contractor claimed the defense that she believed the unlicensed person was exempt because his business was family-owned. OAR 839-15-130(15) provides a "family business exception" to Oregon's farm/forest labor contractor licensing requirements that has two explicit limitations pertinent to this case. First, the exemption applies only to individuals who are working by themselves or with only the assistance of their spouse, son, daughter, brother, sister, mother or father. Second, the exemption applies only when the contract or agreement under which the allegedly exempt individual is working is between that individual and the farmer, owner, or lessee of the land involved. When the evidence revealed that the unlicensed person had a subcontract with the contractor, and the unlicensed person employed at least one non-family employee, the forum concluded that the unlicensed person was not exempt under OAR 839-15-130(15). The forum held that the contractor was charged with knowledge of the law, noting that even a quick reading of OAR 839-15-130(15), or an inquiry to the agency, would have apprised the contractor of the fact that a subcontractor cannot qualify for this exemption. ---- ***In the Matter of Deanna Donaca, 6 BOLI 212, 239 (1987).***

**4.24 --- Force Worker or Subcontractor to Give Up Compensation (ORS 658.440(3)(f))**

**4.25 --- Induce Worker to Travel for Work Not Available For 30 Days (ORS 658.440(3)(g))**

**4.26 --- Discriminate Against Employee (ORS 658.452)**

□ When respondent refused to permit the rehire of a regular seasonal employee because the employee had made a claim against respondent for unpaid wages and caused to be instituted proceedings related to ORS 658.405 to 658.503 and 658.803, the forum found that respondent had discriminated against the employee in violation of ORS 658.452 and assessed a civil penalty. -- ---- ***In the Matter of Victor Ovchinnikov, 13 BOLI 123, 152-53 (1994).***

**5.0 CIVIL PENALTIES**

**5.1 --- In General**

□ When the agency alleged six violations of ORS 658.440(1)(f) & (g) but proved eight violations, the forum assessed civil penalties for the six violations, as civil penalties assessed cannot exceed those alleged in the notice of intent. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 158 (2007).***

□ ORS 658.453 and OAR 839-015-0508(g) & (h) authorize the Commissioner to assess civil penalties of up to \$2,000 for each violation of ORS 658.440(1)(f) & (1)(g). ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 157 (2007).***

□ The Commissioner may consider aggravating and mitigating circumstances when determining the amount of civil penalty to impose. ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration,***

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### 25 BOLI 12, 51 (2003).

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ It shall be the responsibility of the respondents to provide the commissioner with any mitigating evidence. ----- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 51 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ In determining the amount of civil penalty, the forum considers all the facts of the case, the seriousness of the violation, and any mitigating and aggravating circumstances. ----- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 236 (1999).***

□ In determining the appropriate civil penalty, the forum may consider the seriousness and magnitude of the violation. ----- ***In the Matter of Mike L. Sulfridge, 18 BOLI 22, 45 (1999).***

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ The commissioner may impose any sanction authorized by statute. Respondents' assertion at hearing that a civil penalty would be an appropriate sanction in lieu of revocation cannot confer such authority on the commissioner. ORS 658.453 is the commissioner's statutory authority for assessing a civil penalty. In subsection (1), the statute specifies the violations for which a civil penalty may be assessed. OAR 839-15-508 similarly lists the violations for which the commissioner may impose a civil penalty. Neither the statute nor the rule lists a failure to make workers' compensation insurance premium payments when due as a basis for assessing a civil penalty. Thus, a civil penalty is not an available sanction for that violation. ----- ***In the Matter of Scott Nelson, 15 BOLI 168, 184-85 (1996).***

□ When the agency proposes to deny, suspend, revoke, or refuse to renew a license, the exact number of violations is not critical. In such cases, it is the nature of the repeated violations and any aggravating or mitigating circumstances that are important. ----- ***In the Matter of Xavier Carbajal, 8 BOLI 206, 223 (1990).***

□ When a contractor permitted his license to expire without applying for its renewal, and this occurred after he had been given notice by the agency of its intent to refuse to renew the contractor's license because of multiple violations of farm/forest labor contractor laws, the forum held that the commissioner had the authority to assess civil penalties for the violations when the contractor had been given full and fair opportunity to respond to the modification in the action from refusing to renew a license to assessing civil penalties. ----- ***In the Matter of Jose Solis, 5 BOLI 180, 199, 202-03 (1986).***

□ ORS 658.453(1)(a) allows the commissioner to assess a civil penalty not to exceed \$2,000 for each violation by a farm labor contractor who employs a

worker without a valid license from the agency. When a contractor employed workers on at least two different contracts without a valid license, the commissioner was empowered to assess a penalty of up to \$4,000 against the contractor. ----- ***In the Matter of Michael Burke, 5 BOLI 47, 52 (1985).***

### 5.2 --- Amount (see also 5.3, 5.4, 5.5)

□ No civil penalties were assessed for respondents' violation of ORS 658.410 because none were sought by the agency. ----- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 163 (2007).***

□ Based on the aggravating and mitigating circumstances and amounts assessed for similar violations in prior cases, the forum assessed a civil penalty of \$1,000 for respondents' violation of ORS 658.440(1)(d). ----- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 161 (2007).***

□ When there were aggravating circumstances and no mitigating circumstances, the forum assessed a \$2,000 civil penalty for each of respondents' two violations of ORS 658.440(3)(b). ----- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 160 (2007).***

□ When there were substantial aggravating circumstances and only a single mitigating circumstance, the commissioner assessed a civil penalty of \$2,000 for each of six violations of ORS 658.440(1)(f) & (g), for a total of \$12,000. A respondent and her corporation were held jointly and severally liable. ----- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 158 (2007).***

□ In determining appropriate civil penalties, the forum considers aggravating and mitigating circumstances. ----- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 157 (2007).***

□ In calculating a civil penalty, the commissioner must also consider "the amount of money or valuables, if any, taken from employees or subcontractors by the contractor or other person in violation of any statute or rule." ----- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 157 (2007).***

□ The forum assessed \$8,000 in civil penalties for eight certified payroll violations when there were aggravating circumstances and the violations were only partially mitigated. ----- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 51-52 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ The forum assessed \$2,000 in civil penalties for respondents' two misrepresentations and willful concealment of information on respondents' farm labor contractor license application based on respondents' history of farm labor violations, respondents' actual knowledge of information that was either misrepresented or not disclosed, and the absence of mitigating circumstances. ----- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 53 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor*

and Industries, 196 Or App 639, 103 P3d 1212 (2004).

- The forum imposed \$500 for respondent's first instance of acting as a farm labor contractor without a license, \$1000 for his first repeat violation, and \$2000 for each of his subsequent violations. ---- ***In the Matter of Tomas Benitez, 19 BOLI 142, 158 (2000).***
  - In determining the appropriate magnitude of the penalties for violations of ORS 658.440(1)(f) and (g), the forum considers aggravating and mitigating factors, including "the amount of money or valuables, if any, taken from employees or subcontractors by the contractor or other person in violation of any statute or rule" and: (a) The history of the contractor or other person in taking all necessary measures to prevent or correct violations of statutes or rules; (b) Prior violations, if any, of statutes or rules; (c) The magnitude and seriousness of the violation; and (d) Whether the contractor or other person knew or should have known of the violation. ---- ***In the Matter of Tomas Benitez, 19 BOLI 142, 159 (2000).***
  - The commissioner has discretion to determine not only the proper penalty per violation, but also whether the cumulative amount of penalties imposed is appropriate. In a case involving many violations, the commissioner may determine that the penalty per violation should be reduced so that the total penalty is proportionate to the seriousness of the respondent's offense when: (1) Many violations are associated with a single farm labor contract; (2) The violations involve breaches of only one statutory requirement or only a few related requirements; and (3) There is no evidence that any worker suffered a loss of wages or other harm.---- ***In the Matter of Tomas Benitez, 19 BOLI 142, 159-61 (2000).***
  - When aggravating factors were present and the only mitigating factor was a lack of evidence that any person suffered monetarily as a result of respondent's violations of the farm labor contracting statutes, the commissioner stated: "If the forum were to consider only the appropriate magnitude of the penalty for each violation, it would impose a civil penalty of \$1000.00 for each of Respondent's 176 violations of ORS 658.440(1)(f) and (g), as the ALJ suggested in the Proposed Order." However, because respondent's 176 violations of ORS 658.440(1) were associated with a single farm labor contract, involved only two related types of misdeeds, and there was no evidence that any worker suffered a loss of wages or other harm, the commissioner found that a total penalty of \$176,000.00 for these violations would be excessive. Instead, the commissioner ordered respondent to pay only a \$250.00 penalty for each of the 176 violations, for a total of \$44,000.00. ---- ***In the Matter of Tomas Benitez, 19 BOLI 142, 159-61 (2000).***
  - The forum imposed a \$1000 penalty for the respondent's failure to notify BOLI of the changes in the circumstances under which he had been granted exempt status. ---- ***In the Matter of Lambertus Sandker, 18 BOLI 277, 289 (1999).***
  - The forum imposed a \$500 penalty for the respondent's failure to file certified payroll records when both aggravating and mitigating factors were present. ----
  - ***In the Matter of Lambertus Sandker, 18 BOLI 277, 290 (1999).***
  - The forum imposed a \$500 penalty for the respondent's failure to post a notice of bond when both mitigating and aggravating factors were present. ---- ***In the Matter of Lambertus Sandker, 18 BOLI 277, 290-91 (1999).***
  - The forum imposed a \$1000 penalty against each respondent for their failure to obtain farm/forest labor contractor's licenses before engaging in activities requiring that license and no mitigating circumstances were present. ---- ***In the Matter of Charles Hurt, 18 BOLI 265, 275 (1999).***
  - The forum imposed a \$1000 penalty against each of two respondents who failed to provide workers' compensation insurance to individuals who performed manual labor on a forestation/reforestation contract and no mitigating circumstances were present. ---- ***In the Matter of Charles Hurt, 18 BOLI 265, 276 (1999).***
  - The forum imposed a \$1000 penalty against each of two respondents for their failure to comply with the terms of a BLM contract. ---- ***In the Matter of Charles Hurt, 18 BOLI 265, 276 (1999).***
  - The forum assessed a \$500 penalty against respondent for a single violation of ORS 658.437. ---- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 237 (1999).***
  - The forum assessed a \$5,000 penalty against respondent for ten violations of ORS 658.440(1)(f). ---- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 239 (1999).***
  - The forum assessed respondent a \$7,500 penalty against respondent for ten violations of ORS 658.440(1)(g). ---- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 240 (1999).***
  - The forum assessed a \$500 penalty against respondent for one violation of ORS 658.417(3). ---- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 240 (1999).***
  - The forum assessed a \$4,000 penalty against an individual farm labor contractor and his corporation for two violations of ORS 658.410(1) and 658.417(1) -- operating as a farm/forest labor contractor without a proper license or indorsement. ---- ***In the Matter of Mike L. Sulfridge, 18 BOLI 22, 44-45 (1999).***
- Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).
- The forum assessed a \$4000 penalty against an individual farm labor contractor and his corporation for two violations of ORS 658.417(3) -- failure to provide timely certified payroll records. ---- ***In the Matter of Mike L. Sulfridge, 18 BOLI 22, 45 (1999).***
- Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

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□ The forum assessed \$8000 in penalties against an individual farm labor contractor and his corporation for four violations of ORS 658.417(3) -- failure to provide timely certified payroll records. ----- ***In the Matter of Mike L. Sulfridge, 18 BOLI 22, 45 (1999).***

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ The forum assessed \$4000 in penalties against an individual farm labor contractor and his corporation for four violations of ORS 658.440(1)(g) -- failure to enter into written agreements with workers as required by statute. ----- ***In the Matter of Mike L. Sulfridge, 18 BOLI 22, 45 (1999).***

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ The forum assessed a \$1000 penalty against an individual farm labor contractor and his corporation for one violation of ORS 658.440(1)(g) -- failure to enter into written agreements with workers as required by statute. - --- ***In the Matter of Mike L. Sulfridge, 18 BOLI 22, 45 (1999).***

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ The forum assessed \$3500 in penalties against an individual farm labor contractor and his corporation for fourteen violations of ORS 658.440(1)(g) -- failure to enter into written agreements with workers containing all the required elements. ----- ***In the Matter of Mike L. Sulfridge, 18 BOLI 22, 45 (1999).***

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ The forum assessed a \$750 penalty against respondent for each of five violations of ORS 658.440(1)(g), for a total of \$3,750. ----- ***In the Matter of Paul A. Washburn, 17 BOLI 212, 226 (1998).***

□ The ALJ imposed a nominal penalty of \$200 when a license applicant failed to disclose the name of a business partner, but that partner had not previously been found to be ineligible for a license and did not provide financial resources to the applicant. ----- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 139-40 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ When respondent failed to furnish 41 employees with a written statement of the terms and conditions of employment as required by ORS 658.440(1)(f) and OAR 839-015-0310 and failed to execute written agreements with the 41 employees as required by ORS 658.440(1)(g) and OAR 839-015-0360(4), the commissioner found 41 violations of each statute and assessed a civil penalty of \$250 for each violation, for a

total of \$20,500 (82 violations). ----- ***In the Matter of Andres Bermudez, 16 BOLI 229, 242-43, 245 (1998).***

□ Respondent obtained a USFS contract to apply herbicide in June 1996. Effective July 1, 1996, OAR 839-15-0004(8) was amended to include herbicide application among the activities that the agency required a farm labor contractor license to perform, and respondent was aware of this change. In July 1996, respondent recruited, transported, and employed at least three workers in Oregon to perform the USFS herbicide application contract in California. The commissioner held that respondent acted as a farm labor contractor with regard to the forestation or reforestation of lands without a farm labor contractor's license or forestation indorsement, in violation of ORS 658.410(1) and 658.417(1) and assessed a civil penalty of \$2,000 for these violations. ----- ***In the Matter of Manuel Galan, 16 BOLI 51, 62-64, 65-66 (1997).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 154 Or App 762 (2000), 763 P2d 755, rev den 327 Or 553, 971P2d 409 (1998).

□ By failing to furnish the written information contained in form WH-151 or its equivalent to at least three workers at the time of hiring and prior to the workers performing any work, respondent violated ORS 658.440(1)(g) three times and the commissioner assessed civil penalties of \$1,000 for each violation, for a total of \$3,000. ----- ***In the Matter of Manuel Galan, 16 BOLI 51, 64-65 (1997).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 154 Or App 762 (2000), 763 P2d 755, rev den 327 Or 553, 971P2d 409 (1998).

□ By failing to execute a written agreement such as form WH-153 or its equivalent between himself and each of at least three workers at the time of hiring and prior to the workers performing any work, respondent violated ORS 658.440(1)(g) three times and the commissioner assessed civil penalties of \$1,000 for each violation, for a total of \$3,000. ----- ***In the Matter of Manuel Galan, 16 BOLI 51, 64-65 (1997).***

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 154 Or App 762 (2000), 763 P2d 755, rev den 327 Or 553, 971P2d 409 (1998).

□ Respondent's failure to promptly pay all wages due to at least 24 workers constituted 24 violations of ORS 658.440(1)(c) and 652.145 and respondent was assessed a \$2,000 civil penalty for each violation. ----- ***In the Matter of Odon Salinas, 16 BOLI 42, 49 (1997).***

□ When respondent employed workers to perform labor for another in the production and harvesting of Christmas trees and acted as a farm labor contractor for at least eight farmers in Oregon in 1993 and 1994 while not licensed to do so, respondent violated ORS 658.410 and OAR 839-15-125 eight times and the commissioner assessed civil penalties of \$1,000 for the first violation and \$2,000 for each subsequent violation. ----- ***In the Matter of Odon Salinas, 16 BOLI 42, 49 (1997).***

□ When respondent argued that civil penalties of \$500 each for two admitted violations of ORS 658.440(1)(e) – failure to file annual report of contracts – was an unconscionable abuse of agency discretion for

“technical, paperwork violations,” the commissioner found that ORS 658.453 authorized imposition of up to \$2,000 in civil penalties for each violation and that the penalties imposed were reasonable. ---- ***In the Matter of Mohammad Khan, 15 BOLI 191, 210 (1996).***

□ Respondent's foreman recruited 14 workers in and around Medford, Oregon, and transported them to California to work in forestation for the respondent corporation. At the time they were hired and before work began, respondent failed to execute a written agreement with each worker describing the terms and conditions of employment. The respondent corporation violated ORS 658.440(1)(g) 14 times and the commissioner assessed \$14,000 in civil penalties. ---- ***In the Matter of Manuel Galan, 15 BOLI 106, 124, 127, 138 (1996).***

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ Respondent's foreman recruited 14 workers in and around Medford, Oregon, and transported them to California to work in forestation for the respondent corporation. At the time they were hired and before work began, the foreman did not furnish them with a written description of the terms and conditions of the employment. The respondent corporation violated ORS 658.440(1)(f) 14 times and the commissioner assessed \$14,000 in civil penalties. ---- ***In the Matter of Manuel Galan, 15 BOLI 106, 124, 127, 138 (1996).***

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ When the agency did not allege aggravating circumstances and respondent did not present any evidence of mitigating circumstances, the forum assessed a first offense civil penalty of \$500 for one violation of ORS 658.437(2). ---- ***In the Matter of Melvin Babb, 14 BOLI 230, 239 (1995).***

□ When respondents failed to take all necessary measures to prevent a violation of ORS 658.440(1)(d) (failure to comply with the terms and provisions of a legal and valid agreement with the USFS), there was no question the respondents knew they were failing to comply with the terms and provisions of their contract, and the commissioner found this violation to be serious because it frustrated the USFS's ability to meet its reforestation goals and the resulting default affected respondents' ability to pay an employee leasing company, the commissioner found these circumstances aggravated the violation and assessed the \$1,000 civil penalty requested by the agency. ---- ***In the Matter of Jose Carmona, 14 BOLI 195, 213 (1995).***

□ When respondent committed seven violations of ORS 658.440(3)(e) by assisting an unlicensed person to act as a farm labor contractor, the forum found that these were repeat violations in the sense that there were four violations on one contract and three violations on another, and also in the sense that the two contracts were about a year apart. The forum assessed a \$500 civil penalty for each violation, pursuant to OAR 839-15-512(2). ---- ***In the Matter of Alexander Kuznetsov, 14 BOLI 185, 194 (1995).***

□ When respondent, a farm labor contractor, supplied workers to four farms when he lacked a farm labor contractor license, the forum found four violations of ORS 658.410(1) and assessed civil penalties of \$500 for the first offense; \$1,000 for the second; and \$2,000 for each of the third and fourth offenses. ---- ***In the Matter of Juan Gonzalez, 14 BOLI 27, 32-33 (1995).***

□ When a respondent farm labor contractor failed to comply with the terms and provisions of a contract with the USFS by failing to show up at prework meetings and failed to begin work on the contract, causing the USFS to terminate the contract for default, the forum found the magnitude and seriousness of this violation moderate. With no evidence of other aggravating circumstances and no history of prior violations, the forum assessed a civil penalty of \$500 against respondent for his violation of ORS 658.440(1)(d). ---- ***In the Matter of Tolya Meneyev, 14 BOLI 6, 14 (1995).***

□ Respondent filed a certified payroll record 65 days late on one contract and failed to submit any records on a second contract. Respondent's violations were aggravated by respondent's knowledge of his obligation to submit these records and the fact that the agency reminded him twice to submit them. There were no mitigating circumstances. The forum assessed respondent a \$500 civil penalty for his first violation of ORS 658.417(3), and a \$1,000 civil penalty for the second, repeat violation. ---- ***In the Matter of Tolya Meneyev, 14 BOLI 6, 15-16 (1995).***

□ Respondent failed to provide workers' compensation insurance for almost a month, knew he was required to provide this insurance, and was notified by SAIF and BOLI that he had no coverage and that his license was in jeopardy. The forum found that this type of violation was particularly serious because it frustrates the commissioner's ability to implement the law's requirements, and the requirement of providing workers' compensation insurance is fundamental for the protection of Oregon's workers. The forum assessed a \$2,000 civil penalty for respondent's violation of ORS 658.417(4). ---- ***In the Matter of Tolya Meneyev, 14 BOLI 6, 14 (1995).***

□ The agency charged that a respondent farm labor contractor committed two violations of each of three statutes and sought a \$500 in civil penalty for each violation as a "repeated" violation under OAR 839-15-512(2). The forum held that the first violation of each statute was not a repeated one and assessed a \$300 civil penalty for each violation. The forum held that the second violation of each statute was a repeat violation and assessed the minimum \$500 civil penalty for each of those violations. ---- ***In the Matter of Jefty Bolden, 13 BOLI 292, 300 (1994).***

□ When respondent acted as a farm labor contractor without a valid license on three separate occasions, the forum assessed a \$500 civil penalty for the first offense, a \$1,000 civil penalty for the second offense, and a \$2,000 civil penalty for the third offense. ---- ***In the Matter of Jose Linan, 13 BOLI 24, 45 (1994).***

□ When supervisory employees hired by farm operators were in fact acting as farm labor contractors

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and the farm operators failed to examine or copy a farm labor license before work commenced, the commissioner imposed a civil penalty of \$500. ----- ***In the Matter of Boyd Yoder, 12 BOLI 223, 232 (1994).***

Affirmed without opinion, *Yoder v. Bureau of Labor and Industries*, 134 Or App 627, 896 P2d 19 (1995).

□ When respondents' filings of certified payroll records on four separate contracts over a three-month period were from 14 to 33 days late, the commissioner found four violations of ORS 658.417(3) and imposed a civil penalty of \$500 per violation. ----- ***In the Matter of Robert Gonzalez, 12 BOLI 181, 197-98 (1994).***

□ In a prior contested case, respondents had been allowed to continue operating as a forest labor contractor based on assurances entered into with the agency in a consent order, including assurances that respondents would notify the agency on a monthly basis whenever respondents used a subcontractor on a forestation contract. Respondents failed to timely notify the agency on nine occasions. The forum found that respondents breached the agreement, violating ORS 658.440(1)(d) nine times, and imposed a civil penalty of \$500 for each violation. ----- ***In the Matter of Robert Gonzalez, 12 BOLI 181, 200 (1994).***

□ The commissioner imposed a civil penalty of \$2,000 against each of two licensed persons who acted as farm labor contractors and failed to post notice of a surety bond or cash deposit on the premises where workers were to be employed. ----- ***In the Matter of Clara Rodriguez, 12 BOLI 153, 172, 176, 180-81 (1994).***

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

□ A Christmas tree grower paid respondent contractor for the harvest of trees and respondent failed to pay wages, when due, to at least 187 workers who harvested the trees. The commissioner found a violation of ORS 658.440(1)(c) and imposed a civil penalty of \$18,700. ----- ***In the Matter of Clara Rodriguez, 12 BOLI 153, 174, 180 (1994).***

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

□ An unlicensed respondent who recruited and employed workers to harvest Christmas trees for a licensed respondent violated ORS 658.410 by acting as a farm labor contractor and the commissioner imposed a civil penalty of \$2,000. ----- ***In the Matter of Clara Rodriguez, 12 BOLI 153, 171-72, 174, 180 (1994).***

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

□ When an unlicensed respondent transported, recruited, solicited, and supplied workers and bid and submitted prices on contract offers to harvest Christmas trees for a licensed respondent, the unlicensed respondent violated ORS 658.410 by acting as a farm labor contractor and the commissioner imposed a civil penalty of \$2,000 on the unlicensed respondent. ----- ***In the Matter of Clara Rodriguez, 12 BOLI 153, 172, 176,***

***180-81 (1994).***

Affirmed without opinion, *Rodriguez v. Bureau of Labor and Industries*, 135 Or App 696, 898 P2d 818 (1995).

□ When a farm labor contractor failed to furnish forms WH-151 and WH-153 regarding the rights of workers to four workers, the commissioner found four violations of ORS 658.440(1)(f). Despite several aggravating circumstances, the commissioner assessed civil penalties of \$250 for each violation. ----- ***In the Matter of Andres Ivanov, 11 BOLI 253, 259-60, 263-64 (1993).***

□ When respondents provided certified payroll records 29 days late on one occasion, in violation of ORS 658.417(3) and OAR 839-15-300(2), respondents had no prior violations of statutes or rules, and there were no other aggravating factors, the commissioner found the magnitude and seriousness of the violation low and assessed a civil penalty of \$250. ----- ***In the Matter of Cristobal Lumbreras, 11 BOLI 167, 172 (1993).***

□ Respondent worked on a BLM reforestation project under a subcontract and twice failed to provide timely certified payroll records to the commissioner for the work his employees performed. The commissioner assessed civil penalties of \$500 for each violation, pursuant to ORS 658.453(1)(e), OAR 839-15-508(2)(b), and 839-15-512(1) and (2). ----- ***In the Matter of Iona Pozdeev, 11 BOLI 146, 148, 150 (1993).***

□ When respondent's farm labor contractor license expired and he failed to take action to extend it in accordance with a statutory change in license year, despite repeated attempts by the agency's licensing unit to have him file the proper bond and reapplication, then respondent continued to operate his farm labor contractor business and operated farm labor camps without the required license indorsement or registration, and committed other infractions for which the commissioner assessed civil penalties totaling \$7,500, the commissioner found respondent unfit to act as a farm labor contractor and denied his application for a farm labor contractor license for a period of three years. ----- ***In the Matter of Jose Rodriguez, 11 BOLI 110, 125-26 (1992).***

□ Respondent acted as a farm labor contractor without a license by supplying workers on a contract for at least 10 days. He had been warned by the agency three times previously that he was acting in violation of the law and some of his workers were left unpaid or underpaid. The commissioner assessed a civil penalty of \$500 per day for each of ten days, for a civil penalty of \$5,000. ----- ***In the Matter of René García, 11 BOLI 85, 91 (1992).***

□ When one respondent partner committed four violations of ORS 658.440(3)(e) by assisting his unlicensed partner to act as a farm labor contractor, the other partner committed four violations of ORS 658.410, 658.415, and 658.417 by acting as a farm labor contractor without a license, and aggravating circumstances existed, the forum assessed a \$2,000 civil penalty on each partner for each of his four violations, for a total of \$8,000 in civil penalties against each partner. ----- ***In the Matter of Ivan Skorohodoff,***

**11 BOLI 8, 18-19 (1992).**

□ Respondent failed to comply with the terms and conditions of a consent order. The forum found that he violated ORS 658.440(1)(d) by filing to comply with the terms and provisions of all legal and valid agreements respondent contracts and assessed a civil penalty of \$1,000 pursuant to the terms of the consent order and ORS 658.453(1)(c) and (e). ---- ***In the Matter of Azul Corporation, Inc., 10 BOLI 156, 160 (1992).***

□ When respondent guided another person through the licensing process to obtain a "partial exempt" license that requires that the licensee employ a maximum of two employees and be a sole proprietor with the only financial interest, and respondent thereafter financed and managed the enterprise and paid wages to more than three others, including the licensee, the commissioner found that respondent should have been licensed as a farm/forest labor contractor and was in violation of ORS 658.410, 658.415(1), and 658.417(1) and imposed a civil penalty of \$1,000. ---- ***In the Matter of Kenneth Vanderwall, 9 BOLI 148, 155-56 (1990).***

□ When the agency proposes to assess a civil penalty for repeated violations, the exact number of violations is important since "a minimum of \$500 for each repeated violation will be imposed" under OAR 839-15-512(2). ---- ***In the Matter of Xavier Carbajal, 8 BOLI 206, 223 (1990).***

□ When respondent violated ORS 658.440(1)(f) by filing to furnish four workers a written statement that contains a description of the worker's rights and remedies at the time of hiring, recruiting, soliciting or supplying, whichever occurred first, the commissioner assessed a \$500 civil penalty for the four violations. ---- ***In the Matter of Francis Kau, 7 BOLI 45, 53, 55 (1987).***

□ When a contractor failed to promptly pay money to two subcontractors who were entitled to the money, the forum found the contractor in violation of ORS 658.440(1)(c) and 658.440(1)(d) and assessed civil penalties of \$1,000 for each of the contractor's two violations of ORS 658.440(1)(c) and \$500 for each of the contractor's two violations of 658.440(1)(d). ---- ***In the Matter of Deanna Donaca, 6 BOLI 212, 236-37 (1987).***

□ When a contractor employed the services of an unlicensed person, the forum found the contractor in violation of either ORS 658.417(3) for failing to provide the commissioner with certified payroll records, if the person was an employee; or ORS 658.440(3)(e) for assisting the unlicensed person to act as a farm/forest labor contractor, if the person was a subcontractor. The commissioner assessed a civil penalty of \$250 for the contractor's violation of one or the other of the two statutes without determining whether the unlicensed person was an employee or a subcontractor. ---- ***In the Matter of Deanna Donaca, 6 BOLI 212, 237 (1987).***

□ The commissioner assessed a \$2,000 civil penalty for respondent's six violations of ORS 658.440(1)(f). ---- ***In the Matter of Jose Solis, 5 BOLI 180, 202 (1986).***

□ When a contractor failed to file six certified payroll records required by ORS 658.417(3), the forum found that each failure constituted one violation of ORS

658.417(3) and assessed a civil penalty of \$1,000. ---- ***In the Matter of Jon Paauwe, 5 BOLI 168, 173 (1986).***

□ When a contractor employed workers on at least two different contracts without a valid license, the commissioner was empowered to assess a penalty of up to \$4,000 against the contractor. The commissioner assessed a civil penalty of \$500 when the agency proposed a civil penalty of \$500. ---- ***In the Matter of Michael Burke, 5 BOLI 47, 52 (1985).***

**5.3 --- Separate Violations**

□ A respondent violated both ORS 658.410(1) and ORS 658.417(1) by acting as a farm/forest labor contractor without a farm labor contractor's license or a forestation indorsement. The forum treated the failures to obtain a license and indorsement as one simultaneous violation. ---- ***In the Matter of Charles Hurt, 18 BOLI 265, 275 (1999).***

□ Each failure to comply with a farm labor contractor statute constitutes a separate violation. Each violation is a separate and distinct offense. ---- ***In the Matter of Andres Ivanov, 11 BOLI 253, 263 (1993).***

□ Each failure to comply with a farm labor contractor statute constitutes a separate violation. ---- ***In the Matter of Xavier Carbajal, 8 BOLI 206, 223 (1990).***

**5.4 --- Aggravating Circumstances**

□ In determining appropriate civil penalties, the forum considers aggravating and mitigating circumstances. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 157 (2007).***

□ Aggravating and mitigating circumstances include: (a) The history of the contractor or other person in taking all necessary measures to prevent or correct violations of statutes or rules; (b) Prior violations, if any, of statutes or rules; (c) The magnitude and seriousness of the violation; and (d) Whether the contractor or other person knew or should have known of the violation. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 157 (2007).***

□ Respondents' violation of ORS 658.440(1)(d) was aggravated by respondents' deception of the owner of the land respondents contracted with to plant trees, in that the owner was unaware that a different business entity than the one it contracted with was performing work on its tree planting contract. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 160-61 (2007).***

□ The magnitude and seriousness of the violation respondents' violation of ORS 658.440(1)(d) were low because there was no evidence that the contract violation in any way affected the performance of the contract. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 161 (2007).***

□ Respondents' violation of ORS 658.440(1)(d) was aggravated by the fact that respondents knew they were violating their tree planting contract, as shown by their signatures on the original contract and the prohibited subcontract. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 161 (2007).***

□ Respondents' violations of ORS 658.440(3)(b) were aggravated by the fact that there was no evidence that

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they made any attempt to comply with that statute. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 160 (2007).***

□ The seriousness of respondents' violations of ORS 658.440(3)(b) was low because there was no evidence that any workers were unaware of or misunderstood where they would be working, that they would be working on land owned by someone other than respondents, that any worker suffered any loss as a result of respondents' false representation, or that respondents intended to deceive USDOL or the agency as to the identity and address of owner of the land where the workers would be working. However, the magnitude was high because of the sheer number of violations, 23 in all. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 160 (2007).***

□ Respondents' violations of ORS 658.440(3)(b) were aggravated because Respondents knew of the violations. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 160 (2007).***

□ Violations of ORS 658.440(1)(f) & (g) are serious matters that go to the heart of farm labor contractor statutes" because they deny workers the ability to protect themselves in the event of a dispute. The magnitude of respondents' violations was enhanced because of the fabricated signatures on respondents' documents, respondents' deliberate attempt to deceive the agency, respondents' failure to provide all the information regarding terms and conditions of employment required by statute to any of its workers, and by respondents' failure to provide its workers with a WH-151S or WH-153S that was legible. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 158 (2007).***

□ Respondents' violations of ORS 658.440(1)(f) & (g) were aggravated by respondent's knowledge of the violations. Respondents deliberately shrunk the forms, and both respondents signed documents on which the workers' signatures were forged. One respondent further admitted that he directed the family of a deceased worker to sign the worker's name to a WH-151S and a WH-153S after the worker's death. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 158 (2007).***

□ Respondents' violations of ORS 658.440(1)(f) & (g): were aggravated by several circumstances. There was no evidence that respondents took any actions to ensure their workers were provided WH-151S and WH-153S forms with the required information required by ORS 658.440(1)(f) & (g). Although respondents provided the agency with a number of forms, at least three had signatures that were not those of the workers. Respondents' failed attempt to deceive the agency, together with respondents' unwillingness to provide original documents and alterations and inconsistencies in the forms provided by respondents, made the forum question whether other WH-151S and WH-153S forms provided by respondent also contained worker's signatures that were not genuine. To compound matters, even if the forum assumed that respondents provided WH-151S and WH-153S forms to all its other workers, respondents reduced the forms to one quarter of their original size before providing them to their

workers. As a result, the print on all those forms was either illegible or nearly microscopic. Furthermore, not a single WH-153S stated the name and address of the place the workers would be working, which is required by ORS 658.440(1)(f)(G). In summary, there was no credible evidence that respondents took any steps to prevent violations of ORS 658.440(1)(f) & (g) and they appeared to have done just the opposite. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 157-58 (2007).***

□ Respondents' failure to submit accurate and complete, accurate, and certified records on eight occasions was aggravated by a prior violation that resulted in a written consent order and respondent's knowledge of their obligation. ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 51 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ This forum considers violations of ORS 658.440(1)(f) and (g) to be very serious. Such violations are aggravated by a respondent's previous violations. --- ***In the Matter of Tomas Benitez, 19 BOLI 142, 160 (2000).***

□ A farm/forest labor contractor's violation of the statute requiring the filing of certified payroll records was aggravated by his prior violation. ---- ***In the Matter of Lambertus Sandker, 18 BOLI 277, 290 (1999).***

□ A farm/forest labor contractor's violation of the requirement to post a notice of bond was aggravated by his failures to comply with the requirement of obtaining the bond. ---- ***In the Matter of Lambertus Sandker, 18 BOLI 277, 290 (1999).***

□ Respondents' failure to comply with the terms of a forestation/reforestation contract was aggravated by the facts that neither respondents nor their subcontractor completed work on the contract and that the subcontractor's work was substandard. ---- ***In the Matter of Charles Hurt, 18 BOLI 265, 277 (1999).***

□ Respondent's violation of ORS 658.437(2) was aggravated by the fact that he was a licensed contractor and should have known of the requirement to examine the farm/forest labor contractor's license of any person who supplied workers on respondent's behalf. ---- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 237 (1999).***

□ Respondent's ten violations of ORS 658.440(1)(f) were aggravated because the workers were not provided with some of the information required by statute and because respondent, a licensed contractor, should have known of the violations. ---- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 239 (1999).***

□ Respondent's ten violations of ORS 658.440(1)(g) were aggravated because a farm/forest labor contractor's complete failure to provide workers with any sort of binding written agreement is extremely serious and because respondent, a licensed contractor, knew or should have known of the violations. ---- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 239 (1999).***

□ Respondent's violation of ORS 658.417(3) was

aggravated because he knew he was required to submit a certified payroll report and failed to do so, several workers claimed they were due additional wages, and respondent's difficulty with keeping his payroll up to date may have contributed to those claims. ---- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 241 (1999).***

□ Respondents' violations of ORS 658.417(3) were aggravated by a number of factors. Respondents operated for years without providing their employees with adequate written agreements. After repeated warnings from the agency about the need to submit timely certified payroll records, respondents failed to do so. Respondents did not take all necessary measures to prevent violations. Respondents knew or should have known of the violations. ---- ***In the Matter of Mike L. Sulffridge, 18 BOLI 22, 45 (1999).***

Affirmed without opinion, *Mike Sulffridge dba Mike Sulffridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ The forum found respondents' violation of ORS 658.440(1)(g) to be "grave" when respondents did not give their workers any document constituting a binding written agreement or containing the statutorily required information, and respondents knew or should have known of the violations and admitted they did not provide their workers with agreements using form WH-153 because they believed the paperwork would be too cumbersome. ---- ***In the Matter of Paul A. Washburn, 17 BOLI 212, 225 (1998).***

□ Respondent's violations of ORS 658.440(1)(f) and (g) were aggravated when respondent knew of his obligation to comply with ORS 658.440(1)(f) and (g) because (1) he certified in his application for a license that he had read and understood the WH-151 and WH-153 forms and would provide the information contained in the forms to workers as required by law; and (2) an agency compliance specialist had advised him and his bookkeeper about these legal requirements before work on this contract began. ---- ***In the Matter of Andres Bermudez, 16 BOLI 229, 244 (1998).***

□ Respondent's violations of ORS 658.440(1)(f) and (g) were aggravated by respondent's false representation to an agency compliance specialist about providing WH-151 and WH-153 forms to his workers. ---- ***In the Matter of Andres Bermudez, 16 BOLI 229, 244 (1998).***

□ Respondent's violations of 658.440(1)(f) and (g) were aggravated because protection of farm labor workers is at the heart of Oregon's farm labor contractor statutes, and the written statements furnished to workers and the written agreements executed with workers are keys to the workers being able to protect themselves. Failure to furnish this information and execute these agreements frustrates the law's purpose of protecting Oregon's workers. ---- ***In the Matter of Andres Bermudez, 16 BOLI 229, 244 (1998).***

□ When respondents failed to take all necessary measures to prevent a violation of ORS 658.440(1)(d) (failure to comply with the terms and provisions of a legal and valid agreement with the USFS), there was no

question the respondents knew they were failing to comply with the terms and provisions of their contract, and the commissioner found this violation to be serious because it frustrated the USFS's ability to meet its reforestation goals and the resulting default affected respondents' ability to pay an employee leasing company, the commissioner found these circumstances aggravated the violation. ---- ***In the Matter of Jose Carmona, 14 BOLI 195, 213 (1995).***

□ The forum found the following aggravating circumstances to respondent's seven violations of ORS 658.440(3)(e) (assisting an unlicensed person to act as a farm labor contractor): (1) respondent should have known that his partners needed to be licensed; (2) the violations were serious because licensing is at the heart of the commissioner's ability to implement the requirements of the law; (3) the violations were repeated; and (4) respondent had the opportunity, by getting his partners licensed before the second contract was bid, to prevent the last three violations. ---- ***In the Matter of Alexander Kuznetsov, 14 BOLI 185, 194 (1995).***

□ Failure to provide workers' compensation insurance is particularly serious because it frustrates the commissioner's ability to implement the law's requirements, and the requirement of providing workers' compensation insurance is fundamental for the protection of Oregon's workers. ---- ***In the Matter of Tolya Meneyev, 14 BOLI 6, 14 (1995).***

□ When a respondent farm labor contractor failed to comply with the terms and provisions of a contract with the USFS by failing to show up at prework meetings and failed to begin work on the contract, causing the USFS to terminate the contract for default, the forum found the magnitude and seriousness of this violation moderate. --- ***In the Matter of Tolya Meneyev, 14 BOLI 6, 14 (1995).***

□ When respondent failed a certified payroll record 65 days late on one contract and failed to submit any records on a second contract, respondent's knowledge of his obligation to submit these records and the agency's two unheeded reminders to him to submit them were aggravating circumstances. ---- ***In the Matter of Tolya Meneyev, 14 BOLI 6, 15-16 (1995).***

□ Prior violations of statutes and rules are aggravating circumstances. ---- ***In the Matter of Jose Linan, 13 BOLI 24, 45 (1994).***

□ Breaching a contract to pay for worker's compensation insurance is quite serious because of the statutory duty to provide such insurance for the protection of workers. Knowledge of the breach over a period of a year aggravates the violation. ---- ***In the Matter of Jose Linan, 13 BOLI 24, 26, 45-46 (1994).***

□ Respondents' willful misrepresentation on a license application, in violation of ORS 658.440(1)(a), was aggravated because respondents knew their answer on the application was false, and the misrepresentation involved a court action based on the corporation's failure to pay its workers' compensation insurance premiums. -- ***In the Matter of Alejandro Lumbreras, 12 BOLI 117, 127-28 (1993).***

## F/FLC -- 5.0 CIVIL PENALTIES

- Respondent's actions as a farm labor contractor without a license, in violation of ORS 658.410 and 658.417, were aggravated by the fact that respondent was previously licensed and either knew or said he had known that his farm labor contractor activities violated the law. ---- ***In the Matter of Alejandro Lumbreras, 12 BOLI 117, 127 (1993).***
- Since licensure is at the heart of the state's effort to regulate farm labor contractors, the forum always regards acting as a farm labor contractor without a license to be a serious violation. ---- ***In the Matter of Alejandro Lumbreras, 12 BOLI 117, 127 (1993).***
- Respondents' violation of ORS 658.440(1)(d) was aggravated when respondents either knew or should have known of their failure to comply with a valid agreement to pay for workers' compensation insurance, failed to prevent or correct the violation, and failed to satisfy a judgment that arose from their breach of the agreement. ---- ***In the Matter of Alejandro Lumbreras, 12 BOLI 117, 127 (1993).***
- Respondents' violation of ORS 658.440(1)(d) for failure to pay workers' compensation insurance premiums was very serious because it resulted in the cancellation of respondents' insurance, which the farm labor contractor law required respondents to maintain. --- ***In the Matter of Alejandro Lumbreras, 12 BOLI 117, 127 (1993).***
- When respondent failed to itemize deductions on workers' written pay statements and failed to furnish any worker with a written statement stating the applicable prevailing wage under the Service Contract Act or related federal or state law in violation of ORS 658.440(1)(h), the commissioner found the magnitude and seriousness of the violations to be low. ---- ***In the Matter of Andres Ivanov, 11 BOLI 253, 266 (1993).***
- Respondent's history of an ongoing problem with timely submitting his records to the agency was an aggravating circumstance when respondent failed to timely file certified payroll records in violation of ORS 658.417(3) and OAR 839-15-300(2). His knowledge of these violations and the ongoing problem was also an aggravating factor. ---- ***In the Matter of Andres Ivanov, 11 BOLI 253, 265 (1993).***
- When respondent submitted two certified payroll records 27 days late in violation of ORS 658.417(3), the commissioner found the magnitude and seriousness to be moderate. ---- ***In the Matter of Andres Ivanov, 11 BOLI 253, 265 (1993).***
- When respondent failed to post a notice of his compliance with the law's bonding requirements, in violation of ORS 658.415(15), his failure to post a notice during the entire period of performance of the contract aggravated the violation. ---- ***In the Matter of Andres Ivanov, 11 BOLI 253, 264-65 (1993).***
- When assessing civil penalties, the commissioner considered respondent's willful misrepresentations made to the agency during the course of its investigations an aggravating circumstance for each violation found. ---- ***In the Matter of Andres Ivanov, 11 BOLI 253, 264 (1993).***
- In a farm labor contractor license revocation case, because ORS 658.453 and OAR 839-15-520(8) provide for the imposition of civil penalties, and because the rules provide that the commissioner may consider mitigating and aggravating circumstances when determining the amount of any civil penalty to be imposed, the hearing referee may take evidence on such circumstances in order to determine which sanction is appropriate, such as a license suspension instead of revocation. ---- ***In the Matter of Clara Perez, 11 BOLI 181, 195-96 (1993).***
- When respondent failed to pay hundreds of workers as agreed, each failure was a violation of ORS 658.440(1)(d). When the agency proposed to revoke a license, the exact number of violations is not critical. Respondent's violations were considered by the commissioner to be of such magnitude and seriousness that revocation of respondent's license was appropriate. ---- ***In the Matter of Clara Perez, 11 BOLI 181, 195 (1993).***
- When respondents provided certified payroll records 29 days late on one occasion in violation of ORS 658.417(3) and OAR 839-15-300(2), respondents had no prior violations of statutes or rules, and there were no other aggravating factors, the commissioner found the magnitude and seriousness of the violation low and assessed a civil penalty of \$250. ---- ***In the Matter of Cristobal Lumbreras, 11 BOLI 167, 172 (1993).***
- In assessing civil penalties, the commissioner is authorized to consider respondent's history, including prior violations, the seriousness of the current violations, and whether respondent knew he was violating the law. - ---- ***In the Matter of René Garcia, 11 BOLI 85, 91 (1992).***
- The forum found that respondent knew his activities of submitting a price on a contract and recruiting and supplying workers violated the law when the agency had warned respondent three times in a period of 18 months that his activities required a farm labor contractor license and that he was violating the law. This knowledge was an aggravating circumstance in assessing a civil penalty. ---- ***In the Matter of René Garcia, 11 BOLI 85, 91 (1992).***
- When some of respondent's workers were either unpaid or underpaid, the commissioner found this added to the seriousness of respondent's violation of acting as a farm labor contractor without a license. ---- ***In the Matter of René Garcia, 11 BOLI 85, 91 (1992).***
- When respondent violated former ORS 658.440(2)(e) (now ORS 658.440(3)(e)), the forum found three aggravating circumstances: (1) respondent had three prior violations of the farm labor contractor law; (2) respondent knew that the unlicensed person did not have a license and knew or should have known that subcontracting with him was illegal; and (3) this type of violation is particularly serious because it frustrates the commissioner's ability to implement the law's requirements, and the requirement of being licensed is a keystone in the regulatory design. ---- ***In the Matter of Efrain Corona, 11 BOLI 44, 60 (1992).***

Affirmed without opinion, *Corona v. Bureau of Labor*

and Industries, 124 Or App 211, 861 P2d 1046 (1993).

□ When one respondent partner committed four violations of ORS 658.440(3)(e) by assisting his unlicensed partner to act as a farm labor contractor, the other partner committed four violations of ORS 658.410, 658.415, and 658.417 by acting as a farm labor contractor without a license, and aggravating circumstances existed, the forum assessed a \$2,000 civil penalty on each partner for each of his four violations, for a total of \$8,000 in civil penalties against each partner. ---- ***In the Matter of Ivan Skorohodoff, 11 BOLI 8, 18-19 (1992).***

□ When respondent made a false statement on its license application, the forum found two aggravating circumstances. First, respondent's owners knew their representation about workers' compensation insurance was false, and they made other false statements to those they contracted with regarding the insurance. Second, this type of violation is particularly serious because it frustrates the commissioner's ability to implement the law's requirements, and the requirement of providing workers' compensation insurance is fundamental for the protection of Oregon's workers. ---- ***In the Matter of Z & M Landscaping, Inc., 10 BOLI 174, 182 (1992).***

□ When respondent made misrepresentations on her license application and the agency proposed to deny her a license, and one of those misrepresentations involved her failure to reveal a business address on her application, the forum considered respondent's failure to notify the agency of her change of address, as required by ORS 658.440(1)(b), as aggravating evidence that was relevant in determining the appropriate sanction for respondent's violations. ---- ***In the Matter of Amalia Ybarra, 10 BOLI 75, 83 (1991).***

□ Respondent's violation was aggravated by respondent's action as a contractor without a license and attempt to use a "straw man" as the licensee in order to get a partial exempt license, which subverted the licensing process. ---- ***In the Matter of Kenneth Vanderwall, 9 BOLI 148, 156 (1990).***

□ When evidence showed that a license applicant acted as a contractor on several occasions after he was notified that the agency proposed to deny him a license, the commissioner found that these facts, although outside of the allegations of the charging document, were aggravating circumstances that may be weighed when determining an appropriate sanction for the violations. ---- ***In the Matter of Rogelio Loa, 9 BOLI 139, 146 (1990).***

□ When an unlicensed contractor had previously been licensed, and the agency advised him he was required to obtain a license while he was acting as a contractor without a license, the commissioner held that these facts were aggravating circumstances because they showed that the contractor knew or should have known that his actions violated the law. ---- ***In the Matter of Xavier Carbajal, 8 BOLI 206, 224 (1990).***

□ When contractors failed to provide workers statements of their rights or with an agreement between

the workers and the contractor, but the number of workers was uncertain, the commissioner found four certain violations and found that the contractor's failure to provide the forms to an uncertain number of other workers constituted an aggravating factor and assessed a \$2,000 civil penalty for each of the four proved violations. ---- ***In the Matter of Xavier Carbajal, 8 BOLI 206, 224 (1990).***

□ When a contractor with a lapsed license failed to file information with the agency, failed to submit and maintain proof of his financial ability to pay wages, failed to file a wage certification, failed to furnish each worker with a statement of the worker's right and remedies, failed to comply with the terms and conditions of his employment agreements, failed to comply with the terms and conditions of his contract with the U.S. Forest Service, and there were no mitigating circumstances, the forum held that respondent's 13 total violations were very substantial and were of a magnitude and seriousness such that the forum would have refused to renew the contractor's license, had he applied for renewal. ---- ***In the Matter of Francis Kau, 7 BOLI 45, 54-55 (1987).***

□ When a contractor's 18 violations would cause the forum to refuse to renew the contractor's license, had he applied for renewal, the forum found the magnitude and seriousness of the violations "very substantial." ---- ***In the Matter of Jose Solis, 5 BOLI 180, 203 (1986).***

□ The forum found a contractor's failure to file six wage certifications when due to be violations of considerable magnitude and seriousness. ---- ***In the Matter of Jon Paauwe, 5 BOLI 168, 174 (1986).***

**5.5 --- Mitigating Circumstances (see also 6.0)**

□ In determining appropriate civil penalties, the forum considers aggravating and mitigating circumstances. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 157 (2007).***

□ Aggravating and mitigating circumstances include: (a) The history of the contractor or other person in taking all necessary measures to prevent or correct violations of statutes or rules; (b) Prior violations, if any, of statutes or rules; (c) The magnitude and seriousness of the violation; and (d) Whether the contractor or other person knew or should have known of the violation. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 157 (2007).***

□ It is the responsibility of the contractor or other person to provide the commissioner any mitigating evidence concerning the amount of the civil penalty to be imposed. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 157 (2007).***

□ Respondents' violations of ORS 658.440(1)(f) & (g) were partially mitigated by the lack of evidence showing that respondents' violations caused any person to suffer a monetary loss. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 158 (2007).*** See also *In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 51-52 (2003), affirmed without opinion, Ochoa v. Bureau of Labor and Industries, 196 Or App 639, 103 P3d 1212 (2004).*

## F/FLC -- 5.0 CIVIL PENALTIES

- It is a mitigating factor that a respondent's violations of the farm labor contracting statutes did not cause any person to suffer a monetary loss. ----- ***In the Matter of Tomas Benitez, 19 BOLI 142, 160 (2000).***
- Inability to pay a civil penalty is not a mitigating circumstance. ----- ***In the Matter of Lambertus Sandker, 18 BOLI 277, 289 (1999).***
- A contractor's unsuccessful attempts to obtain a bond did not mitigate the contractor's failure to inform the agency that he was employing more than two workers and had therefore lost his exemption from the requirement that he have a bond. ----- ***In the Matter of Lambertus Sandker, 18 BOLI 277, 289 (1999).***
- A farm/forest labor contractor's violation of the statute requiring the filing of certified payroll records was mitigated by the fact that there was no evidence that his workers had not been paid appropriately. ----- ***In the Matter of Lambertus Sandker, 18 BOLI 277, 290 (1999).***
- A farm/forest labor contractor's violation of the requirement to post a notice of bond was mitigated by the fact that there was no evidence that his workers had not been paid appropriately. ----- ***In the Matter of Lambertus Sandker, 18 BOLI 277, 290-91 (1999).***
- When the agency informed respondents that they were required to carry workers' compensation insurance, respondents' failure to carry that insurance was not mitigated by their testimony that some unidentified person said they were not required to have insurance. --- ***In the Matter of Charles Hurt, 18 BOLI 265, 276 (1999).***
- Respondents' failure to comply with contract terms was not mitigated by their inexperience as farm labor contractors or by their lack of readiness to begin work when the notice to proceed was issued. By bidding on and accepting the award of the contract, respondents represented that they were able to perform it. ----- ***In the Matter of Charles Hurt, 18 BOLI 265, 276-77 (1999).***
- Respondent's violation of ORS 658.437(2) was mitigated by his cooperation with the agency's investigation and the fact that he had no prior violations on his record. ----- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 237 (1999).***
- Respondent's 10 violations of ORS 658.440(1)(f) were mitigated by his use of an employee handbook that contained some of the statutorily required information, his cooperation with the agency's investigation, the absence of prior violations on his record, and his intent to comply with ORS 658.440(1)(f) in the future. ----- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 239 (1999).***
- Respondent's 10 violations of ORS 658.440(1)(g) were mitigated by his cooperation with the agency's investigation and his intent to comply with ORS 658.440(1)(f) in the future. ----- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 240 (1999).***
- Respondent's violation of ORS 658.417(3) was mitigated by the fact that it was his first violation. ----- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 241 (1999).***
- Respondents' lack of repeated violations during the previous two years and the fact that respondents' workers lost no wages did not justify the assessment of nominal civil penalties. ----- ***In the Matter of Mike L. Sulfridge, 18 BOLI 22, 45-46 (1999).***  

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).
- Respondents' cooperation with the agency's investigation, the absence of prior violations on their record, their intent to comply with the requirements of ORS 658.440 in the future, and the absence of any evidence showing that any worker had suffered a loss of wages as a result of respondents' violations of ORS 658.440(1)(g) were considered mitigating factors. ----- ***In the Matter of Paul A. Washburn, 17 BOLI 212, 226 (1998).***
- The commissioner found mitigating circumstances when respondent took prompt action to correct violations of failing to provide WH-151 and WH-153 forms to 41 workers; respondent provided documents to the agency within 24 hours of his conversation with a compliance specialist and apparently furnished the written statements and executed the written agreements with the workers within 28 hours, at most, after they began work; there was uncontroverted evidence that respondent had no prior violations of statutes or rules in many years as a farm labor contractor; there was uncontroverted evidence that at least some workers considered respondent a good employer and these workers had not had problems with him paying them appropriately; and respondent indicated his desire to comply with the law in the future and his regret for his past mistakes. He and his bookkeeper testified to their efforts to comply with the law and their belief that they were currently in compliance. ----- ***In the Matter of Andres Bermudez, 16 BOLI 229, 244-45 (1998).***
- The commissioner found that a respondent farmer's ignorance or, or ignoring the law was not a mitigating circumstance when the respondent farmer's stated that he was unfamiliar with "obscure ORS statutes" and suggested that the agency should have given him notice before enforcing the requirement that the user of a farm labor contractor must verify that the contractor is properly licensed,. ----- ***In the Matter of Melvin Babb, 14 BOLI 230, 239 (1995).***
- Subsequent compliance with the farm labor contractor law may be considered in mitigation of a civil penalty. ----- ***In the Matter of Jeffy Bolden, 13 BOLI 292, 300 (1994).***
- When respondent who had a Washington farm labor contractor license and a federal license recruited workers in Oregon to perform forestation work in Washington and claimed he did not know he was violating Oregon law, the forum accepted his statement that he did not believe he had violated the law as a mitigating circumstance. ----- ***In the Matter of Jose Linan, 13 BOLI 24, 46 (1994).***
- When respondent failed to post a notice of his

compliance with the bond requirements of the law, but claimed that he gave the notice to his workers to post, the commissioner held that, even if his claim were true, it would not negate the violation of ORS 658.415(15). Respondent is ultimately responsible for complying with the statute's requirements and cannot avoid liability for a failure to do so by delegating such responsibilities to his workers. ---- *In the Matter of Andres Ivanov, 11 BOLI 253, 260-61, 264 (1993).*

□ When the hearings referee granted the agency summary judgment on one of two allegations, the agency thereafter dismissed the second allegation and alleged aggravating circumstances and requested that the hearing be canceled. The hearings referee denied the agency's request because the respondent was entitled, pursuant to OAR 839-15-510, to an opportunity to present mitigating evidence for the purpose of reducing the amount of the civil penalty to be imposed. --- *In the Matter of Cristobal Lumbreras, 11 BOLI 167, 169 (1993).*

□ In a farm labor contractor license revocation case, because ORS 658.453 and OAR 839-15-520(8) provide for the imposition of civil penalties, and because the rules provide that the commissioner may consider mitigating and aggravating circumstances when determining the amount of any civil penalty to be imposed, the hearings referee may take evidence on such circumstances in order to determine which sanction is appropriate, such as a license suspension instead of revocation. ---- *In the Matter of Clara Perez, 11 BOLI 181, 195-96 (1993).*

□ When respondent subcontracted with an unlicensed farm labor contractor, respondent's belief that the subcontractor had applied for and was qualified for a license was not a mitigating factor when respondent had a duty to check for a license and knew or should have known that a subcontractor had to be licensed,. ---- *In the Matter of Efrain Corona, 11 BOLI 44, 60 (1992).*

Affirmed without opinion, *Corona v. Bureau of Labor and Industries*, 124 Or App 211, 861 P2d 1046 (1993).

□ When respondent argued that he signed two prior consent orders only after considering the hassle and expense to fight the alleged violations, the forum found this was not a mitigating factor because, in both cases, with the advice of counsel, he admitted violations of the law, the agency also dropped other allegations in consideration of respondent signed the consent orders, and no evidence suggested that respondent was coerced into signing the orders or that the violations did not occur. ---- *In the Matter of Efrain Corona, 11 BOLI 44, 60-61 (1992).*

Affirmed without opinion, *Corona v. Bureau of Labor and Industries*, 124 Or App 211, 861 P2d 1046 (1993).

□ Respondent entered into a consent order with the agency, then failed to comply with it by failing to pay over \$5,000 in wages and civil penalties and argued that it was unaware at the time it entered into the consent order that a federal investigation would freeze a payment to respondent, and respondent would be unable to borrow funds sufficient to make the \$5,000 payment.

The forum held that, even if respondent had produced evidence to establish its financial inability to make payment under the order when it came due, that inability would not form a partial defense or mitigation of respondent's failure to abide by its agreement. ---- *In the Matter of Azul Corporation, Inc., 10 BOLI 156, 161 (1992).*

□ The urgencies of contract bidding and completion do not excuse or mitigate a failure to obtain a license before acting as a farm labor contractor. ---- *In the Matter of Miguel Espinoza, 10 BOLI 96, 100 (1991).*

□ When respondent entered the farm labor contractor business, he had a duty to determine its legal requirements. A respondent's ignorance of the law does not excuse or mitigate violations. ---- *In the Matter of Miguel Espinoza, 10 BOLI 96, 10 (1991).*

□ A contractor was given copies of the farm/forest labor contractor laws and rules at the time he applied for a license, was in contact with the agency on many occasions, and testified that he did not know he was violating any laws or rules and was confused about his duty to provide workers' compensation insurance, along with his duty to submit proof of financial ability to pay wages. The forum held that his ignorance or confusion, however innocent, did not mitigate his 13 violations of the law. ---- *In the Matter of Francis Kau, 7 BOLI 45, 54-55 (1987).*

□ When a contractor was required to submit a certified payroll record by October 6, 1986, and testified that he had submitted it on January 31, 1987, but the agency had no certified payroll record on file, the contractor had no copy of the one he allegedly submitted on January 31, 1987, and the only certified payroll record received by the agency was received on the date of hearing, the forum did not find the contractor's testimony credible and that the contractor's testimony, even if believed, would not mitigate the contractor's violation of ORS 658.417(3). ---- *In the Matter of Francis Kau, 7 BOLI 45, 54 (1987).*

□ When a contractor was found to have violated ORS 658.440(1)(d) five times by failing to pay his five workers and testified that he was employed by the state, but had not made any wage payments to his former employees for at least 10 months, the forum held that contractor's claims of his good intentions of paying the workers' wages in the future did not mitigate his five violations. --- *In the Matter of Francis Kau, 7 BOLI 45, 54 (1987).*

□ In 1983, a contractor violated ORS 658.440(1)(f) by filing to provide his workers with a written agreement and statement of the worker's rights and remedies. In 1984, the contractor gave his workers a written statement that appeared to contain the information required by statute and was attempting to comply with the statute. The forum found this to be a mitigating circumstance. ---- *In the Matter of Jose Solis, 5 BOLI 180, 203 (1986).*

□ A contractor who failed to file certified payroll records when due claimed that he could not prepare and file them because the records necessary for preparing them were in the custody of his foreman, who had left the country. The forum found that those circumstances did not mitigate the contractor's violations of ORS

## F/FLC -- 6.0 LIABILITY (SEE ALSO 3.2, 6.0)

658.417(3). ----- *In the Matter of Jon Paauwe, 5 BOLI 168, 173-74 (1986).*

□ A contractor who had failed to file certified payroll records when due stated he intended to file them as soon as he recovered records from his foreman, who had left the country. The forum found that such a filing would not cure the contractor's violation of ORS 658.417(3) and such a filing, along with the intent to file, did not mitigate the violations or the civil penalty to be assessed. ----- *In the Matter of Jon Paauwe, 5 BOLI 168, 174 (1986).*

### 5.6 --- Effect of Bankruptcy

□ Respondent's bankruptcy petition did not operate to bar civil penalties for violations of the farm labor contractor law. A petition in bankruptcy does not stay state administrative proceedings undertaken pursuant to the state's police or regulatory power. 11 §USC 362(b)(4). A civil penalty so imposed and payable to the state is not dischargeable. ----- *In the Matter of Bill Martinez, 14 BOLI 214, 223 (1995).*

## 6.0 LIABILITY (see also 3.2, 6.0)

□ A respondent and her corporation were held jointly and severally liable for civil penalties assessed pursuant to respondents' single violations of ORS 658.440(1)(d). - ----- *In the Matter of Basilio Piatkoff, 28 BOLI 133, 162 (2007).*

□ A respondent and her corporation were held jointly and severally liable for civil penalties assessed pursuant to respondents' six violations of ORS 658.440(1)(f) & (g). ----- *In the Matter of Basilio Piatkoff, 28 BOLI 133, 158 (2007).*

□ An individual who was licensed as a farm labor contractor and his corporation were held and jointly and severally liable for the civil penalties assessed for respondents' two misrepresentations and willful concealment of information on their farm labor contractor application. ----- *In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 53 (2003).*

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ An individual who was licensed as a farm labor contractor and his corporation committed eight violations of ORS 658.417(3) and were held and jointly and severally liable for the civil penalties assessed for those violations. ----- *In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 51-52 (2003).*

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ An individual licensed farm labor contractor owned one company and was majority shareholder of a second company that leased employees to the first company and paid those employees for their work on reforestation/reforestation contracts. The individual farm labor contractor was held equally responsible for violations by the second company of acting as a farm/forest labor contractor without a license or

indorsement and was held jointly and severally liable for the penalties associated with the second company's violations of ORS chapter 658. ----- *In the Matter of Mike L. Sulfridge, 18 BOLI 22, 42-43 (1999).*

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ When an individual was licensed as a farm labor contractor and was the majority shareholder of a corporation doing business as an unlicensed farm labor contractor and did not submit any certified payroll records for work performed on reforestation/reforestation work, the individual and the corporation were both in violation of ORS 658.417(3) and were jointly and severally liable for the civil penalties associated with the violations. ----- *In the Matter of Mike L. Sulfridge, 18 BOLI 22, 43 (1999).*

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ When an individual was licensed as a farm labor contractor and was the majority shareholder of a corporation doing business as an unlicensed farm labor contractor and did not enter into written agreements with four workers regarding a private reforestation contract as required by ORS 658.440(1)(g), the individual and the corporation were both in violation of ORS 658.440(1)(g)) and were jointly and severally liable for the civil penalties associated with the violations. ----- *In the Matter of Mike L. Sulfridge, 18 BOLI 22, 43 (1999).*

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ An individual who was licensed as a farm labor contractor and his corporation did not submit four certified payroll records until months after they were due. The forum found the individual and his corporation both in violation of ORS 658.417(3) and jointly and severally liable for the civil penalties associated with the violations. ----- *In the Matter of Mike L. Sulfridge, 18 BOLI 22, 43-44 (1999).*

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

□ An individual farm labor contractor and his corporation did not enter into a written agreement with one employee and entered into written agreements with other employees that did not include all the elements required by ORS 658.440(1)(g), committing 15 violations of that statute. The individual and his corporation were held jointly and severally liable for the penalties associated with the violations. ----- *In the Matter of Mike L. Sulfridge, 18 BOLI 22, 44-45 (1999).*

Affirmed without opinion, *Mike Sulfridge dba Mike Sulfridge Contracting, Inc., and A & B Cutters, Inc. v. Bureau of Labor and Industries*, 168 Or App 498 (2000).

## F/FLC -- 7.0 AFFIRMATIVE DEFENSES

□ A corporation that engages in farm/forest labor activity and its majority shareholder(s) are equally liable for violations of the Farm Labor Contractors Act. Both must be licensed to operate as a farm labor contractor. The legislature has expressed its intent to hold a majority shareholder, together with the majority shareholder's corporation, responsible for farm/forest labor activities, including violations. The majority shareholder's license is a derivative of the license issued to the corporation. There is only one license, not two or more, when a corporation is the licensee. Limiting the penalty for unlicensed activity to the corporation would defeat the apparent purpose of the statute. ---- ***In the Matter of Manuel Galan, 15 BOLI 106, 114, 131-32 (1996).***

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

□ Each partner in a farm labor contractor business must be licensed. When respondent, a licensed farm labor contractor, bid on two contracts with unlicensed partners, those partners acted in violation of ORS 658.405 to 658.503. By assisting his unlicensed partners to act in violation of the law, respondent violated ORS 658.440(3)(e). ---- ***In the Matter of Alexander Kuznetsov, 14 BOLI 185, 192-93 (1995).***

□ A corporate respondent and an individual respondent, who was the majority shareholder and president of the corporation, were jointly licensed as a farm labor contractor and were jointly responsible for any violation of the farm labor contractor laws and jointly liable for any sanction imposed for a violation. ---- ***In the Matter of Jose Carmona, 14 BOLI 195, 210-11 (1995).***

□ When an individual respondent who was licensed as majority shareholder of respondent corporation and facing a refusal to renew the corporation's license argued that the violations found were corporate acts and not chargeable to his license, and that the signature of an authorized corporate representative other than himself was not chargeable to him, the commissioner found that ORS 658.410(2) sets out that the majority shareholder's license is derivative of that issued to the corporation, that there is but one license when a corporation is a licensee, and that the statute does not treat the corporation and the majority shareholder separately. ---- ***In the Matter of Robert Gonzalez, 12 BOLI 181, 198 (1994).***

□ When one respondent partner committed four violations of ORS 658.440(3)(e) by assisting his unlicensed partner to act as a farm labor contractor, and the other partner committed four violations of ORS 658.410, 658.415, and 658.417 by acting as a farm labor contractor without a license, each partner was assessed civil penalties for four violations. ---- ***In the Matter of Ivan Skorhodoff, 11 BOLI 8, 18-19 (1992).***

□ The actions, inactions, and statements of the owners of a corporate respondent were properly imputed to the respondent corporation. ---- ***In the Matter of Z & M Landscaping, Inc., 10 BOLI 174, 179 (1992).***

□ In a farm/forest labor contractor case in which the contractor's husband was either her employee or her agent, and his actions, inactions and statements were

made in the course and within the scope of that employment or agency, the contractor was responsible for those actions, inaction, and statements. ---- ***In the Matter of Deanna Donaca, 6 BOLI 212, 232, 236 (1987).***

□ In a farm/forest labor contractor case in which the licensed contractor was a corporation, the actions and knowledge of the corporation's owner and president, the contractor's supervisor, and the contractor's foremen were properly imputed to the contractor. ---- ***Highland Reforestation, Inc., 4 BOLI 185, 203 (1984).***

## 7.0 AFFIRMATIVE DEFENSES

□ Respondents' argument that the agency waived "compliance of the actions complained of in the agency's Notice of Intent" by allowing respondents the opportunity to correct deficient payroll records each time they were submitted was dismissed as having no merit because the agency never extended the statutory deadline for submitting certified true copies of payroll records, the agency reiterated in its reminder letters to respondents the rule governing submission deadlines and the requirement that respondent's reports must contain all statutory elements, and no evidence in the record showed that respondents complied with the agency's reminders. ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 35-36 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ Waiver is an affirmative defense that respondents bear the burden of proving by a preponderance of the evidence. ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 36 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ Waiver is an intentional act that must be plainly and unequivocally manifested either "in terms or by such conduct that clearly indicates an intention to renounce a known privilege or power." ---- ***In the Matter of Rodrigo Ayala Ochoa, revised final order on reconsideration, 25 BOLI 12, 35 (2003).***

Affirmed without opinion, *Ochoa v. Bureau of Labor and Industries*, 196 Or App 639, 103 P3d 1212 (2004).

□ The forum rejected respondent's affirmative defense that penalties for any violations of ORS 658.440(1)(f) should be suspended because the violations were corrected within 15 days of the date on which respondent was put on notice of them. ---- ***In the Matter of Thomas L. Fery, 18 BOLI 220, 238 (1999).***

□ Application of an administrative rule to a contractor's activities after the effective date of that rule, performed on a contract awarded before that date, did not unconstitutionally impair the effectiveness of the contract. ---- ***In the Matter of Manuel Galan, Jr., 17 BOLI 112, 142 (1998).***

Affirmed without opinion, *Galan v. Bureau of Labor*

## F/FLC – 8.0 FINAL ORDER ON INFORMAL DISPOSITION

*and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ When an individual respondent, licensed as majority shareholder of respondent corporation and facing a refusal to renew the corporation's license, argued that the violations found were corporate acts and not chargeable to his license, and that the signature of an authorized corporate representative other than himself was not chargeable to him, the commissioner found that ORS 658.410(2) sets out that the majority shareholder's license is derivative of that issued to the corporation, that there is but one license when a corporation is a licensee, and that the statute does not treat the corporation and the majority shareholder separately. ---- ***In the Matter of Robert Gonzalez, 12 BOLI 181, 198 (1994).***

□ When the commissioner found multiple violations of failure to file certified payroll records, of assisting unlicensed forest labor contractors, and of failure to comply with agreements entered into as a forest labor contractor, the latter based on breach of a consent order resolving prior accusations of violations of the farm labor contractor law; a former agency employee testified that failure to file certified payroll records was a common violation that was not always prosecuted; and respondents argued that they had been the victim of selective enforcement and that the consent order was the result of duress, the commissioner found no substantial evidence of duress or that other forest labor contractors, particularly those operating under consent orders resulting from prior violations, were not the subject of enforcement action in similar situations. ---- ***In the Matter of Robert Gonzalez, 12 BOLI 181, 198 (1994).***

□ A respondent's belief that an unlicensed person has applied for and is qualified for a license is no defense to a violation of a charge of assisting an unlicensed person to act in violation of Oregon's farm labor contractor law. - ---- ***In the Matter of Efrain Corona, 11 BOLI 44, 55 (1992).***

Affirmed without opinion, *Corona v. Bureau of Labor and Industries*, 124 Or App 211, 861 P2d 1046 (1993).

□ When respondent entered the farm labor contractor business, he had a duty to determine its legal requirements. A respondent's ignorance of the law does not excuse or mitigate violations. ---- ***In the Matter of Miguel Espinoza, 10 BOLI 96, 10 (1991).***

□ When a contractor was given copies of the farm/forest labor contractor laws and rules at the time he applied for a license; he was in contact with the agency on many occasions; and his testimony at hearing showed that he did not understand his obligations under the law, that he did not know he was violating any laws or rules and was confused about his duty to provide workers' compensation insurance, along with his duty to submit proof of financial ability to pay wages, the forum held that his ignorance or confusion, however innocent, did not mitigate his 13 violations of the law. ---- ***In the Matter of Francis Kau, 7 BOLI 45, 54-55 (1987).***

□ When the agency alleged that a contractor assisted an unlicensed person, the contractor claimed the

defense that she believed the unlicensed person was exempt because his business was family-owned. OAR 839-15-130(15) provides a "family business exception" to Oregon's farm/forest labor contractor licensing requirements that has two explicit limitations pertinent to this case. First, the exemption applies only to individuals who are working by themselves or with only the assistance of their spouse, son, daughter, brother, sister, mother or father. Second, the exemption applies only when the contract or agreement under which the allegedly exempt individual is working is between that individual and the farmer, owner, or lessee of the land involved. When the evidence revealed that the unlicensed person had a subcontract with the contractor, and the unlicensed person employed at least one non-family employee, the forum concluded that the unlicensed person was not exempt under OAR 839-15-130(15). The forum held that the contractor was charged with knowledge of the law, noting that even a quick reading of OAR 839-15-130(15), or an inquiry to the agency, would have apprised contractor of the fact that a subcontractor cannot qualify for this exemption. --- ***In the Matter of Deanna Donaca, 6 BOLI 212, 239 (1987).***

□ When respondent, who had breached a contract with a subcontractor, asserted the defense that the breach was justified because the subcontractor had breached a different contract with respondent, the forum held that this did not excuse respondent's breach of contract and found a violation of ORS 658.440(1)(d). ---- ***In the Matter of Deanna Donaca, 6 BOLI 212, 238 (1987).***

## 8.0 FINAL ORDER ON INFORMAL DISPOSITION

□ When a hearing was canceled based on respondent's agreement to sign a consent order providing for payment of civil penalties for admitted violations and prohibiting reapplication for a farm/forest labor contractor license for a period of three years, and respondent thereafter failed to sign the order or pay the agreed penalties, the commissioner entered an order based on the agreed disposition. ---- ***In the Matter of Fidel Hernandez, 14 BOLI 149, 154 (1995).***

## 9.0 ADMINISTRATIVE RULE INTERPRETATION

□ In order to give effect to the intent of the agency in enacting OAR 839-015-0520(3)(m), the forum relied on the PGE template for statutory interpretation to determine the meaning of the word "misconduct." ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 167 (2007).***

□ In determining the meaning of an administrative rule, the forum uses the PGE template for statutory interpretation. ---- ***In the Matter of Basilio Piatkoff, 28 BOLI 133, 167 (2007).***

□ When interpreting an administrative rule, the forum must attempt to discern the agency's intent. The forum's inquiry begins with an examination of the text and context of the rule. Context includes other provisions of the same rule, other related rules, the statute pursuant to which the rule was created, and other related statutes. --

--- *In the Matter of Basilio Piatkoff, 28 BOLI 133, 167 (2007).*

□ When interpreting the word “misconduct” in the agency’s administrative rule, the forum relied on its plain, natural and ordinary meaning contained in *Webster’s Third New Int’l Dictionary* because it was not defined anywhere in the rule, related rules, related statutes, or in any of the commissioner’s previous final orders. ---- *In the Matter of Basilio Piatkoff, 28 BOLI 133, 167 (2007).*

□ Respondents sought postponement of the hearing until the agency adopted rules defining recruiting, soliciting and supplying as used in ORS 658.405. Respondents argued that the formal rulemaking procedures set forth in ORS chapter 183 were required. Finding that “recruit” and “solicit” were previously defined in *In the Matter of Leonard Williams, 8 BOLI 57 (1989)*, the commissioner ruled that to be an example of rulemaking through a contested case decision. ---- *In the Matter of Manuel Galan, 15 BOLI 106, 114, 133 (1996).*

Affirmed without opinion, *Staff, Inc. v. Bureau of Labor and Industries*, 148 Or App 451, 939 P2d 174, rev den, 326 Or 57, 944 P2d 947 (1997).

**10.0 CONSTITUTIONALITY**

□ Application of an administrative rule to a contractor’s activities after the effective date of that rule, performed on a contract awarded before that date, did not unconstitutionally impair the effectiveness of the contract. ---- *In the Matter of Manuel Galan, Jr., 17 BOLI 112, 142 (1998).*

Affirmed without opinion, *Galan v. Bureau of Labor and Industries*, 167 Or App 259 (2000), rev den 332 Or 137 (2001).

□ The constitutional prohibitions against *ex post facto* laws are generally confined to penal statutes. The prohibitions do not apply in an administrative hearing to revoke a farm labor contractor license. ---- *In the Matter of Scott Nelson, 15 BOLI 168, 189 (1996).*

□ When the agency has adopted rules stating that, when assessing a person’s character, competence, and reliability, the agency will consider whether the person made workers’ compensation insurance premium payments when due (OAR 839-15-145(6)) and providing that failure to make workers’ compensation insurance premium payments when due demonstrates that the person is unfit to act as a farm labor contractor (OAR 839-15-520(3)(j)), and when the agency has interpreted these rules through a contested case hearing holding that, when determining a farm labor contractor’s fitness to be licensed, the agency will consider whether the licensee made *sufficient* workers’ compensation insurance premium payments when due, the phrase “sufficient payment” is not a nullity and does not permit purely *ad hoc* discretion, in violation of the Oregon and US constitutions. ---- *In the Matter of Scott Nelson, 15 BOLI 168, 182-83 (1996).*

□ Oregon’s farm labor contractor law applies to the recruitment of workers in Oregon to perform work outside of Oregon. Regulation of such recruitment is within the constitutional power of Oregon to regulate and

is not preempted by federal law. ---- *In the Matter of Jose Linan, 13 BOLI 24, 36 (1994).*

□ When the commissioner found multiple violations of failure to file certified payroll records, of assisting unlicensed forest labor contractors, and of failure to comply with agreements entered into as a forest labor contractor, the latter based on breach of a consent order resolving prior accusations of violations of the farm labor contractor law; a former agency employee testified that failure to file certified payroll records was a common violation that was not always prosecuted; and respondents argued that they had been the victim of selective enforcement and that the consent order was the result of duress, the commissioner found no substantial evidence of duress or that other forest labor contractors, particularly those operating under consent orders resulting from prior violations, were not the subject of enforcement action in similar situations. ---- *In the Matter of Robert Gonzalez, 12 BOLI 181, 1980 (1994).*