

839-020-0004

Definitions

As used in ORS 653.010 to 653.261 and these rules, unless the context requires otherwise:

- (1) "Administrator" means the Administrator of the Wage and Hour Division.
- (2) "Adult" means an individual of 18 years of age or more.
- (3) "Adult foster home" means any family home or facility in which residential care is provided in a homelike environment for five or fewer adults who are not related to the provider by blood or marriage.
- (4) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. "Agricultural employment" is employment in "Agriculture" as herein defined.
- (5) "Bureau" means Bureau of Labor and Industries.
- (6) "Casual basis" as used in ORS 653.020(2) and these rules means employment which is irregular and intermittent and which is not performed by an individual whose vocation is providing domestic services.
- (7) "Child care service person" means an individual who performs child care services in the home of the individual or the child and who during any part of a 24 hour period provides custodial care and protection to infants or children.
- (8) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.
- (9) "Commissions" or "pay on a commission basis" means payment based on a percentage of total sales, or of sales in excess of a specified amount, or on a fixed allowance per unit agreed upon as a measure of accomplishment or on some other formula and may be the sole source of compensation or payment in addition to other compensation.
- (10) "Companionship services", as used in ORS 653.020(14) and in these rules, means those services which provide fellowship, care and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Such services may include household work related to the care of the elderly or infirm person such as meal preparation, bed making, washing of clothes and other similar services. They may also include the performance of general household work: provided, however, that such work is incidental, i.e., does not exceed 20 percent of the total weekly hours worked. Individuals employed in domestic service employment in or about a family home to provide companionship services are not required to be employed by the individual for whom they provide such services. The term "companionship services" does not include services relating to the care and protection of the elderly or infirm which require and are performed by trained personnel, such as a registered or practical nurse. While such trained personnel do not qualify as companions, this fact does not remove them from the category of covered domestic service employees when employed in or about a family home.
- (11) "Division" means the Wage and Hour Division of the Bureau of Labor and Industries.
- (12) "Domestic service" means services of a household nature performed by an employee in or about a family home (permanent or temporary) of the person by whom the employee is employed. The term includes, but is not limited to, employees such as cooks, waiters, butlers,

valets, maids, housekeepers, governesses, nurses, janitors, gardeners, and companions to the elderly and infirm.

(13) "Domicile" means the permanent residence of a person or the place to which that person intends to return even though that person may actually reside elsewhere.

(14) "Employed on a seasonal basis at", as used in ORS 653.020(10) and in these rules, means employment that occurs during the time the organized camp provides services to campers at the camp site where campers are located. The term includes employment at the camp site in duties preparatory to the opening or closing of the camp site. The term includes employment during the camping season only and does not include full time, year around employment.

(15) "Employer" has the same meaning as that in ORS 653.010(3).

(16) "Fair market value" means an amount not to exceed the retail price customarily paid by the general public for the same or similar meals, lodging or other facilities or services provided to the employee by the employer. In determining the fair market value of meals, lodging and other facilities and services, the bureau will be guided by these rules and by Title 29, CFR Part 531 — Wage Payments under the Fair Labor Standards Act of 1938, where applicable.

(17) "Family home", as used in ORS 653.020(2) and this section, means a residence, the purpose of which is to provide an abode for the owner or renter of the residence and family members of the owner or renter. For example, a boarding house or an adult foster care home are not family homes for purposes of ORS 653.020(2) and these rules. However, when casual domestic service work is performed in structures where the owner or renter resides and operates a business, such work may qualify as exempt under ORS 653.020(2) depending upon all the facts of the particular arrangement.

(18) "Homeworker" means any employee suffered or permitted to produce goods or services for an employer in or about a home, apartment or room in a residence in which that employee or other employees of an employer resides, regardless of the source of the materials used by the homeworker in such production.

(19) "Hours worked" means all hours for which an employee is employed by and required to give to the employer and includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place and all time the employee is suffered or permitted to work. "Hours worked" includes "work time" as defined in ORS 653.010(11).

(20) "Immediate family" means grandfather, grandmother, father, mother, son, daughter, sister, brother, uncle or aunt.

(21) "Minimum wage" means the rate of pay prescribed in ORS 653.025 and 653.030.

(22) "Minor" means an individual of 17 years of age or less.

(23) "Organized camp" has the same meaning as that in ORS 653.010(6).

(24) "Primary duty" means, as a general rule, the major part, or over 50 percent, of an employee's time. However, a determination of whether an employee has management as the employee's primary duty must be based on all the facts of a particular case. Time alone is not the sole test and in situations where the employee does not spend over 50 percent of the employee's time in managerial duties, the employee might have management as a primary duty if other pertinent factors support such a conclusion. Factors to be considered include, but are not limited to, the relative importance of the managerial duties as compared with other duties, the frequency with which the employee exercises discretionary powers, the relative freedom from supervision and the relationship between the salary paid the employee and wages paid other employees for the kind of non-exempt work performed by the supervisor.

(25) "Primary school" means a learning institution containing any combination of grades Kindergarten - 8 or age level equivalent.

(26) "Region" means a geographic area for which ORS 653.025 establishes a minimum rate of wage.

[(26)]**(27)** "Reside" means a personal presence at some place of abode with no present intention of definite and early removal and with the intent to remain for an undetermined period, but not necessarily combined with the intent to stay permanently.

[(27)]**(28)** "Resident manager" means an employee of an adult foster home who is domiciled at the home and who is directly responsible for the care of residents in the home on a day to day basis.

[(28)]**(29)** "Salary" means a predetermined amount constituting all or part of the employee's compensation paid for each pay period of one week or longer (but not to exceed one month). The predetermined amount may not be any amount less than the equivalent of a monthly salary calculated by multiplying the wage set pursuant to ORS 653.025 by 2,080 hours per year, then dividing by 12 months.

[(29)]**(30)** "Salary basis" means a salary as defined in section ([28]**(29)**) of this rule, which is not subject to deduction because of lack of work for part of a work week, however, deductions for absences of one day or more may be made if the employee is absent for other reasons. Deductions may not be made for absences of less than one day, except as permitted for employers covered by the federal Family and Medical Leave Act of 1993, Public Law 103-3, for part-day absences due to leave pursuant to that law. Employees who are not paid for workweeks in which they performed no work are considered to be on a salary basis provided they are paid on a salary basis in workweeks when work is performed.

(a) Payment of additional compensation is not inconsistent with the salary basis of payment.

(b) Compensation paid in the form of fees is not inconsistent with the salary basis of payment, provided the fees paid in each pay period are not less than the amount required to be paid pursuant to ORS 653.025 and meet the requirements for fee payments under Title 29, Code of Federal Regulations, Part 541.605 and related regulations as amended April 23, 2004.

[(30)]**(31)** "Secondary school" means a learning institution containing any combination of grades 9–12 or age level equivalent and includes those institutions that provide junior high schools which include 9th grade.

[(31)]**(32)** "Violation" means a transgression of any statute or rule, or any part thereof and includes both acts and omissions.

[(32)]**(33)** "Willfully" means knowingly. An action is done knowingly when it is 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 willfully if the person has the means to inform ***[himself or herself]*****the person's self** but elects not to do so. For purposes of these rules, the employer is presumed to know the requirements of ORS 653.010 to 653.261 and these rules.

Stat. Auth.: OL, Ch. 012, 2016, ORS 651.060(4) & ORS 653.040

Stats. Implemented: OL Ch. 012, 2016 & ORS 653.025

839-020-0010

Payment of Minimum Wages – Generally

(1) Unless exempt under ORS 653.020, an employer is required to pay each employee it employs in the state no less than the minimum rate(s) of wage for the applicable region(s) as specified in ORS 653.025 and OAR 839-020-0011 for each hour worked by the employee.

(2) Employees shall be paid no less than the applicable minimum wage for all hours worked, which includes "work time" as defined in ORS 653.010(11). If in any pay period the combined wages of the employee are less than the applicable minimum wage, the employer shall pay, in addition to sums already earned, no less than the difference between the amounts earned and the minimum wage as prescribed by the appropriate statute or administrative rule.

(3) Employers may include commission and bonus payments to employees when computing the minimum wage. Such commission or bonus payment may only be credited toward employees' minimum wages in the pay periods in which they are received.

Stat. Auth.: OL, Ch. 012, 2016, ORS 651.060(4) & ORS 653.040

Stats. Implemented: OL Ch. 012, 2016 & ORS 653.025

839-020-0011

Determination of Applicable Region and Minimum Wage Rate to be Paid for Work Performed by Employees

The applicable region and minimum wage rate to be paid to employees pursuant ORS 653.025 and OAR 839-020-0010 shall be determined as follows:

(1) Work performed at a permanent fixed business location of the employer in Oregon. (a) If an employee performs more than 50% of the employee's work in a pay period at the employer's permanent fixed business location in Oregon, the applicable minimum wage rate to be paid to the employee by the employer shall be determined based on the region in which such business is located.

(b) If an employee makes deliveries as a part of the employee's job and starts and ends the employee's work at the employer's permanent fixed business location, the minimum rate of wage required to be paid to the employee by the employer is the applicable rate for the region in which such business is located.

(2) Work performed other than at the employer's permanent fixed business location. (a) If an employee does not perform more than 50% of the employee's work in a pay period at the employer's permanent fixed business location in Oregon pursuant to section (1) of this rule, the region in which the employee performs work is considered to be the employer's location for purposes of determining the applicable minimum wage rate to be paid. The employer is required to pay no less than this rate for each hour worked during the pay period.

(b) In the event an employee performs work in more than one region in a pay period, the employer must pay either:

(A) the applicable minimum rates of wage for each hour worked in each region in which the employee worked; or

(B) the highest minimum rate of wage required for any region in which the employee worked for all hours worked by the employee during the pay period.

(c) If an employee performs work in more than one region in a pay period, the employer must maintain records of the locations in which the employee worked unless pursuant to paragraph (b)(B) of this section, the employer pays the highest rate of wage required for any region in which the employee worked for all hours worked by the employee during the work period.

Stat. Auth.: OL, Ch. 012, 2016, ORS 651.060(4) & ORS 653.040

Stats. Implemented: OL Ch. 012, 2016 & ORS 653.025