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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

FILED
10/26/2017 3:49 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updating division 1 and 20 rules to implement OL Ch. 685 (2017).

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/24/2017 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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Filed By:
Paloma Sparks
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NEED FOR THE RULE(S):

Implementation of OL Ch. 685 (2017)

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

FISCAL AND ECONOMIC IMPACT:

No additional impact from rules.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

No additional impact from rules.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were part of the Rule Advisory Committee

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

839-001-0100, 839-001-0125, 839-001-0143, 839-001-0145, 839-001-0147, 839-001-0148, 839-001-0155, 839-

001-0160, 839-020-0400, 839-020-0410, 839-020-0415, 839-020-0417, 839-020-0420, 839-020-1010

AMEND: 839-001-0100

RULE SUMMARY: Implements OL Ch. 685 (2017).

CHANGES TO RULE:

839-001-0100

Definitions for Regulations Pertaining to Maximum Hours of Work in Mills, Factories, Manufacturing Establishments ¶¶

As used in ORS 652.010 to 652.030 and in OAR 839-001-0100 to 839-001-0200, unless the context requires otherwise:¶¶

(1) Administrative duties means office or non-manual work directly related to the employers management policies or general business operations.¶¶

(2) "Agent of the Employer-" includes any person acting as the employer's agent for purposes of assigning work, assigning hours of work, or authorizing overtime payments to employees.¶¶

(23) "Bureau-" means the Bureau of Labor and Industries of the State of Oregon.¶¶

(34) "Commissioner-" means the Commissioner of the Bureau of Labor and Industries.¶¶

(45) "Day-" or "Day of 24 Hours-" means any time period of 24 consecutive hours as determined by the employer.¶¶

(56) Direct processing of goods means the use of machinery in the production of manufactured goods.¶¶

(7) "Employ-" includes to suffer or permit to work.¶¶

(68) "Employed in-" refers to employment of employees in the actual place specified in ORS 652.010 to 652.030.

Employees who are not performing duties in the named places are not "employed in-" those places.¶¶

(79) "Employee-" means any individual employed by an employer.¶¶

(810) "Employer-" includes any person acting directly or indirectly in the interest of an employer in relation to an employee.¶¶

(911) "Factory-" means a building or set of buildings with facilities for manufacturing; the seat of some kind of production. "Factory-" in the context used in these rules is a "manufacturing establishment"-.¶¶

(102) "Finished Forest Products-" means a forest product ready for sale to a wholesaler or retailer of finished products.¶¶

(113) Manufacturing Establishment means machinery means material-handling equipment anyd place where machinery is used for manufacturing purposes:¶¶

(a) Manufacturing in the context used in these rules means the process of making goods or any material produced by machinery; anything made from raw materials by machinery; the production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, by the use of machinery;¶¶

(b) As used in this subsection, machinery means power driven machinery by electricity, nuclear and fossil fuels, hydroelectric, geothermal, or some power source other than by human hand, foot, breath or otherwiseower-driven machines powered by electricity, nuclear or fossil fuels, hydroelectric power, geothermal power or another power source other than by human hand, foot or breath.¶¶

(14) Manufacturing means the process of using machinery to transform materials, substances or components into new products.¶¶

(15) Manufacturing establishment means an establishment engaged in manufacturing.¶¶

(126) "Mill-" means a building or collection of buildings with machines for manufacturing. "Mills-" in the context used in these rules are "manufacturing establishments".¶¶

(17) Perishable product means any product that may spoil, deteriorate or undergo other material changes that render it unsuitable for the use for which it was produced. Perishable product includes agricultural crops, meat and fish.¶¶

(138) "Primary Duty-" means duties the employee is engaged in over 50 percent of the time the employee is

employed in any work-week.¶

(19) Undue hardship period means the period of time during which perishable product must be processed after harvesting, slaughter or catch.¶

(20) Workweek means a fixed period of time established by an employer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods. A workweek may begin on any day of the week and any hour of the day and need not coincide with a calendar week. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade overtime requirements.

Statutory/Other Authority: ORS 651.060(4), ~~652~~ORS 652, OL Ch. 685 (2017 Laws)

Statutes/Other Implemented: ORS 652.010 - 652.030, OL Ch. 685 (2017 Laws)

AMEND: 839-001-0125

RULE SUMMARY: Implement changes to overtime statutes by OL Ch. 685 (2017 Laws).

CHANGES TO RULE:

839-001-0125

Individual Exemptions from Regulations Pertaining to Maximum Hours of Work in Mills, Factories, Manufacturing Establishments ¶¶

(1) The following employees are exempt from the provisions of ORS 652.020:¶¶

(a) Any employee whose primary duty is that of a member of a logging train crew;¶¶

(b) Any employee whose primary duty is that of ~~watchman/woman~~ guard;¶¶

(c) Any employee whose primary duty is ~~that of fireman/woman. As used in this rule, the term fireman means a person whose primary duty is to operate and clean boilers or to maintain fuel and steam pressure levels in those boilers;~~¶¶

(d) Any employee who ~~is one of his/her regular duties is engaged~~ engaged regularly in the transportation of other employees to and from work;¶¶

(e) Any employee whose primary duty is that of making necessary repairs. This includes employees conducting maintenance on buildings, equipment or machinery;¶¶

(f) Employees engaged in emergency work pursuant to section (2) of this rule;¶¶

(g) Any employee whose primary duty is that of cleaning, guarding, repairing and otherwise caring for the living quarters and immediate surrounding areas of other employees;¶¶

(h) Any employee whose primary duty is that of feeding, grooming, guarding or otherwise caring for livestock by, among other things, cleaning and repairing the areas in which the livestock is kept;¶¶

(i) Any employee whose primary duty is to be employed in mess_halls where meals are served to other employees. This would include any and all employment necessary to conduct the mess_hall operations;¶¶

(j) Any employee whose primary duty is that of supervising and directing work. This includes supervisors, managers, ~~foremen/women~~ and persons who are temporarily acting in these capacities in the absence of the named employees;¶¶

(k) Any employee whose primary duty is the loading and removal of finished forest products. This includes employees engaged in shipping or otherwise removing the final finished forest product from the establishment's premises. This applies to finished products only and not to products shipped for further processing at another location.; ¶¶

(l) Any employee whose principal duties are administrative in nature; or¶¶

(m) Any employee who is not engaged in the direct processing of goods in the usual course of the employees duties. ¶¶

(2) Employees engaged in activities under emergency situations are only exempt when the emergency puts life or property in imminent danger. In order to be exempt, therefore, employees must be employed in an emergency situation which threatens to harm or destroy life or property. When the normal production process is interrupted by a breakdown of machinery or unexpected absences of employees, life and property are not normally threatened with harm or destruction. For this reason, the exemption is not applicable to normal routine operational occurrences.¶¶

(3) Employees who are party to a collective bargaining agreement are not subject to ORS 652.020, provided that:¶¶

(a) The agreement is in effect at the employee's work site;¶¶

(b) The agreement contains a provision which limits the employee's required hours of work; and¶¶

(c) The agreement contains a provision for the payment of overtime hours of work.¶¶

(4) Except as provided in section (5) of this rule, employees who are party to a collective bargaining agreement which, for any reasons, was not renewed, extended or not otherwise in force are not subject to ORS 652.020, provided that:¶¶

(a) The agreement was in effect at the employee's work site;¶¶

- (b) The limits on the employee's required hours of work continue as if the agreement were still in effect; and¶
- (c) The payment of overtime continues as if the agreement were still in effect.¶
- (5) Section (4) of this rule does not apply under the following circumstances:¶
- (a) Employees who are party to the collective bargaining agreement are locked out;¶
- (b) Employees who are party to the collective bargaining agreement are engaged in a strike; or¶
- (c) The employer has unilaterally implemented new terms and conditions of employment.

Statutory/Other Authority: ORS 651.060(4), 652, OL Ch. 685 (2017)

Statutes/Other Implemented: ORS 652.020, OL Ch. 685 (2017)

AMEND: 839-001-0143

RULE SUMMARY: Implementation of OL Ch. 685 and updates to manufacturing overtime rules.

CHANGES TO RULE:

839-001-0143

~~Determination of the Work Week; Failure to Make Determination for Regulations Pertaining to Maximum Hours of Work in Mills, Factories, Manufacturing Establishments~~ Failure to Establish a Workweek

~~(1) As used in OAR 839-001-0100, work week means any seven consecutive days as determined by the employer. The employer shall establish the beginning day and the ending day to be used by the employer for purposes of determining the primary duty of the employee.¶~~

~~(2) Once if an employer fails to establish, the beginning day shall not be changed unless the change is intended to be permanent and is not designed to circumvent the provisions of ORS 652.020 or these rules.¶~~

~~(3) If an employer fails to establish the beginning day of the work week as provided for in section (1) of this rule, of the workweek as provided for in ORS 652.020.(1)(b) and OAR 839-001-0100(9) the Bureau shall consider the work-week to begin on the day the individual employee commences work and to end seven consecutive days after the work began.~~

Statutory/Other Authority: ORS 651.060(4), 652

Statutes/Other Implemented: ORS 652.020

AMEND: 839-001-0145

RULE SUMMARY: Updating manufacturing overtime rules

CHANGES TO RULE:

839-001-0145

Determination of Employees "Employed in" a Named Establishment for Regulations Pertaining to Maximum Hours of Work in Mills, Factories, Manufacturing Establishments ¶

~~(1) As used in ORS 652.020, the term employed in refers to employees who are actually employed in the mill, factory or manufacturing establishment. Employees who are employed by the same employer but not employed to perform duties in a mill, factory, or manufacturing establishment are not covered by ORS 652.020 because they are not employed in the establishment.¶~~

~~(2) Employees who are employed to perform duties that do not include work in connection with production machinery in a mill, factory, or manufacturing establishment but perform their duties in a location that is physically separated from the actual production process by means of an architectural barrier, are not covered by ORS 652.020 because they are not employed in the establishment.~~

Statutory/Other Authority: ORS 651.060(4), 652

Statutes/Other Implemented: ORS 652.020, OL Ch. 685 (2017)

ADOPT: 839-001-0147

RULE SUMMARY: Adopting new rule to implement new maximum working hours provisions in OL Ch. 685 (2017).

CHANGES TO RULE:

839-001-0147

Employee's Written Consent to Work up to 60 Hours in a Workweek

(1) Pursuant to ORS 652.020(2) an employer is prohibited from requiring or permitting an employee to work over 55 hours in one workweek except that the employer may permit an employee to work up to 60 hours in one workweek if the employee requests or consents in writing to work more than 55 hours in one workweek.¶

(2) Employers must obtain written consent from employees prior to permitting employees to work in excess of 55 hours in one workweek.¶

(3) The employer must retain and keep available to the commissioner a copy of each employees written consent during the duration of the employees employment and for no less than six months after the termination date of the employee.¶

(4) The commissioner shall create a template for the written consent that employers may, but are not required to, use to document the employees written consent.

Statutory/Other Authority: ORS 651.060(4), ORS 652, OL Ch. 685 (2017)

Statutes/Other Implemented: ORS 652, OL Ch. 685 (2017)

ADOPT: 839-001-0148

RULE SUMMARY: Implements new provisions regarding maximum work hours and undue hardship exceptions.

CHANGES TO RULE:

839-001-0148

Undue Hardship Notices and Employee's Written Consent

(1) Pursuant to the provisions of ORS 652.020(4), an employer that processes perishable products may be exempt from the restrictions on maximum workweek hours if an undue hardship exists. To claim such an exemption, an employer must provide notice of the undue hardship period to the commissioner within seven calendar days of the beginning of the hardship period permitting employees to work more than 55 hours in one workweek (or more than 60 hours if the employee has previously consented to work up to 60 hours in one workweek pursuant to ORS 652.020[2][b] and OAR 839-001-0147). The notice submitted by the employer to the commissioner must include:¶

(a) The name and address of the employer;¶

(b) A description of the reasons for the undue hardship period;¶

(c) The start and expected end dates of the undue hardship period;¶

(d) An estimate of the number of employees whose work hours will exceed the maximum workweek hours because of the undue hardship exemption; ¶

(e) The start and end dates of any undue hardship periods previously claimed by the employer in the same calendar year;¶

(f) The printed name and signature of the person submitting the notice, with the date of signature.¶

(2) The employers notice of the undue hardship period may be submitted on Form WH-262, which is available to any interested person. An employer may copy this form or use a similar form provided such form contains all the elements of Form WH-262. The notice must be delivered to: Bureau of Labor and Industries, Wage and Hour Division, 800 NE Oregon Street, Suite 1045, Portland, OR 97232-2180. ¶

(3) When claiming an undue hardship exemption, an employer must obtain written consent from each employee whose work hours, pursuant to ORS 652.020(2)(c), will exceed the maximum workweek hours because of the undue hardship exemption. The written consent, which must be completed by the employee prior to performing work during the undue hardship period, must include:¶

(a) A description of the employers reasons for the undue hardship period;¶

(b) The start and expected end dates of the undue hardship period;¶

(c) A statement that the employer may require the employee to work up to 84 hours in a workweek for up to four workweeks during the undue hardship period;¶

(d) A statement that the employer may require the employee to work up to 80 hours in a workweek for the remainder of the undue hardship period;¶

(e) A statement that the employee consents to working up to 84 hours in a workweek for up to four weeks during the undue hardship period and up to 80 hours in a workweek for the remainder of the undue hardship period but that the employee may withdraw such consent at any time in writing, effective no sooner than the following workweek, unless another date is agreed upon with the employer;¶

(f) The printed name and signature of the employee completing the written consent, with the date of signature; and¶

(g) Contact information for the Bureau of Labor and Industries.¶

(4) To provide written consent, an employee may use Form WH-263 or any similar form provided such form contains all the elements of Form WH-263. The employees written consent must be in the language used by the employer to communicate with the employee.¶

(5) The employer must retain and keep available to the commissioner a copy of each employees written consent during the duration of the employees employment and for no less than six months after the termination date of the employee.

Statutory/Other Authority: ORS 651.060(4), ORS 652, OL Ch. 685 (2017)

Statutes/Other Implemented: ORS 652

AMEND: 839-001-0155

RULE SUMMARY: Updating civil penalty rules to reflect changes from OL Ch. 685 (2017).

CHANGES TO RULE:

839-001-0155

Violations of ORS 652.020 for Which a Civil Penalty May Be Imposed ¶¶

(1) Pursuant to ORS 652.900, the Commissioner may assess a civil penalty for violations of ORS 652.020 or of these rules as follows:¶¶

(1a) Failure to pay employees subject to ORS 652.020 time and one-half their regular rate of pay for all hours worked over ten in any day of 24 hours;¶¶

(2b) Requiring or pPermitting any agent of the employer to require to permit employees to work over ten hours in any day of 24 hours when the employees are not paid time and one-half their regular rate of pay for such hours worked over ten in a day;¶¶

(3c) Requiring or permitting an employee subject to ORS 652.020 to work more than 13 hours in any day of 24 hours;¶¶

(d) Permitting any agent of the employer to require or permit employees to work more than 13 hours in any day of 24 hours; ¶¶

(e) Requiring or permitting an employee subject to ORS 652.020 to work more hours than permitted under ORS 652.020(2)(a), (b), or (c);¶¶

(4f) Requiring or permitting any agent of the employer to require or permit employees to work more than 13 hours in any day of 24 hours employee subject to ORS 652.020 to work more than 55 hours in any one workweek without obtaining the employees consent in writing, in violation of ORS 652.020(2)(b) or (4)(b);¶¶

(g) Permitting an employee subject to ORS 652.020 to work up to the maximum hours permitted by ORS 652.020(2)(c) when the employer is not eligible for an undue hardship exemption;¶¶

(h) Failure to make available to the commissioner, upon request, a copy of an employees written consent as required by OAR 839-001-0147(3) and OAR 839-001-0148(5);¶¶

(i) Failure to provide notice of the undue hardship period to the commissioner within seven calendar days of the date on which the undue hardship period began; or¶¶

(j) Requiring or permitting an employee subject to ORS 652.020 to begin a work shift less than 10 hours after the end of the employees previous work shift if the employees previous work shift totaled eight or more hours.¶¶

(2) As provided in ORS 652.020(9)(a), notwithstanding ORS 652.900, the Commissioner may assess a civil penalty against an employer that has coerced an employee into consenting to work more than 55 hours in one workweek. For the purpose of this rule, an employer will be considered to have coerced an employee into consenting to work more than 55 hours in one workweek under the following circumstances:¶¶

(a) The employer requires an employee to consent in writing to work more than 55 hours in one workweek;¶¶

(b) The employer requires an employee to consent to work more than 55 hours in one workweek as a condition of employment at the time of hire; or¶¶

(c) The employer requests or requires any person, including another employee, to require an employee to consent in writing to work more than 55 hours in one workweek.

Statutory/Other Authority: ORS 651.060(4), 652

Statutes/Other Implemented: ORS 652.900, OL Ch. 685 (2017)

AMEND: 839-001-0160

RULE SUMMARY: Updating civil penalty rules to reflect OL Ch. 685 (2017)

CHANGES TO RULE:

839-001-0160

Schedule of Civil Penalties for Violations of ORS 652.020 ¶¶

(1) ~~¶~~Except as provided in section (4) of this rule, the civil penalty for any one violation of ORS 652.020 or any rule adopted pursuant thereto shall not exceed \$1,000. The actual amount of the civil penalty will depend on all the facts and on any mitigating and aggravating circumstances.¶¶

(2) When the commissioner determines to assess a civil penalty for requiring or permitting an employee to work over ten hours in a day when the employee is not paid time and one-half the regular rate of pay in violation of ORS 652.020, the minimum civil penalty to be assessed shall be \$50 per day for each employee affected. For example, when the employer or an employer's agent requires or permits five employees to work over ten hours in a day for four days without paying the employees time and one-half their regular rate of pay for the hours worked over ten in a day, the minimum civil penalty to be assessed shall be \$1,000 (5 employees x 4 days x \$50 per day per employee = \$1,000).¶¶

(3) When the commissioner determines to assess a civil penalty for requiring or permitting an employee to work more than 13 hours in any day of 24 hours, the minimum civil penalty shall be \$500 per day for the first offense. For example, when an employer or an employer's agent requires or permits any number of employees to work over 13 hours in a day for four days, the minimum civil penalty shall be \$2,000 (4 days x \$500/day = \$2,000). When the Commissioner determines to assess a civil penalty for subsequent offenses, the Commissioner may assess up to \$1,000 for each such offense.¶¶

(4) When the commissioner determines that an employer has violated ORS 652.020 by coercing an employee into consenting to work more than 55 hours in one workweek, the civil penalty shall not exceed:¶¶

(a) \$2,000 for any one violation if the employer coerced an employee to work more than 55 hours in one workweek under ORS 652.0250(2)(b); or¶¶

(b) \$3,000 for any one violation if the employer coerced an employee to work more than 55 hours in one work week during a period of undue hardship under ORS 652.020(4)(b).¶¶

(5) The civil penalties set out in sections (2), (3) and (4) of this rule shall be in addition to any other penalty imposed by law or rule.¶¶

(6) The civil penalty for all other violations shall be set in accordance with the determinations and considerations referred to in OAR 839-001-0496.

Statutory/Other Authority: ORS 651.060(4), 652

Statutes/Other Implemented: ORS 652.900, OL Ch. 685 (2017)

ADOPT: 839-020-0400

RULE SUMMARY: Implementing OL Ch. 685 (2017).

CHANGES TO RULE:

839-020-0400

Definitions for Maximum Hours of Work in Canneries, Driers and Packing Plants

As used in OL Ch. 685 (2017), ORS 653.265 and OAR 839-020-0400 to 839-020-0420, unless the context requires otherwise:¶

(1) Administrative duties means office or non-manual work directly related to the employers management policies or general business operations.¶

(2) Cannery means an establishment for the canning or preservation of food products to prevent spoilage.¶

(3) Day means any time period of 24 consecutive hours as determined by the employer.¶

(4) Drier means an establishment in which food products are preserved through the removal of moisture.¶

(5) "Employed in" refers to employment of employees in the actual place specified in ORS 653.265. Employees who are not performing duties in the named places are not "employed in" those places.¶

(6) "Employee" means any individual employed by an employer.¶

(7) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee.¶

(8) Engaged in the direct processing of goods means to perform duties directly related to the canning, drying, packing, or preservation of food products.¶

(9) Packing plant means an establishment for the processing and packing of food products, including the slaughter of livestock and packing of meat.¶

(10) Perishable product means any product that may spoil, deteriorate or undergo other material changes that render it unsuitable for the use for which it was produced. Perishable product includes agricultural crops, meat and fish.¶

(11) Undue hardship period means the period of time during which a perishable product must be processed after harvesting, slaughter or catch.¶

(12) Workweek means a fixed period of time established by an employer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods. A workweek may begin on any day of the week and any hour of the day and need not coincide with a calendar week. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade overtime requirements.

Statutory/Other Authority: OL 685 (2017), ORS 653, ORS 651

Statutes/Other Implemented: OL 685 (2017), ORS 653

ADOPT: 839-020-0410

RULE SUMMARY: Implementing OL Ch. 685 (2017)

CHANGES TO RULE:

839-020-0410

Determination of the Day; Failure to Make Determination

(1) The employer shall establish the beginning time and the ending time of the day to be used by the employer for purposes of complying with ORS 653.265 and these rules.¶

(2) Once established, the beginning time of the day shall not be changed unless the change is intended to be permanent and is not designed to circumvent the provisions of ORS 653.265.¶

(3) If the employer fails to establish the beginning and ending times of day as provided for in section (1) of this rule, the Bureau shall consider the day to begin at the time the individual employee commences work and to end 24 consecutive hours after the work began.

Statutory/Other Authority: OL Ch. 685 (2017), ORS 651

Statutes/Other Implemented: OL Ch. 685 (2017), ORS 653

ADOPT: 839-020-0415

RULE SUMMARY: Implementing OL Ch. 685 (2017)

CHANGES TO RULE:

839-020-0415

Failure to Establish a Workweek

If an employer fails to establish the beginning day of the workweek as provided for in ORS 653.265(1)(c), the Bureau shall consider the workweek to begin on the day the individual employee commences work and to end seven consecutive days after the work began.

Statutory/Other Authority: OL Ch. 685 (2017), ORS 651

Statutes/Other Implemented: OL Ch. 685 (2017), ORS 653

ADOPT: 839-020-0417

RULE SUMMARY: Implementing OL Ch. 685 (2017)

CHANGES TO RULE:

839-020-0417

Employee's Written Consent to Work up to 60 Hours in a Workweek

(1) Pursuant to ORS 653.265(2) an employer is prohibited from requiring or permitting an employee to work over 55 hours in one workweek except that the employer may permit an employee to work up to 60 hours in one workweek if the employee requests or consents in writing to work more than 55 hours in one workweek.¶

(2) Employers must obtain written consent from employees prior to permitting employees to work in excess of 55 hours in one workweek.¶

(3) The employer must retain and keep available to the commissioner a copy of each employees written consent during the duration of the employees employment and for no less than six months after the termination date of the employee.¶

(4) The commissioner shall create a template for the written consent that employers may, but are not required to, use to document the employees written consent.

Statutory/Other Authority: OL Ch. 685 (2017), ORS 651

Statutes/Other Implemented: OL Ch. 685 (2017), ORS 653

ADOPT: 839-020-0420

RULE SUMMARY: Implementing OL Ch. 685 (2017)

CHANGES TO RULE:

839-020-0420

Undue Hardship Notices and Employee's Written Consent

(1) Pursuant to the provisions of ORS 653.265(5)(a), an employer that processes perishable products may be exempt from the restrictions on maximum workweek hours if an undue hardship exists. To claim such an exemption, an employer must provide notice of the undue hardship period to the commissioner within seven calendar days of the date on which the undue hardship period begins. The notice submitted by the employer to the commissioner must include:¶

(a) The name and address of the employer;¶

(b) A description of the reasons for the undue hardship period;¶

(c) The start and expected end dates of the undue hardship period;¶

(d) An estimate of the number of employees whose work hours will exceed the maximum workweek hours because of the undue hardship exemption; ¶

(e) The start and end dates of any undue hardship periods previously claimed by the employer in the same calendar year;¶

(f) The printed name and signature of the person submitting the notice, with the date of signature.¶

(2) The employers notice of the undue hardship period may be submitted on Form WH-262, which is available to any interested person. An employer may copy this form or use a similar form provided such form contains all the elements of Form WH-262. The notice must be submitted by mail or in an electronic format to: Bureau of Labor and Industries, Wage and Hour Division, 800 NE Oregon Street, Suite 1045, Portland, OR 97232-2180.¶

(3) When claiming an undue hardship exemption, an employer must obtain written consent from each employee whose work hours, pursuant to ORS 653.265(2)(c), will exceed the maximum workweek hours because of the undue hardship exemption. The written consent, which must be completed by the employee prior to performing work during the undue hardship period, must include:¶

(a) A description of the employers reasons for the undue hardship period;¶

(b) The start and expected end dates of the undue hardship period;¶

(c) A statement that the employer may require the employee to work up to 84 hours in a workweek for up to four workweeks during the undue hardship period;¶

(d) A statement that the employer may require the employee to work up to 80 hours in a workweek for the remainder of the undue hardship period;¶

(e) A statement that the employee consents to working up to 84 hours in a workweek for up to four weeks during the undue hardship period and up to 80 hours in a workweek for the remainder of the undue hardship period but that the employee may withdraw such consent at any time in writing, effective no sooner than the following workweek, unless another date is agreed upon with the employer;¶

(f) The printed name and signature of the employee completing the written consent, with the date of signature; and¶

(g) Contact information for the Bureau of Labor and Industries.¶

(4) To provide written consent, an employee may use Form WH-263 or any similar form provided such form contains all the elements of Form WH-263. The employees written consent must be in the language used by the employer to communicate with the employee.¶

(5) The employer must retain and keep available to the commissioner a copy of each employees written consent during the duration of the employees employment and for no less than six months after the termination date of the employee.

Statutory/Other Authority: OL Ch. 685 (2017), ORS 651

Statutes/Other Implemented: OL Ch. 685 (2017), ORS 653

AMEND: 839-020-1010

RULE SUMMARY: Implementing OL Ch. 685

CHANGES TO RULE:

839-020-1010

Violations for Which a Civil Penalty May Be Assessed ¶¶

(1) The commissioner may assess a civil penalty for any of the following willful violations: ¶¶

(a) Failure to pay the applicable minimum wage for all hours worked in violation of ORS 653.025 and OAR 839-020-0010. ¶¶

(b) Failure to pay overtime for all hours worked over forty (40) in a week in violation of OAR 839-020-0030 or, for domestic workers, failure to pay overtime in violation of OL Ch. 457, sec. 1, 2015 and OAR 839-020-0030. ¶¶

(c) Payment to persons with mental or physical disabilities less than a fixed minimum hourly wage rate which has been approved by the commissioner in violation of ORS 653.030 and OAR 839-020-0015; ¶¶

(d) Payment to student-learners less than a fixed minimum hourly wage rate which has been approved by the commissioner in violation of ORS 653.030 and 839-020-0015; ¶¶

(e) Failure to make required payroll and other records in violation of ORS 653.045, OAR 839-020-0050, 839-020-0080, and 839-020-0082; ¶¶

(f) Failure to keep available required payroll and other records in violation of ORS 653.045, OAR 839-020-0050, 839-020-0080, 839-020-0082, and 839-020-0083; ¶¶

(g) Failure to supply each of the employer's employees with itemized statements of amounts and purposes of deductions in the manner provided in ORS 652.610 in violation of 653.045, OAR 839-020-0012 and 839-020-0080; ¶¶

(h) Failure to keep summaries of ORS 653.010 to 653.261 and rules promulgated thereto by the commissioner posted in a conspicuous and accessible place in or about the premises where such employees are employed in violation of ORS 653.050; ¶¶

(i) Discharging or discriminating in any other manner against any employee in violation of ORS 653.060; ¶¶

(A) Because the employee has made complaint that the employee has not been paid wages in accordance with ORS 653.010 to 653.261; ¶¶

(B) Because the employee has caused to be instituted or is about to cause to be instituted any proceedings under or relating to ORS 653.010 to 653.261; or ¶¶

(C) Because the employee has testified or is about to testify in any such proceedings. ¶¶

(j) Failure to provide to each employee appropriate meal periods in violation of OAR 839-020-0050; ¶¶

(k) Coercing an employee into waiving a meal period in violation of ORS 653.261(5)(b); ¶¶

(l) Failure to provide to each employee appropriate rest periods in violation of OAR 839-020-0050; ¶¶

(m) Intentional failure to provide a reasonable rest period to accommodate an employee who needs to express breast milk in violation of ORS 653.077 and OAR 839-020-0051; ¶¶

(n) Requiring any employee to lift excessive weights in violation of OAR 839-020-0060; ~~or~~ ¶¶

(o) Employing any employee to work under any conditions in violation of OAR 839-020-0065~~[-]~~; ¶¶

(p) Failure to provide a domestic worker who resides in the home of the employer with an uninterrupted rest period of at least eight consecutive hours within each 24-hour period in violation of OL Ch. 457, sec. 1, 2015 and OAR 839-020-0042(4); ¶¶

(q) Failure to provide a domestic worker with a rest period of at least 24 consecutive hours in each work week in violation of OL Ch. 457, sec. 1, 2015 and OAR 839-020-0052(1); ¶¶

(r) Failure to provide a domestic worker not less than three paid personal days off in violation of OL Ch. 457, sec. 1, 2015 and OAR 839-020-0052(2); ~~or~~; ¶¶

(s) Failure to pay a domestic worker for personal days off in violation of OL Ch. 457, sec. 1, 2015 and OAR 839-020-0052(2). ¶¶

~~(2) Except as provided in ORS 653.261(5)(c); ¶¶~~

(t) Requiring or permitting an employee subject to ORS 653.265 to work more hours than permitted under ORS 653.265(2)(a), (b) or (c);¶

(u) Requiring or permitting an employee subject to ORS 653.265 to work more than 55 hours in any one workweek without obtaining the employees consent in writing, in violation of ORS 653.265 (2)(b) or (5)(b);¶

(v) Permitting an employee subject to ORS 653.265 to work up to the maximum hours permitted by ORS 653.265(2)(c) when the employer is not eligible for an undue hardship exemption;¶

(w) Failure to make available to the commissioner, upon request, a copy of an employees written consent as required by OAR 839-020-0417(3) and OAR 839-020-0420(5); or¶

(x) Failure to provide notice of the undue hardship period to the commissioner within seven calendar days of the date on which the undue hardship period began. ¶

(2) Except as provided in ORS 653.261(5)(c), ORS 653.265(9)(a), and section (3) of this rule, the civil penalty for any one violation will not exceed \$1,000. The actual amount of the civil penalty will depend on all the facts and circumstances referred to in OAR 839-020-1020.¶

(3) When the commissioner determines that an employer has violated ORS 653.265 by coercing an employee into consenting to work more than 55 hours in one workweek, the civil penalty shall not exceed:¶

(a) \$2,000 for any one violation if the employer coerced an employee to work more than 55 hours in one workweek under ORS 653.265(2)(b); or ¶

(b) \$3,000 for any one violation if the employer coerced an employee to work more than 55 hours in one workweek during a period of undue hardship under ORS 653.265(5)(b).¶

(4) For the purpose of section (3) this rule, an employer will be considered to have coerced an employee into consenting to work more than 55 hours in one workweek under the following circumstances:¶

(a) The employer requires an employee to consent in writing to work more than 55 hours in one workweek;¶

(b) The employer requires an employee to consent to work more than 55 hours in one workweek as a condition of employment at the time of hire; or¶

(c) The employer requests or requires any person, including another employee, to require an employee to consent in writing to work more than 55 hours in one workweek.¶

(5) The civil penalties set out in this rule will be in addition to any other penalty assessed or imposed by law or rule.

Statutory/Other Authority: ORS 651.060(4), ORS 653.040

Statutes/Other Implemented: ORS 653, OL Ch. 457; (2015), OL Ch. 685 (2017)