



BUREAU of LABOR & INDUSTRIES

BEFORE THE COMMISSIONER OF THE BUREAU OF LABOR AND INDUSTRIES OF THE STATE OF OREGON

In the Matter of:

FUTURE LOGGING CO.,

Respondent.

Case Nos. **39-23**

FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
ORDER

SYNOPSIS

The forum concluded that Respondent engaged in an unlawful employment practice by failing to reasonably accommodate Complainant's rheumatoid arthritis disability when it did not repair a broken handrail on his work vehicle, and also for failing to engage in the interactive process with him in violation of ORS 659A.112(2)(e). Additionally, the forum concluded that Respondent discharged Complainant because he had requested a disability accommodation in violation of ORS 659A.112(1). The forum did not award back pay, but awarded \$35,000 in damages for physical pain and emotional distress pursuant to ORS 659A.850(4)(a)(B).

The above-entitled case came on regularly for hearing before Kari Furnanz, designated as Administrative Law Judge ("ALJ") by the Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on January 14-15, February 12, and March 13, 2025, via the Zoom video conference application; and on March 12, 2025, at BOLI's Eugene office, located at 1400 Executive Parkway, Suite 200, Eugene, Oregon.

1 The Bureau of Labor and Industries (“BOLI” or “the Agency”) was represented by
2 Administrative Prosecutor Anita Smith, an employee of the Agency. Complainant, Scott
3 Woolley (“Woolley”) was present throughout the hearing. Respondent Future Logging
4 Co. (“Future Logging”) was represented throughout the proceeding by Attorney Matthew
5 Denley (“Denley”). Alan Young (“Young”) was also present throughout the hearing as the
6 representative of Future Logging.

7 The Agency called Civil Rights Investigator Mimi Perdue (“Perdue”) and Woolley
8 as its witnesses.

9 Young, Brett Bullock, Kirk DeHut, Keith Moore, Mable Young, and Richard
10 Christian testified for Future Logging.

11 The forum received into evidence: (a) Administrative exhibits X1 through X18; (b)
12 Agency’s exhibits A1-A4, A6, A9-A12, A13 (portion of p. 1 and p. 2 only¹), A14-A15, A16
13 (pp. 4-18 and 24-26 only), A17 (pp. 1-10 only), A19-A24, A26-A27, A28 (pp. 29-42 only),
14 A29, A35, A36, A38, and A39; and (c) Future Logging exhibits R1, R3A, R6A-1, R8A,
15 R9A and R27.

16 Having fully considered the entire record in this matter, I, Christina Stephenson,
17 Commissioner of the Bureau of Labor and Industries, hereby make the following Findings
18 of Fact (Procedural and on the Merits), Conclusions of Law, Opinion, and Order.²

19 FINDINGS OF FACT – PROCEDURAL

20 1) Woolley filed a charge of discrimination with the Equal Employment
21 _____

22 ¹ The entirety of page 2 of Ex. A13 was received. On page 1 of Ex. A13, only the middle text bubble
23 beginning with “sometimes I forget” was received.

24 ² The Ultimate Findings of Fact required by OAR 839-050-0370(1)(b)(B) are subsumed within the Findings
of Fact – The Merits.

1 Opportunity Commission on October 5, 2021, that was co-filed with BOLI's Civil Rights
2 Division. In the charge, Woolley alleged that Future Logging denied him reasonable
3 accommodations and terminated him from his position as an equipment operator due to
4 his disability and/or in retaliation for his engagement in a protected activity in violation of
5 the Americans with Disabilities Act. (Ex. A1)

6 2) On October 5, 2022, the Agency's Civil Rights Division issued a Notice of
7 Substantial Evidence Determination ("SED") for Case No. DPEMDP211005-92176 in
8 which it found substantial evidence of unlawful employment practices (terms and
9 conditions of employment, failure to engage in a meaningful interactive process to provide
10 a reasonable accommodation, failure to provide a reasonable accommodation and
11 termination) in violation of ORS 659A.112. (Ex. A11)

12 3) On March 7, 2024, the contested case forum issued a Notice of Hearing to
13 Future Logging and the Agency, stating the time and place of the hearing as August 20,
14 2024, beginning at 9:30 a.m., and that the hearing would be held by video conference.
15 Together with the Notice of Hearing, the forum sent a copy of the Agency's Formal
16 Charges, a document entitled "Summary of Contested Case Rights and Procedures"
17 containing the information required by ORS 183.413, a document entitled
18 "Servicemembers Civil Relief Act (SCRA) Notification," a multi-language notice explaining
19 the significance of the Notice of Hearing, and a copy of the forum's contested case
20 hearings rules, OAR 839-050-0000 to 839-050-0445. (Exs. X2, X2a-X2h)

21 4) The Formal Charges alleged that: (1) Woolley has one or more physical
22 impairments, including rheumatoid arthritis, that substantially limits one or more major life
23 activities; (2) Future Logging did not reasonably accommodate Woolley's disability,
24

1 thereby violating ORS 659A.112(1), (2)(e); ORS 659A.118(1)(c); OAR 839-005-0011(1),
2 (2), (3),(4); and OAR 839-006-0206(1)(b), (c); (3) Future Logging failed to engage in an
3 interactive process with Woolley in violation of ORS 659A.112(2)(e) and OAR 839-006-
4 0206(1)(b),(c), (4), (5)(a), (6)(a)(b); and (4) Future Logging terminated Woolley's
5 employment for requesting a disability accommodation in violation of ORS 659A.112(1),
6 (2)(a), (f); OAR 839-006-0200(2), (3)(a). (Ex. X2b)

7 5) On March 13, 2024, the ALJ issued an interim order requiring case
8 summaries to be filed no later than August 6, 2024, and set out the requirements for what
9 each participant must include in their case summary. The interim order also noted that
10 the parties indicated by email that they consented to accept filings by email, and provided
11 instructions for how the parties could file documents by email. (Ex. X3)

12 6) Future Logging filed an unopposed motion to postpone the hearing on
13 March 25, 2024. The ALJ issued an interim order on March 26, 2024, granting the motion
14 and set a new hearing date of October 22, 2024, and a new case summary deadline of
15 October 8, 2024. (Exs. X4-X5)

16 7) On March 27, 2024, Future Logging timely filed an answer to the Formal
17 Charges in which it denied the allegations. (Ex. X6)

18 8) On July 29, 2024, the Agency filed a motion for a protective order
19 concerning the production of Woolley's medical records (which included information
20 regarding his mental health) and his personal notes regarding his mental health. Because
21 the motion was unopposed and the Agency represented that documents may be
22 produced at various times throughout the course of the case, the forum granted the
23 motion. (Exs. X7-X8)

1 9) The forum held a prehearing video conference on September 19, 2024.
2 Administrative Prosecutor Anita Smith appeared on behalf of the Agency. Attorney Rob
3 Nichols (“Nichols”) participated on behalf of Respondent. The ALJ discussed the forum’s
4 prehearing filing procedures and hearing expectations with the parties.

5 Additionally, Nichols indicated that Future Logging recently received medical
6 records produced in discovery by the Agency, and was determining whether to request a
7 brief postponement of the hearing. Nichols further stated that he would notify the forum
8 and the Agency by the end of the following week if Respondent would be filing a motion
9 for postponement. On September 23, 2025, the forum issued an interim order
10 summarizing the discussion in the video conference. The interim order stated that if
11 Future Logging did not file a motion for postponement by Friday, September 27, 2024,
12 the hearing would proceed as scheduled, unless otherwise ordered by the Administrative
13 Law Judge. (Ex. X9)

14 10) The Agency filed its case summary on October 6, 2024, and Future Logging
15 filed its case summary on October 8, 2024. (Exs. X10-X11)

16 11) On Friday, October 18, 2024, the Agency filed a motion for postponement
17 due to illness and multiple competing deadlines in other cases. The Agency requested
18 expedited consideration of the motion and contacted ALJ Holien after receiving
19 notification that ALJ Furnanz was out of the office. Future Logging took no position on
20 the motion. ALJ Caroline Holien issued the following ruling by email:

21 “In light of [Future Logging] not taking a position on the motion, and good cause
22 having been shown, I am granting the Agency’s motion to postpone the hearing
23 scheduled to begin Tuesday, October 22, 2024. ALJ Furnanz will be in contact
24 with the parties early next week to establish a new hearing date.”

1 On Monday, October 21, 2024, ALJ Furnanz issued an interim order memorializing ALJ
2 Holien's email ruling. The interim order instructed that if the parties reached agreement
3 on a hearing date, they were to email the proposed new dates to ALJ Furnanz by October
4 25, 2024. If no agreement was reached by that time, ALJ Furnanz would contact the
5 parties to arrange a prehearing conference to discuss new hearing dates.

6 On October 28, 2024, the ALJ issued an interim order memorializing
7 communications with the parties regarding their availability for hearing, and rescheduling
8 the hearing to begin on Tuesday, January 14, 2025. (Exs. X12-X15)

9 12) The Agency filed an amended case summary on January 13, 2025. (Ex.
10 X16)

11 13) At the start of hearing on January 14, 2025, pursuant to ORS 183.415(7),
12 the ALJ orally informed the participants of the issues to be addressed, the matters to be
13 proved, and the procedures governing the conduct of the hearing. (Hearing Record)

14 14) During a discussion on the record following Perdue's testimony and prior to
15 the testimony of Woolley, the Agency moved to amend the citation in the Formal Charges
16 on page 2, at the end of line 8 by interlineation to read "OAR 839-006-0202." Future
17 Logging did not object. In response, Future Logging moved to amend its response to the
18 Formal Charges on page 2 at lines 16-18 to indicate that Future Logging denied that
19 Respondent satisfied that rule. The Agency did not object. Accordingly, the ALJ granted
20 both motions to amend by interlineation. (Hearing Record)

21 15) On January 15, 2025, Future Logging sought to introduce Exhibits R21 and
22 R22 into evidence (alleged copies of restraining orders issued against Woolley) for
23 purposes of impeachment. The Agency objected for several reasons, including lack of
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1 authenticity. The ALJ noted that Exhibits R21 and R22 were not certified copies of court
2 orders and, therefore, sustained the Agency's objection. (Hearing Record)

3 16) After the conclusion of witness testimony on January 15, 2025, Future
4 Logging's counsel contacted the administrative prosecutor and the ALJ by email
5 requesting an emergency postponement due to medical issues experienced by a witness.
6 The Agency responded by email, stating that it supported the request for postponement.
7 Given the exigent circumstances, the ALJ allowed the parties to request a postponement
8 by email, rather than requiring a written motion under OAR 839-050-0150. The ALJ
9 granted the request and issued an email ruling postponing the hearing. (Ex. X17)

10 17) On January 28, 2025, the ALJ issued an interim order stating that the
11 hearing would resume on Wednesday, February 12, 2025, a date all parties indicated
12 they were available. (Ex. X18)

13 18) The video hearing resumed on February 12, 2025. During Young's
14 testimony, Future Logging's attorney questioned Young about three small space heaters
15 that Young had in his possession and referred to during his testimony. The heaters were
16 not listed as exhibits in Future Logging's Case Summary, but were identified for the record
17 as Exhibits R23-R25. The Agency objected to Exhibits R23-R25 being received into
18 evidence. The ALJ deferred ruling on the Agency's objections, and issued an order
19 requiring Future Logging to produce Exhibits R23-R25 to the Agency for inspection.

20 The ALJ also recessed the hearing and issued an interim order stating that the
21 hearing would resume in person on March 12, 2025, at BOLI's Eugene office located at
22 1400 Executive Parkway, Suite #200, Eugene, Oregon. The ALJ's interim order further
23 stated that when the hearing continued, the Agency would have the opportunity to cross-
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1 examine Young, and Future Logging could conduct redirect examination of Young. (Ex.
2 X19)

3 19) When the hearing reconvened in person at BOLI's Eugene office on March
4 12, 2025, the ALJ discussed the status of admitted exhibits with the parties, and made
5 some corrections to the record. (Hearing Record)

6 20) During the hearing, the Agency submitted Exhibits A38 (Photograph of R23
7 – Little Buddy Heater) and A39 (photograph of R25 – “My Buddy” portable console
8 heater). There were no objections to these exhibits and they were received into evidence.
9 (Hearing Record)

10 21) Future Logging marked the heater from Wooley's 320C vehicle as Ex. R26,
11 and Young referred to it during his testimony. Following the hearing, Future Logging
12 submitted Ex. 27 (photographs of the 320C heater) with a letter indicating that the Agency
13 did not object to the admission of Ex. R27. Accordingly, Ex. R27 was received. (Hearing
14 Record; Ex. R27)

15 22) The parties delivered closing arguments by Zoom on March 13, 2025.

16 23) On September 15, 2026, the ALJ issued a Proposed Order that notified the
17 participants that they were entitled to file exceptions of the Proposed Order within 10 days
18 of its issuance. The Agency filed exceptions on September 25, 2026. Future Logging did
19 not file exceptions.

20 **FINDINGS OF FACT – THE MERITS**

21 ***Background***

22 1) Over the course of the last 30-35 years, Woolley worked off and on in the
23 logging industry operating heavy equipment. (Testimony of Woolley)

1 2) On October 7, 1993, Woolley sustained injuries in a logging accident and
2 had to be airlifted from the site. As a result of that event, Woolley suffered a severe
3 traumatic brain injury which continues to impact his daily life. He has cognition problems
4 and sometimes does not process information well when he feels overwhelmed.
5 (Testimony of Woolley)

6 3) Woolley worked as a shovel operator for Future Logging from July to
7 October 2018, in the McKenzie River area of Oregon. When the logging operation moved
8 to another site, Woolley gave notice and quit because he did not want to be away from
9 home. He did not work in the logging industry again until August of 2020. (Testimony of
10 Woolley; Exs. X2b, X6)

11 4) Immediately prior to August of 2020, Woolley worked for an individual
12 performing home maintenance and landscape work. (Testimony of Woolley)

13 *Woolley's Return to Future Logging in 2020*

14 5) Young worked for Future Logging as its logging operations supervisor. He
15 contacted Woolley in August of 2020 and asked him to come back to work temporarily for
16 a couple of weeks on the Camas Thin project to fill in for a worker who was out.
17 (Testimony of Woolley)

18 6) The Camas Thin project involved timber cutting work in wilderness areas
19 on public forest land near Canyon Creek, Moose Creek and the Santiam River in Oregon.
20 (Testimony of Woolley)

21 7) Woolley began working for Future Logging on the Camas Thin project on
22 August 24, 2020, as a "dangle head" machine operator. After a couple of weeks, he
23 switched to "shovel logging" and operated a 320C Log Loader machine for several
24

1 months. (Testimony of Woolley; Exhibit R9A)

2 8) A logging shovel loader “is a tracked excavator with a grapple on the arm
3 for moving logs or trees from the woods” “either directly to the landing or road, or it can
4 also be used to shovel to a skid road, whereby it will pre-bunch the trees for more efficient
5 extraction.” (Judicial Notice³)

6 9) The 320C Log Loader vehicle has an enclosed cab with windows, which
7 sits on top of rolling tracks that move the vehicle across uneven forest terrain. The
8 operator of the vehicle sits on a seat inside the cab and uses hand controls and levers to
9 move a boom and shovel that are connected to the front of the vehicle. (Testimony of
10 Woolley; Ex. A6)

11 10) While working in the 320C, Woolley had the ability to open windows to
12 provide ventilation, but opening the windows let cold air into the cab of his vehicle.
13 (Testimony of Woolley)

14 11) A ladder is attached to the side of 320C vehicles. Vertical handrails are
15 located on each side of the ladder for shovel operators to grasp and climb the ladder up
16 into the cab.⁴ (Testimony of Woolley; Ex. A6)

17 12) Woolley’s log shoveling duties involved maneuvering the 320C vehicle
18 through mountainous areas on difficult terrain. He operated the controls inside the 320C
19 machine to “shovel” or “grab” logs from where they had been cut. With the logs in the
20 shovel, Woolley then drove the 320C down to a landing area for the logs to be processed
21 and loaded onto trucks. (Testimony of Woolley)

22
23 ³ The forum takes judicial notice of the logging shovel description from the United States Forest Service’s
24 website at: https://www.fs.usda.gov/t-d/programs/forest_mgmt/projects/textbook/machinery/shovel.html.

⁴ As explained in greater detail below, the left handrail on Woolley’s 320C vehicle was broken and unusable.

1 13) For a couple weeks in September, Woolley lived close to the job site in a
2 van on forest service land with his family. In October and part of November 2020, Woolley
3 stayed in a nearby motel. Future Logging assisted him with arrangements to pay for the
4 motel. (Testimony of Woolley)

5 14) In the first part of September 2020, the Camas Thin project was shut down
6 due to forest fires. Woolley normally worked five days per week, but Young asked him to
7 work more days in October and November as operations were behind schedule due to
8 the September fire shutdown. Employees maintained their own time records. (Testimony
9 of Woolley, Young)

10 15) In October and November of 2020, both Young and Future Logging's owner,
11 Rick Christian, told Woolley that he was "doing a really good job." (Testimony of Woolley)

12 16) In December of 2020, Future Logging provided Woolley with a bonus in the
13 amount of \$3,500. In addition, his wages throughout his employment totaled \$32,460.
14 (Testimony of Woolley; Exs. R8A, R9A)

15 17) Young provided a Christmas card to Woolley in December of 2020 with the
16 following handwritten note:

17 "Scott,

18 "You've been a huge help to me and the company this year. Thank you and have
19 a very Merry Christmas.

20 "Alan."

21 (Ex. A15)

22 ***Woolley's Interactions with Co-Worker DeHut***

23 18) Woolley and a co-worker (DeHut) did not get along and had two verbal
24 altercations at the job site. The first dispute occurred after Woolley's initial return to Future

1 Logging, and the second took place in or around November of 2020. (Testimony of
2 Woolley, DeHut)

3 19) Young witnessed the November 2020 conflict and “broke it up.” He told
4 both Woolley and DeHut to “work it out,” and that they needed to keep the work “family”
5 together. (Testimony of Young)

6 20) After the November 2020 altercation, DeHut became so angry that he
7 walked away from the job site and he was about to quit. Young helped DeHut “simmer
8 down” and told him that he was not fired. (Testimony of DeHut)

9 21) On or about February 24, 2021, Woolley told Young that DeHut and other
10 employees were smoking marijuana on the job site. Young immediately spoke to DeHut
11 and the rest of the crew, and they denied Woolley’s allegations. Young did not take further
12 action as he did not have the ability to drug test the workers. Young did not speak to
13 Woolley about it again. (Testimony of Young)

14 ***Woolley’s Health Issues***

15 22) In October of 2020, Woolley started experiencing medical issues while
16 working. His body “seized up” and it hurt “really bad.” He had difficulty walking, and he
17 felt shoulder pain. He brought pillows to work to place behind his back and under his
18 arms to provide support while working in the cab of the 320C. Woolley worked seven
19 days a week for 8-14 hours⁵ per day during this time, and it was “really hard on [his] body.”
20 (Testimony of Woolley; Ex. R9A)

21 23) At times, Woolley’s hands became swollen, which affected his grip and
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23 ⁵ Woolley testified that he worked “probably 14 hours a day” during this time, but his time records show that
24 his hours varied and were generally less than 14 hours per day. (Ex. R9A)

1 caused him to drop and break cell phones. (Testimony of Woolley)

2 24) Woolley frequently spoke to Young while they were working, and Woolley
3 found Young to be approachable. Woolley talked to Young about the pain he
4 experienced. Young expressed genuine concern about Woolley's health and would
5 check in to ask how his doctor's appointments went. They communicated by telephone,
6 text message, on the CB radio and in person. (Testimony of Woolley)

7 25) If Woolley had to miss work due to his medical condition, he would let Young
8 know. Young took his place and performed his work duties while he was out. (Testimony
9 of Woolley)

10 26) Woolley never submitted anything in writing to Future Logging about his
11 medical problems and Young told him that he did not need to do so. (Testimony of
12 Woolley)

13 28) On at least one occasion, a coworker (Larry Rook) assisted Woolley when
14 he was in pain and could not climb down from the 320C cab by himself. On a snowy day
15 in January of 2021, Woolley's pain impacted his ability to walk. He fell to the ground, sat
16 for awhile, and then crawled to his pickup truck. (Testimony of Woolley)

17 29) Woolley saw a physician on November 27, 2020, to follow up on an
18 emergency room visit on November 19, 2020. Woolley spoke to the physician about pain
19 in his left shoulder, hips and knees. He also discussed the persistent pain in his hands
20 and fingers, which he reported was better after three days of taking Prednisone
21 medication.⁶ Woolley did not complain about cold intolerance at that appointment. Prior

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23 ⁶ Ex. A16 referenced limitations on Woolley's work capabilities, including a mention of a letter with a 10-
24 pound lifting restriction. However, there is no evidence that Woolley received such a letter or that this
restriction was communicated to Young or others at Future Logging.

1 to the November medical appointments, Woolley had not sought treatment for his
2 symptoms for approximately a year. He had been “feeling pretty good” when he came to
3 work for Future Logging in August of 2020. (Testimony of Woolley; Ex. A16)

4 30) Woolley visited his primary care doctor on December 14, 2020. They
5 discussed Woolley’s right shoulder pain, and the doctor noted that Woolley’s “right
6 [shoulder] has recently become just as painful as the left.” Woolley did not mention issues
7 with his hands and fingers at this appointment. Woolley’s doctor asked him about
8 depression, which he had experienced in the past. Woolley told the doctor that he was
9 feeling better and had stopped taking antidepressant medication. He did not want to see
10 a therapist and declined medication for depression. At this time, Woolley’s mood was
11 good and he liked working for Future Logging. (Testimony of Woolley; Ex. A16)

12 31) Woolley considered Future Logging’s owners (Rick and Darci Christian) to
13 be “very nice people” who seemed genuinely concerned about his medical condition. In
14 a Christmas card provided to Woolley in December of 2020, Rick Christian told Woolley
15 that he knew that Woolley had “been dealing with some serious issues” and that he could
16 “relate because I’ve been living with some auto-immune problems for a number of years
17 and have been pretty sick at times.” Rick Christian also wrote the following in the card:

18 “I know that [you’re] getting some good medical help, so I would encourage you to
19 stay the course, and remember that even when things are tough, there’s still hope
20 for all of us. I also wanted to mention that I’ve been helped a lot by a local
homeopathic doctor – give me a call anytime and let us know if there is anything
we can do to help.”

21 (Testimony of Woolley; Ex A14)

22 32) In January of 2021, after visiting several medical providers to address his
23 bodily pain and stiffness, Woolley received a diagnosis of rheumatoid arthritis.
24

1 (Testimony of Woolley; Ex. A16)

2 ***Broken Heater***

3 33) On or before December 5, 2020, Woolley told Young that the heater in his
4 320C vehicle stopped working. (Testimony of Woolley, Young; Ex. R3A)

5 34) The heater in Moore's work vehicle also stopped working at about the same
6 time ("almost simultaneously"). (Testimony of Moore)

7 35) Young arranged for a mechanic to come to the job site during the Christmas
8 break work stoppage to fix the heaters in both vehicles and told Woolley that he was
9 looking into options for portable heaters to be used on a temporary basis. Young followed
10 up by providing Woolley with a portable "Buddy" propane space heater to use until the
11 mechanic could repair the cab heater. (Testimony of Woolley, Young)

12 *Description of Heater Repair Efforts*

13 36) Future Logging did not have a mechanic that could repair the heaters on its
14 staff. (Testimony of Young)

15 37) Mechanics were usually not immediately available to come to the job site,
16 which was located deep in the woods. In the wintertime, the roads to the logging location
17 were often covered in snow. Future Logging frequently used a mechanic named Nate
18 McPherson⁷ to come out to the forest and repair vehicles. (Testimony of DeHut)

19 38) After the heaters in Wooley's and Moore's vehicles stopped working, Young
20 contacted McPherson and requested that he come to the job site in the woods and repair
21 the broken heaters. McPherson told Young he was working on other projects, but could

22 _____
23 ⁷ DeHut referred to Mechanic Nate by a different last name. However, based on the context, the forum
24 concludes that he is the same Nate referred to by Young as "Nate McPherson." To avoid confusion in the
record, the last name "McPherson" will be used throughout.

1 fix the broken heaters during the Christmas break shutdown. (Testimony of Young)

2 39) Young purchased repair parts (a blower motor and controller) from
3 McPherson on December 30, 2020. (Testimony of Young; Ex R6A1)

4 40) Future Logging's operations were closed for the holidays near Christmas
5 and New Year's Day. Woolley's timecards reflect that he did not work December 18-20
6 and 24-29, 2020. He was also off work on January 1, 2021, a holiday. (Testimony of
7 Young; Ex. 9A)

8 41) McPherson did not repair the heaters as scheduled during the holiday
9 shutdown. Young called McPherson numerous times to try to get him to come and repair
10 the heater. McPherson did not return his calls, which Young found frustrating. Young
11 eventually learned that McPherson's truck had broken down, and he was unable to come
12 out to the job site in the forest. Young then retrieved the repair parts from McPherson
13 and arranged for a different mechanic (Brett Bullock of Precision Maintenance & Repair,
14 Inc.) to travel to the job site and repair the heaters. (Testimony of Young)

15 42) Bullock drove to the logging site seven miles up Moose Creek Road and
16 fixed the heater in Woolley's 320C vehicle on January 21, 2021, by installing the new
17 blower motor that Young provided to him. (Testimony of Bullock; Ex. A35)⁸

18 43) Woolley believed that Young took action to repair the heater and that Young
19 did not expect it would take as long as it did to fix the broken heater. (Testimony of
20 Woolley)

21 _____
22 ⁸ There was conflicting testimony about the date of the repair, which the forum attributes to memories fading
23 with the passage of time. As well, Woolley testified that the heater broke a second time and that a mechanic
24 had to repair it again, but there was no evidence in the record to corroborate this statement. Accordingly,
the forum concludes that the heater was repaired once, not twice, and that the invoice Bullock provided to
Future Logging reflects the actual date of the repair.

1 44) After the heater was fixed, Woolley started feeling better. During that time,
2 he also began taking medication and his health improved. (Testimony of Woolley)

3 *Arrangements for Temporary Heaters*

4 45) On December 5, 2020, Young purchased Buddy propane heaters for
5 Woolley and Moore to use temporarily until the mechanic could repair the heaters in the
6 vehicles. (Testimony of Young; Ex. R3A)

7 46) Young was familiar with Buddy heaters because his wife previously used
8 one. He had difficulty finding ones in stock in late 2020 during the height of the COVID-
9 19 pandemic. He purchased the last one that was on the shelf at the Walmart store in
10 Springfield, Oregon, and drove to another Walmart in Cottage Grove, Oregon, to
11 purchase an additional one. (Testimony of Young; Ex. R3A)

12 47) Woolley experienced difficulties using the temporary Buddy heater. The
13 heater frequently fell over and turned off. On at least one occasion, the Buddy heater
14 singed the leg of his pants. (Testimony of Woolley)

15 48) Woolley told Young that the heater intermittently shut off. Young brought in
16 a piece of equipment to try to temporarily address the problem with the heater in the 320C
17 until the mechanic could fix it, but this effort was not successful. Young did not have any
18 available replacement options at that time. (Testimony of Young)

19 49) Young observed that portable heaters and other supplies were often out of
20 stock or in short supply in December 2020 and January 2021 during the COVID-19
21 pandemic, but looked into other temporary solutions that were available. He provided
22 Woolley with an electric heater that plugs into a cigarette lighter for Woolley to use until
23 the 320C heater was repaired. He also purchased another heater from Amazon. In
24

1 addition, Young told Woolley that he could take breaks and warm himself up in Young's
2 pickup truck. Young also told Woolley that he was "open to suggestions," but he did not
3 receive any suggestions from Woolley. (Testimony of Young)

4 50) Woolley was unable to get the temporary electric heater to work.
5 (Testimony of Woolley)

6 51) At some later point in time, Young found the temporary electric heater
7 behind the seat of the 320C with other discarded items and trash. (Testimony of Young)

8 52) Aside from mentioning that the Buddy heater intermittently turned off,
9 Woolley did not tell Young that the replacement heaters were inadequate. He did not
10 ask for a different kind of heater and did not provide a suggestion as to other heaters that
11 would work better. Woolley did not search for a different heater on his own. Young
12 communicated with Woolley frequently about his efforts to arrange for the mechanic to
13 come to the job site to fix the heater in the 320C vehicle. (Testimony of Woolley)

14 ***Broken Handrail***

15 53) The left handrail on the outside of Woolley's 320C vehicle was smashed
16 and broken during the entire time he worked for Future Logging, and he could not use it
17 to pull himself up the ladder on the side of the vehicle. When climbing up into the cab,
18 Woolley had nothing to grab on the left side, so he held his left arm in towards his body.
19 He then hooked his right arm inside the right handrail while shifting most of his weight
20 onto his right side to support himself as he climbed the ladder. After using this maneuver
21 repeatedly, he began to experience right shoulder pain. (Testimony of Woolley; Ex. A6)

22 54) When Woolley first started running the 320C machine, he told Young that
23 the left handrail was smashed and requested that it be fixed. Young told him that he
24

1 would look into it. They spoke about the broken handrail numerous times. In November
2 or December of 2020, Woolley told Young that he was having “a lot of problems” getting
3 in and out of the 320C because of the broken handrail. Woolley waited for the handrail
4 to be repaired and did not talk to Young about other options to address the broken
5 handrail. He did not report issues with the handrail to Future Logging’s owner, Rick
6 Christian. (Testimony of Woolley)

7 55) Following their initial discussion about the broken handrail, Young did not
8 speak to Woolley about it again. After the heater in the 320C was repaired on January
9 20, 2021, Young thought that Woolley appeared to be “back to normal” and Young took
10 no action to fix the handle. The handle was never repaired during Woolley’s employment.
11 (Testimony of Young)

12 ***Log Loading Incident***

13 56) On or about February 24, 2021, Young provided instructions to Woolley
14 about how to distribute long and short logs when loading the logging trucks. (Testimony
15 of Woolley, Young)

16 57) The next day, Woolley loaded the logs in a different manner than how he
17 had been instructed by Young. (Testimony of Young)

18 58) Woolley believed that he loaded the logs properly.⁹ (Testimony of Woolley)

19 59) When Young noticed Woolley loading the logs incorrectly, he contacted
20 Woolley using a CB radio. He told Woolley to mix short logs in with the long logs. Woolley

21
22 ⁹ Woolley testified that he loaded the logs correctly according to Young’s instructions. When comparing
23 the testimony of both Young and Woolley, the forum concludes that although Woolley believed he was
24 loading the logs correctly, Woolley misunderstood Young’s instructions and did not load them as instructed.
Woolley’s misunderstanding is consistent with his testimony that a prior traumatic brain injury sometimes
impacts his cognition and ability to process information. (Finding of Fact – The Merits #2)

1 then swung the log loading boom over the pile of short logs and moved it back towards
2 the long logs, which Young interpreted as an attempt to antagonize him. Young felt that
3 he very clearly told Woolley how to load the truck and that Woolley deliberately disobeyed
4 his instructions. (Testimony of Young)

5 60) Young became angry and approached Woolley with a raised voice. Woolley
6 understood that Young was entitled to give him direction, and he knew that Young was
7 not happy with how he had loaded the logs. Woolley asked Young if he was going to fire
8 him. Young responded “no” and said that he was just frustrated. This was the last day
9 that Woolley worked at Future Logging. (Testimony of Woolley, Young)

10 61) After work that day, Young sent Woolley a text message, which stated,
11 “Sometimes I forget the pain [you’re] in. I just couldn’t believe you didn’t have any short
12 logs on that load after we talked about it last night.” (Ex. A13, p.1)

13 62) Young did not immediately terminate Woolley after the log loading incident.
14 He wanted to think and pray about what to do, and later decided that he “could not see a
15 way forward” with Woolley. Young felt that Woolley was a “hard guy to work with,” and
16 was not a good fit for the company and with other employees who worked together like a
17 family. (Testimony of Young)

18 63) The day after the log loading incident, Woolley took time off from work on
19 Friday, February 26, 2021, and the following Monday, March 1, 2021, to travel to the
20 Oregon coast to grieve the recent death of his father. (Testimony of Woolley; Official
21 Notice of calendar dates)

22 64) On February 26, 2021, the main cylinder on a logging “yoder” vehicle bent
23 and caused the machine to go down. In response, Young laid off the entire crew from
24

1 the Camas Thin project. Except for some layout work that Young performed on his own,
2 there was no work for a period of time on the Camas Thin project. Young sent two of the
3 crew members to a job site in Ashland, Oregon. Work resumed in late February¹⁰ on the
4 Camas Thin project. Young re-hired all of the workers, with the exception of Woolley.
5 (Testimony of Young)

6 65) When Woolley returned from his trip to the Oregon coast, he sent a text to
7 Young, but did not receive a response. After Woolley had not heard back from Young for
8 several days, he contacted a co-worker, "Rick,"¹¹ who also worked on the Camas Thin
9 project. Rick told Woolley that Young was "getting rid of" him.¹² (Testimony of Woolley)

10 66) On the following Saturday (March 6, 2021), Young sent a text message to
11 Woolley, stating:

12 "Good morning. Hope all is going well for you. Looking forward I find myself ahead
13 of layout work [and] other parts of my job. The only other job I can do proficiently
is operate the log loader. Very sorry I'll have to lay you off at this time."

14 (Testimony of Woolley; Ex. A13, p 2)

15 67) Woolley's co-worker, Rick, told Woolley that he saw a Craigslist
16 employment ad for a logging "yoder" operator at Future Logging. Woolley found the
17 Craigslist ad online and noted that it was posted on March 9, 2021. Woolley was qualified
18 to operate a yoder machine and had experience operating one. At that time, Woolley was

20 ¹⁰ The record is unclear as to the exact date work on the Camas Thin project resumed. The forum infers
21 that work must have only stopped for a couple of days based on Young's description of the timing of the
yoder machine breakdown and the resumption of work.

22 ¹¹ The co-worker is a different person than Rick Christian, one of the owners of Future Logging.

23 ¹² Future Logging's counsel objected to this testimony on the grounds of hearsay. The ALJ took the
24 objection under advisement and stated that a ruling would be made in the proposed order. Hearsay is
permitted in BOLI contested case hearings if it is reliable. OAR 839-050-0260(1). Given that Young testified
that he decided to end Woolley's employment after the log loading incident, the forum considers the hearsay
to be "reliable" and the objection is overruled.

1 starting to feel better as a result of the medication he was taking. (Testimony of Woolley)

2 68) Future Logging's work on the Camas Thin project ended in mid-May of
3 2021. (Testimony of Young)

4 69) In 2021, Future Logging also conducted logging operations in Estacada and
5 southern Oregon. Young did not offer work to Woolley at these job sites because he did
6 not want to work with him. (Testimony of Young)

7 ***Woolley's Efforts to Seek Alternative Employment***

8 70) In March of 2021, Woolley felt he was physically able to continue working
9 for Future Logging because he was familiar with its equipment and procedures. He is
10 unsure if he could have performed logging work for other logging companies as he may
11 not have been comfortable with different equipment in a new environment and could have
12 been overwhelmed. In March of 2021, Woolley did not contact any other logging
13 companies to try to find work. Woolley also did not seek logging work in April or May of
14 2021, as he was not feeling well at that time. Woolley's position at Future Logging was
15 the last job he worked in the logging industry. (Testimony of Woolley)

16 71) Woolley had an appointment scheduled with his rheumatologist on April 14,
17 2021. He called the office on April 13, 2021, and was told that his health insurance was
18 canceled. This caused him to feel depressed. His hands began swelling again because
19 he could not afford medication without health insurance. (Testimony of Woolley)

20 72) Pretty close to the time he was laid off from Future Logging, Woolley's
21 health "took a turn" and he was not well enough to apply to work as a logging shovel
22 operator. He did not have the physical capability to work the number of hours required
23 for those positions. (Testimony of Woolley)

1 73) After his employment at Future Logging ended, Woolley did not immediately
2 look for work. He felt depressed and his health was not good. (Testimony of Woolley)

3 74) Woolley started looking for work again in November of 2021 after his health
4 improved and he was feeling better.¹³ He received healthcare coverage through the
5 Oregon Health Plan and was able to see a doctor. (Testimony of Woolley)

6 75) Woolley did not locate work until May of 2022, when he began working for
7 a granola manufacturing company. He packaged products on an assembly line, stacked
8 pallets and provided cleaning services. However, he soon began having problems
9 walking and could not lift his arms above his shoulders. After nine days of work, Woolley
10 was not physically able to do the job and resigned from the position. (Testimony of
11 Woolley)

12 76) After Woolley stopped working at the granola company, he participated in a
13 vocational rehabilitation program. (Testimony of Woolley)

14 77) Woolley next worked for Earthlabs, a pharmaceutical company, running a
15 volumetric machine filling medicine bottles. The vocational rehabilitation program
16 provided him with assistance to do the job, including a chair and clamps. Although the
17 job went well, Earthlabs had a major layoff in March of 2023 and Woolley was laid off.
18 (Testimony of Woolley)

19 78) After the Earthlabs layoff, Woolley worked as an evening custodian for the
20 4J School District from March of 2023 to May of 2024. He voluntarily left this position
21 because he wanted to try something different. (Testimony of Woolley)

22 _____
23 ¹³ Woolley testified that he “called a couple places” to look for work between March and November of 2021,
24 but had no documentation of a job search during this time and did not identify the names of any employers
he contacted for work.

1 79) Woolley then provided in-home care services for a company called New
2 Horizons. Woolley resigned from this position because the job duties were tough and too
3 overwhelming for him. (Testimony of Woolley)

4 80) Woolley next worked for Nancy's Yogurt at its creamery in Springfield,
5 Oregon. He washed equipment and ran computer programs that cleaned pipes with
6 different chemicals. Although the work was rough, he initially enjoyed working for the
7 creamery. However, he began to experience flashbacks and his emotions flooded over
8 him. He had panic attacks and could not concentrate. When he feels down, his cognition
9 is "off" and he loses focus.

10 While working in the creamery's vegan room, Woolley forgot to turn off a switch
11 before disconnecting a pipe, causing the pipe to explode and fill the room with caustic
12 gas. After the explosion, Woolley felt it was unsafe for him to work at the creamery and
13 he resigned from his position. (Testimony of Woolley)

14 81) Prior to the hearing, Woolley last worked in November of 2024. He felt that
15 he could not work because he experienced panic attacks and was not "processing" well.
16 (Testimony of Woolley)

17 ***Additional Emotional Impact of Termination***

18 82) The loss of Woolley's job at Future Logging impacted his marriage of 28
19 years. His wife spit on him and told him that he was worthless because he could not
20 work. They are no longer together. (Testimony of Woolley)

21 83) After Woolley's marriage ended, his adult daughter cared for him. She ran
22 his errands and helped him pay the rent. (Testimony of Woolley)

23 84) Woolley felt devastated after his employment at Future Logging ended. It
24

1 took a toll on him emotionally and brought him down. He suffered from depression, which
2 led to rheumatoid arthritis flareups. It felt like a vicious cycle. (Testimony of Woolley)

3 ***Credibility Findings***

4 85) The forum concludes that Woolley was generally a credible witness, but
5 there were instances of inconsistency with dates and some events that appear to have
6 been exaggerated.

7 In particular, while not necessarily a credibility issue, the forum finds that there is
8 evidence in the record that calls into question the reliability of Woolley's testimony and, in
9 particular, his ability to recall. He testified at the beginning of the hearing regarding a
10 traumatic brain injury that impacted his cognition, and there were numerous instances in
11 which he provided inconsistent testimony about the dates of occurrences. There was
12 also testimony that he had never seen a therapist. However, when cross-examined by
13 reference to a medical chart note, Woolley admitted that he had previously seen a
14 therapist for three and a half years. Accordingly, when testimony was in dispute, the
15 forum looked to other reliable evidence to corroborate Woolley's testimony.

16 Additionally, Woolley's testimony that his pants caught on fire provides an
17 illustration of a likely exaggeration or amplification of an event. In particular, Woolley
18 testified that the temporary Buddy portable heater caught his pants "on fire" a "few times"
19 while he operated the 320C. If a logging worker's clothing caught on fire several times in
20 the middle of an Oregon forest, one would expect that it would have been a major safety
21 emergency, perhaps involving a fire extinguisher and reports to management. However,
22 there was no evidence that anyone else was aware of such a dangerous scenario.
23 Woolley testified that he told Young about the problem with the Buddy heater turning off
24

1 intermittently, but there is no evidence that they discussed his clothing catching on fire,
2 which would have been a far more significant problem. The forum finds it more plausible
3 that the heater singed Woolley's pantlegs when he was too close to it. However, without
4 supporting evidence, the forum is unable to conclude that Woolley's pants "caught on fire"
5 a "few times." The forum disregarded portions of Woolley's testimony which appeared
6 exaggerated and were not supported by additional evidence.

7 86) With respect to the remaining witnesses, there were multiple
8 inconsistencies about the dates and details of events, which required a significant and
9 time-consuming review of the record to resolve. These inconsistencies may be
10 attributable to memory and the passage of time between the events and testimony.
11 Accordingly, the forum based its factual findings primarily on testimony supported by other
12 credible evidence, such as exhibits and the testimony of corroborating witnesses.

13 87) The forum did not find the testimony of Mable Young to be relevant to the
14 matters at issue in this case, and disregarded it in its entirety.

15 **OPINION AND CONCLUSIONS OF LAW**

16 The Formal Charges allege that Future Logging subjected Woolley to three
17 violations of Oregon's employment disability laws by: (1) failing to provide Woolley "with
18 reasonable accommodations because of his disabilities;" (2) failing to engage in a
19 meaningful interactive process with Woolley; and (3) terminating Woolley for requesting
20 a disability accommodation. Before proceeding to the merits of each alleged violation,
21 the forum notes that there is no dispute that at all times material herein, Future Logging
22 was an employer as defined in ORS 659A.001(4)(a) and employed Woolley. Additionally,
23 the Commissioner of the Bureau of Labor and Industries has jurisdiction over the persons
24

1 and the subject matter herein and the authority to eliminate the effects of any unlawful
2 practices found. ORS 659A.800 - ORS 659A.865.

3 The forum will next examine whether Woolley is an individual with a disability as
4 defined by ORS 659A.104.

5 The portions of ORS 659A.104 cited in the Formal Charges are as follows:

6 “(1) An individual has a disability for the purposes of ORS 659A.103 to 659A.145
7 if the individual meets any one of the following criteria:

8 “(a) The individual has a physical or mental impairment that substantially limits one
9 or more major life activities of the individual.

10 “* * * * *

11 “(2) Activities and functions that are considered major life activities for the purpose
12 of determining if an individual has a disability include but are not limited to:

13 “* * * * *

14 (g) Walking;

15 “* * * * *

16 (u) Reaching;

17 “* * * * *

18 “(3) An individual is substantially limited in a major life activity if the individual has
19 an impairment * * * that materially restricts one or more major life activities of the
20 individual. An impairment that substantially limits one major life activity of the
21 individual need not limit other major life activities of the individual.”

22 As well, the provisions of OAR 839-006-0205 cited in the Formal Charges provide:

23 “(1) ‘Disability’ means:

24 “(a) A physical or mental impairment that substantially limits one or more major life
activities of the individual.

“* * * * *

“(6) ‘Major life activity’ includes, but is not limited to:

1 “* * * * *

2 “(h) Walking;

3 “* * * * *

4 “(z) Reaching;

5 “* * * * *

6 “(9) ‘Physical or mental impairment’ means any physiological disorder or condition,
7 cosmetic disfigurement, or anatomical loss affecting one or more of the following
8 body systems: neurological, musculoskeletal, special sense organs, respiratory
9 (including speech organs), cardiovascular, reproductive, digestive, genito-urinary,
10 hemic and lymphatic, skin and endocrine; or any mental or psychological disorder,
11 such as mental retardation, organic brain syndrome, traumatic brain injury,
12 emotional or mental illness, and specific learning disabilities.

13 “* * * * *

14 “(12) ‘Substantially limits’ means that an individual has an impairment, had an
15 impairment or is perceived as having an impairment that restricts one or more
16 major life activities of the individual as compared to most people in the general
17 population.

18 “(a) An impairment need not prevent, or significantly or severely restrict, the
19 individual from performing a major life activity in order to be considered
20 substantially limiting.

21 “(b) An impairment that substantially limits one major life activity of the individual
22 need not limit other major life activities of the individual.

23 “(c) In determining whether an impairment substantially limits a major life activity,
24 the ability of the individual with the impairment to perform that major life activity is
25 compared to that of individuals in the general population.

26 “(d) Factors that could affect whether an impairment ‘substantially limits a major
27 life activity’ include, but are not limited to, the presence of other impairments that
28 combine to make the impairment disabling.”

29 “When determining whether an impairment substantially limits a major life activity
30 of an individual, the determination shall be made without regard to the ameliorative effects
31 of mitigating measures * * * * *.” OAR 839-006-0212(1). “The determination of whether
32 an individual has a disability shall be construed in favor of broad coverage” and “shall be

1 made on a case-by-case basis.” OAR 839-006-0202; OAR 839-006-0212(3).

2 The evidence in this case establishes that Woolley received medical treatment for
3 physical symptoms beginning in late November of 2020 and was diagnosed with
4 rheumatoid arthritis in January of 2021. (Finding of Fact --The Merits # 32) Before and
5 after receiving the diagnosis, Woolley’s symptoms included pain when climbing in and out
6 of his 320C vehicle. (Findings of Fact --The Merits ## 28, 53) On at least one occasion,
7 he had difficulty walking and had to crawl to his pickup truck at the end of his workday.
8 (Finding of Fact --The Merits # 28) At a medical appointment on November 27, 2020,
9 Woolley spoke to a medical provider about pain in his left shoulder, hips and knees, as
10 well as persistent pain in his hands and fingers. (Finding of Fact --The Merits # 29) He
11 told his primary care physician about right shoulder pain on December 14, 2020, and the
12 doctor noted that Woolley’s “right [shoulder] has recently become just as painful as the
13 left.” (Finding of Fact --The Merits # 30)

14 Applying the law to the facts of this case, the forum concludes that Woolley’s
15 rheumatoid arthritis condition is a “physiological disorder or condition” that affects his
16 “neurological” and “musculoskeletal” body systems and, as such, constituted a “physical
17 impairment” within the meaning of OAR 839-006-0205(9). The pain and discomfort
18 experienced by Woolley while walking on the jobsite and climbing in and out of his work
19 vehicle constitute substantial limitations in major life activities under ORS 659A.104(3)
20 and OAR 839-006-0205(12).

21 **A. Reasonable Accommodation**

22 The Formal Charges allege that Future Logging committed an unlawful
23 employment practice by failing to provide Woolley with reasonable accommodations
24

1 because of his disability¹⁴ in violation of ORS 659A.112(1),(2)(e); ORS 659A.118(1)(c);
2 OAR 839-005-0011(1),(2),(3),(4); and OAR 839-006-0206(1)(b),(c), (3). Exposure to cold
3 temperatures exacerbated Woolley's rheumatoid arthritis bodily pain and he experienced
4 right shoulder pain after repeatedly leaning to his right side due to the broken left handrail.
5 Accordingly, Woolley requested that Future Logging repair the heater and the broken left
6 handrail in his 320C vehicle.

7 ORS 659A.112 provides, in pertinent part:

8 “(1) It is an unlawful employment practice for any employer to * * * discriminate in
9 compensation or in terms, conditions or privileges of employment on the basis of
disability.

10 “(2) An employer violates subsection (1) of this section if the employer does any
11 of the following:

12 “* * * * *

13 “(e) The employer does not make reasonable accommodation to the known
14 physical or mental limitations of a qualified individual with a disability who is a job
applicant or employee, unless the employer can demonstrate that the
15 accommodation would impose an undue hardship on the operation of the business
of the employer.”

16 As set forth in ORS 659A.112(2)(e), Future Logging had an obligation to provide
17 “reasonable accommodation” to a “qualified individual with a disability.” Having
18 determined that that Woolley is a person with a disability, the forum must now determine
19 if Woolley is a “qualified” employee with a disability. ORS 659A.115 defines “qualified
20 individual” as “an individual is qualified for a position if the individual, with or without
21 reasonable accommodation, can perform the essential functions of the position.” There
22

23 ¹⁴ The Formal Charges referred to “disabilities” (plural). However, the Formal Charges alleged and the
24 evidence at hearing showed that Woolley's rheumatoid arthritis was the only disability at issue.

1 is no dispute that Woolley was able to and did perform all the essential functions of his
2 job while he was at work, but the Agency asserts that he needed accommodations to do
3 so without pain.

4 In reviewing the reasonable accommodations requested by Woolley, the forum
5 notes that Future Logging did not raise the affirmative defense of undue hardship.
6 Accordingly, it is not necessary to perform the analysis set for in ORA 659A.121 in this
7 matter.

8 1. Fixing the 320C Heater

9 The first accommodation sought by Woolley was to fix the broken heater in the cab
10 of the 320C. The applicable portions of OAR 839-006-0206 define “reasonable
11 accommodations” as “modifications or adjustments:”

12 “(b) To the work environment, or to the manner or circumstances under which a
13 position is customarily performed, that enable a qualified employee or applicant
with a disability to perform the position's essential functions; or

14 “(c) That enable a qualified employee or applicant with a disability to enjoy equal
15 benefits and privileges of employment as are enjoyed by similarly situated
employees without a disability.”

16 In this case, Woolley performed the essential functions of his position and, thus,
17 subsection (b) does not apply. Rather, the issue was that Woolley experienced pain and
18 discomfort doing his job in the cold due to his rheumatoid arthritis condition. The forum
19 concludes that the phrase “enjoy equal benefits and privileges” under subsection (c)
20 includes providing a reasonable accommodation that would reduce an employee's pain
21 while performing their job duties. See, e.g., *Tudor v. Whitehall Cent. Sch. Dist.*, 132 F4th
22 242, 248 (2d Cir 2025) (“In at least some circumstances, the ADA requires an employer
23 to offer accommodations that mitigate (if not necessarily eliminate) an employee's
24 disability-related pain.”); *Hill v. Associates for Renewal in Educ., Inc.*, 897 F3d 232, 239

1 (DC Cir 2018), *cert den* 139 S Ct 1201 (2019)¹⁵ (“A reasonable jury could conclude that
2 forcing [an employee] to work with pain when that pain could be alleviated by his
3 requested accommodation violates the ADA.”)

4 The evidence at hearing demonstrated that the heater in Woolley’s vehicle stopped
5 working on or around December 5, 2020, and was fixed by a mechanic hired by Future
6 Logging on or about January 21, 2021, approximately one and a half months later.
7 (Findings of Fact --The Merits, ## 33, 42) For a portion of this period of time, the job site
8 was shut down for the year-end holidays, and Woolley did not work between December
9 18, 2020, and January 1, 2021. (Finding of Fact --The Merits # 40)

10 The Agency argues that Future Logging should have repaired the heater more
11 quickly. In response, Future Logging demonstrated that Young made considerable efforts
12 to arrange for a mechanic to travel to the job site in the remote and snowy forest location
13 to repair the 320C. In addition, Young first provided Woolley with a portable Buddy heater
14 that he purchased on December 5, 2020. When Woolley used the Buddy heater, it
15 sometimes tipped over and switched off. Woolley told Young that the Buddy heater
16 intermittently shut off. In response, Young tracked down alternative temporary heating
17 options to Woolley and offered his pickup truck for Woolley to use to turn on the heat and
18 warm up. All throughout this time, Young communicated with two separate mechanics
19 to try to get them to come out to the job site on forest service land during winter conditions
20

21
22 ¹⁵ Although federal law similar to Oregon’s civil rights laws is not binding on the forum, federal decisions
23 can be instructive in construing and applying similar state law. *In the Matter of Sunstone Organics, LLC*,
24 39 BOLI 23, 47 n 3 (2023), *aff’d* 336 Or App 113 (2024) (nonprecedential memorandum opinion). *See also*
ORS 659A.139(1) (“ORS 659A.103 to 659A.144 shall be construed to the extent possible in a manner that
is consistent with any similar provisions of the federal Americans with Disabilities Act of 1990, as amended
by the federal ADA Amendments Act of 2008 and as otherwise amended.”)

1 and repair the heater. (See Findings of Fact --The Merits, ## 36-52)

2 There is no evidence that there was another type of temporary heater available
3 that could have worked better for Woolley, and Woolley admitted that he did not suggest
4 a different type of temporary heater for Young to obtain for him. (Finding of Fact --The
5 Merits, # 52)

6 Accordingly, the forum concludes that Future Logging provided a reasonable
7 accommodation to Woolley by repairing the heater as quickly as possible given the
8 remote forest location of the job site, and by attempting to provide temporary solutions
9 such as portable heaters and the offer to warm up in Young's pickup truck.

10 2. Repair of the 320C Broken Left Handrail

11 In contrast to the efforts taken to repair the heater, there is no evidence of any
12 effort made to accommodate Woolley's request to repair the left handrail which was
13 broken for the entire time Woolley worked at Future Logging. Woolley was forced to shift
14 most of his body weight to his right side to maneuver up and down the ladder to climb into
15 the 320C cab. (Findings of Fact --The Merits, # 53) This uneven pressure caused him
16 to experience right shoulder pain, which he reported to his doctor on December 14, 2020.
17 (Findings of Fact --The Merits, ## 30, 53) Woolley asked Young to fix the handrail and
18 told him about the problems it caused him, but the handrail was never fixed. (Findings of
19 Fact --The Merits, ## 54-55)

20 Accordingly, the forum concludes that Future Logging failed to provide Woolley
21 with a reasonable accommodation (fixing the handrail) because of his disability in violation
22 of ORS 659A.112(1),(2)(e); ORS 659A.118(1)(c); and OAR 839-006-0206(1)(b),(c), (3).

23 B. Interactive Process

24 "An interactive process between an employee or applicant with a disability and an

1 employer, that readily identifies mutually agreeable reasonable accommodation, is a
2 meaningful interactive process.” OAR 839-006-0206(5)(a). “A meaningful interactive
3 process is an informal process between a qualified employee * * * and an employer in an
4 effort to identify potential reasonable accommodation.” OAR 839-006-0206(5).

5 With respect to Woolley’s request for the repair of the heater, there is no dispute
6 that Future Logging agreed to Woolley’s request, took action and arranged for it to be
7 repaired. His supervisor, Young, also attempted to provide temporary solutions until that
8 could be done. Young communicated frequently with Woolley, and Woolley never
9 responded by offering alternative temporary solutions that Young failed to implement.
10 Accordingly, as to the heater request, the forum concludes that Future Logging engaged
11 in a meaningful interactive process.

12 However, for the reasons described in the section above, the forum concludes that
13 Future Logging did not engage in a meaningful interactive process with Woolley regarding
14 the broken handrail. After Woolley told Young that the broken left handrail caused him
15 pain when entering and exiting his work vehicle, there is no evidence in the record of any
16 discussions with Woolley about how to resolve the situation. In particular, there is no
17 evidence of any effort to attempt to repair the handle. Rather, it appears that Young
18 presumed that the handle repair was unnecessary after the heater was fixed. Importantly,
19 “once the interactive process begins, the burden is on the employer to provide the
20 employee with reasonable options.” *Cooper v. Robert G. Rust, Jr., D.M.D., PC*, 343 Or
21 App 390, 399, 578 P3d 1225 (2025), *rev allowed sub nom. Cooper v. Rust*, 375 Or 109
22 (2026) (*citing Humphrey v. Mem’l Hosps. Ass’n*, 239 F.3d 1128, 1137 (9th Cir 2001)).
23 When Future Logging failed to make any effort to repair the handle and Young simply
24

1 assumed it was no longer a problem for Woolley, Future Logging failed to meet this
2 burden. Accordingly, the forum concludes that Future Logging violated ORS
3 659A.112(2)(e) and OAR 839-006-0206(5)(a).

4 **C. Retaliation**

5 The Formal Charges allege that Future Logging violated ORS 659A.112(1), (2)(a),
6 (f) and OAR 839-006-0200(2), (3)(a) by terminating Woolley’s employment for “requesting
7 a disability accommodation.” “[I]t is an unlawful employment practice for an employer to
8 discharge someone from employment or to discriminate against them in compensation,
9 terms, conditions, or privileges of employment on the basis of disability. *Kelley v.*
10 *Washington Cnty.*, 303 Or App 20, 25–26, 463 P3d 36 (2020), citing ORS 659A.112. To
11 state a prima facie claim for disability discrimination, the Agency must show that: (1)
12 Woolley is disabled; (2) he is a qualified individual able to perform the essential functions
13 of the job with reasonable accommodation; and (3) he suffered the adverse employment
14 action because of his disability. *Doe v. Teachers Council, Inc.*, 757 F Supp 3d 1142, 1165
15 (D Or 2024), citing ORS 659A.139(1) and *Samper v. Providence St. Vincent Med. Ctr.*,
16 675 F3d 1233, 1237 (9th Cir. 2012).¹⁶ Elements 1 and 2 are established. As well, it is
17 undisputed that Woolley suffered an adverse employment action when Future Logging
18 terminated his employment. Therefore, the forum examines whether there is a causal
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21 ¹⁶ In *Doe*, the U.S. District Court considered federal and Oregon disability discrimination claims together
22 after noting that “the standard for establishing a *prima facie* case of disability discrimination is identical
23 under federal and Oregon law.” *Doe*, 757 F Supp 3d at 1165. See also ORS 659A.139(1) (stating that
24 “ORS 659A.103 to 659A.144 shall be construed to the extent possible in a manner that is consistent with
any similar provisions of the federal Americans with Disabilities Act of 1990.”) Additionally, interpretations
of the federal ADA are useful in determining whether an employer has engaged in impermissible
discrimination under ORS 659A.112. *Kelley*, 303 Or App at 26.

1 connection between Woolley’s rheumatoid arthritis condition and Young’s decision to
2 terminate his employment.

3 Given that ORS 659A.139(1) instructs that “ORS 659A.103 to 659A.144 shall be
4 construed to the extent possible in a manner that is consistent with any similar provisions
5 of the federal Americans with Disabilities Act of 1990,” the forum applies the “but for”
6 causation standard that courts use when interpreting the federal ADA. *See Murray v.*
7 *Mayo Clinic*, 934 F3d 1101, 1105 (9th Cir. 2019) (rejecting the “motivating factor” standard
8 and “hold[ing] instead that an ADA discrimination plaintiff bringing a claim under 42 U.S.C.
9 § 12112 must show that the adverse employment action would not have occurred but for
10 the disability”); *accord Natofsky v. City of New York*, 921 F3d 337, 349-50 (2d Cir. 2019)
11 (granting summary judgment to city because Natofsky failed to demonstrate that his
12 hearing disability was the “but for” cause of his demotion); *Gentry v. E. W. Partners Club*
13 *Mgmt. Co.*, 816 F3d 228, 234 (4th Cir. 2016) (holding that ADA requires a “but for”
14 causation standard); *T.B. ex rel Brenneise v. San Diego Unified Sch. Dist.*, 806 F.3d 451,
15 473 (9th Cir. 2015) (granting summary judgment where no reasonable jury could find
16 district would have failed to provide nurse for disabled student but for desire to retaliate).
17 Therefore, when evaluating causation using the “but for” standard, the forum will examine
18 whether “the adverse employment action would not have occurred but for” Woolley’s
19 request for a disability accommodation. *Murray*, 934 F3d 1101 at 1105. *See also Magee*
20 *v. Trader Joe’s Co.*, No. 3:18-CV-01956-AC, 2020 WL 9550008, at *7 (D. Or. Sept. 1,
21 2020).

22 In this case, Young told Woolley that he was laid off in a text message on March
23 6, 2021. About a week prior to that message, Young laid off all workers on the Camas
24

1 Thin project when the yoder logging machine broke down. However, a couple of days
2 later, Young re-hired all of the Camas Thin workers except for Woolley. Within the next
3 few days, Future Logging posted an advertisement on Craigslist seeking a yoder
4 equipment operator, a piece of equipment that Woolley was qualified to operate.

5 Young testified that he no longer wanted to work with Woolley because he had a
6 difficult personality, and referred to the log loading incident in which Young became angry
7 with Woolley. Young also claimed that Woolley sent him unpleasant text messages, but
8 Future Logging did not offer any such messages into evidence and there was no other
9 evidence describing the contents of such messages.

10 Notably, there was at least one other employee (DeHut) who also had disputes
11 with co-workers and was not laid off. In particular, Young had to step in when DeHut and
12 Woolley had verbal altercations and separate them. On one of those occasions, DeHut
13 was about to walk off the job site and Young had to calm him down.

14 Woolley was the only worker on the Camas Thin project that Young did not re-hire
15 after the February 2021 layoff, and Young testified that he did not consider Woolley to be
16 a part of the work “family.” Future Logging also placed a Craigslist advertisement seeking
17 to hire a logging worker to run a piece of equipment that Woolley was qualified to operate.
18 As well, after Young became angry with Woolley for loading logs incorrectly, he sent a
19 text message to Woolley which read: “Sometimes I forget the pain [you’re] in. I just
20 couldn’t believe you didn’t have any short logs on that load after we talked about it last
21 night.” (Finding of Fact --The Merits # 61) At a minimum, this statement creates an
22 inference that Young associated Woolley’s behavior that day with his disability and
23 treated him differently than the other workers when he did not invite him back to work
24

1 after the short layoff. Considering all of the evidence together, the forum concludes that
2 the termination would not have occurred “but for” Woolley’s request for a disability
3 accommodation. Therefore, the Agency sustained its burden and proved a violation of
4 ORS 659A.112(1), (2)(a), (f) and OAR 839-006-0200(2), (3)(a).

5 **DAMAGES**

6 *Lost Wages*

7 Because Woolley was unlawfully terminated from his position at Future Logging,
8 he is entitled to receive lost wages. At the outset, the forum notes that the presentation
9 of evidence on this issue from both parties was confusing. Accordingly, inferences were
10 drawn against the party who would have been in possession of the evidence.

11 For example, Future Logging provided testimony about its logging operations until
12 the time the business closed in November of 2021. However, the dates of those
13 operations are unclear. Since Future Logging could have provided business records to
14 clarify the dates of its logging operations and closures, the forum made inferences
15 interpreting those matters more generously in favor of the Agency.

16 Conversely, the Agency presented evidence about Woolley’s ability to work and
17 mitigation efforts, but many of those details and dates are unclear.¹⁷ Therefore,
18 inferences regarding that evidence were drawn in favor of Future Logging.

19 In the Formal Charges, the Agency alleged that Woolley suffered lost wages of “at
20 least \$8,900 * * * beginning April 1, 2021.” In its closing argument, the Agency argued
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23 ¹⁷ The Agency offered testimony from Woolley regarding a traumatic brain injury which satisfactorily
24 explained why his memory was unclear. However, there were no employment records, testimony from
other witnesses, or other documents in the record to provide clarity on the dates.

1 that Woolley was entitled to lost wages in the amount of \$43,072. It arrived at that figure
2 by asserting that Woolley's monthly pay averaged \$5384 and arguing that Woolley could
3 have continued to work for eight months from April 2021 until Future Logging shut down
4 in November of 2021 ($\$5384 \times 8 = \$43,072$).

5 In Future Logging's closing argument, its counsel argued that Woolley's economic
6 damages should be "zero" because he had not worked in the logging industry since 2018
7 and never attempted to find timber work again after he left Future Logging. In addition,
8 Woolley testified that he did not look for work in March of 2021 because he was not
9 required to because of COVID-related unemployment rules. Future Logging further
10 argued that the Camas Thin project ended in May of 2021 and there was no evidence
11 that Woolley would have driven to the Estacada job that was operating at that time.
12 Furthermore, Future Logging only employed one employee (DeHut) at its Estacada job,
13 and there was no evidence that Woolley could operate DeHut's equipment.

14 Woolley worked a total of six months for Future Logging (August 24, 2020 –
15 February 25, 2021). (Finding of Fact --The Merits ## 7, 56, 60) During that time, he
16 earned \$32,460.¹⁸ (Finding of Fact --The Merits # 16) Accordingly, his average monthly
17 pay was \$5,410 ($\$32,460$ divided by 6). All other crew members returned to the Camas
18 Thin project at the end of February 2021 and continued working at the site until the project
19 concluded in mid-May of 2021. Thereafter, Future Logging ran operations in other
20 Oregon locations until the company closed in November of 2021. Accordingly, if Woolley
21 had not been terminated due to his disability, he could have potentially earned seven
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23 ¹⁸ Future Logging paid Woolley a holiday bonus, but this payment was not included in his payroll records.
24 (See Ex. R8A)

1 months of wages from April 2021¹⁹ until the end of November 2021 in the total amount of
2 \$37,870 (\$5410 x 7).

3 However, unfortunately, Woolley's health "took a turn" shortly after his employment
4 at Future Logging ended, and he was not capable of working as a logging shovel operator.
5 (Finding of Fact --The Merits # 72) Additionally, in his testimony, he provided examples
6 of his difficulties working in other settings thereafter. In May of 2022, Woolley left his
7 position at a granola factory after nine days when he could not lift his arms above his
8 shoulders and could not physically do the job. (Proposed Finding of Fact --The Merits #
9 75) He resigned from his position providing in-home care services for New Horizons
10 because the work was tough and too overwhelming for him. (Finding of Fact --The Merits
11 # 79) He also resigned from his position at the Nancy's Yogurt creamery after he failed
12 to turn off a switch and caused an explosion of caustic gas. (Finding of Fact --The Merits
13 # 80

14 A complainant who is seeking damages for back pay is required to mitigate
15 damages by using reasonable diligence in finding other suitable employment. *In the*
16 *Matter of The Royal Clothiers*, 39 BOLI 183, 194 (2023). The burden of proof regarding
17 the failure to mitigate damages lies with Future Logging. *Id.* By Woolley's own admission,
18 he did not seek work in the logging industry after his employment with Future Logging
19 ended, and he did not look for any work in March of 2021 when COVID-related rules
20 removed job search requirements for receiving unemployment benefits. (Finding of Fact
21 --The Merits #72) He provided testimony that, after Future Logging, his next job began
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23 ¹⁹ Wages are calculated beginning with April 1, 2021, because that is the date provided by the Agency in
24 the Formal Charges.

1 in May of 2022, and he resigned from that position after nine days. (Finding of Fact --The
2 Merits #75) Wooley's mitigation efforts following his termination until the business closed
3 are insufficient to show that Woolley used reasonable diligence to mitigate his damages.
4 Accordingly, if Woolley had been entitled to lost wages, Future Logging satisfied its
5 burden and established that Woolley did not mitigate his damages while the company
6 was still operating. Therefore, there is no entitlement to an award for lost wages.

7 *Emotional Distress Damages*

8 The Agency seeks damages on behalf of Woolley in the amount of at least
9 \$250,000 for emotional, mental and physical suffering. Pursuant to ORS 659A.850, the
10 Commissioner of the Bureau of Labor and Industries has the authority to award money
11 damages for emotional, mental, and physical suffering sustained. *In the Matter of Oregon*
12 *Truck Painting, LLC*, 37 BOLI 87, 114-15 (2018). The commissioner has the authority to
13 fashion a remedy adequate to eliminate the effects of unlawful employment practices. *Id.*

14 In determining an award for emotional and physical suffering, the forum considers
15 the type of discriminatory conduct, and the duration, frequency, and severity of the
16 conduct. It also considers the type and duration of the mental distress and the
17 vulnerability of the aggrieved persons. A complainant's testimony, if believed, is sufficient
18 to support a claim for mental suffering damages. *Id.*, citing *In the Matter of Dr. Andrew*
19 *Engel, DMD, PC*, 32 BOLI 94, 141 (2012).

20 In this case, the evidence established that, due to the unrepaired left handrail,
21 Woolley began experiencing physical pain in his right shoulder after he was forced to
22 place a disproportionate amount of weight on his right side. The record shows that he
23 received medical care for that pain in December of 2021, and the physician noted that the
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1 Woolley’s “right [shoulder] has recently become just as painful as the left.” (Finding of
2 Fact --The Merits #30)

3 Woolley also testified about his mental state following his termination from
4 employment. He felt devastated and depressed, which worsened his rheumatoid arthritis
5 pain. The termination took a toll on him and brought him down. After he lost his job, his
6 marriage of 28 years ended. His wife spit on him and told him that he was worthless
7 because he could not work. His adult daughter cared for him and helped him pay his
8 rent. (See Findings of Fact --The Merits ## 82-84)²⁰

9 Given that the forum concluded that Woolley was terminated because he asked
10 for a disability accommodation, the forum finds past cases in which a complainant was
11 terminated after engaging in protected activity to be instructive. *See In the Matter of Your*
12 *House LLC*, 39 BOLI 134, 146 (2023) (awarding \$30,000 in emotional distress damages
13 to an employee whose relationships with family and friends were adversely impacted due
14 to her anxiety and depression after an unlawful termination); *In the Matter of 4Rs*
15 *Associates, LLC*, 38 BOLI 68, 77-78 (2022) (awarding \$10,000 to a complainant who felt
16 devastated and depressed after being fired because he asked his employer for wages
17 owed to him); *In the Matter of Vision International Petroleum LLC*, 37 BOLI 187, 200
18 (2019) (awarding \$60,000 in emotional distress damages to a Complainant who
19 experienced racial harassment and was discharged in retaliation about his complaints
20 regarding the harassment); *In the Matter of Blue Gryphon, LLC, and Flora Turnbull*, 34

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22 ²⁰ As discussed above, factors unrelated to Future Logging impacted his ability to work shortly after leaving
23 Future Logging. These factors included his declining rheumatoid arthritis condition and the inability to
24 focus due to effects of his previous traumatic brain injury. Accordingly, the forum bases its award on
suffering that Woolley experienced as a result of Future Logging’s violations.

1 BOLI 216, 239 (2015) (awarding \$20,000 to a complainant who felt “confused,” “angry”
2 and “sad” after he was unlawfully discharged for whistleblowing); *In the Matter of Hey*
3 *Beautiful Enterprises, Ltd.*, 34 BOLI 80, 101 (2015) (awarding \$10,000 to a complainant
4 who felt angry and emotionally distraught after being discharged for complaining about
5 unpaid wages).

6 After considering the awards in these cases, the forum concludes that \$35,000 is
7 an appropriate award for the right shoulder pain and emotional distress Woolley
8 experienced as a result of Future Logging’s violations.

9 **OTHER REQUESTED RELIEF**

10 In the Formal Charges, the Agency request that the forum provide additional relief
11 by issuing an order as follows:

12 “(a) Declaring that Respondent’s practices * * * violated the applicable laws and
13 rules as stated in the [Formal Charges];

14 “(b) Ordering Respondent, including Respondent’s owners, managers,
15 supervisors, and human resources personnel to complete training, at
16 Respondent’s expense on preventing discrimination in the workplace, including
discrimination based on disability. Agency requests that this training be conducted
by the Bureau of Labor and Industries Employer Assistance Unit, or another trainer
agreeable to and approved by the Agency; [and]

17 “(c) Enjoining Respondent, their agents, employees, and all other persons in
18 active concert or participation with any of them, from violating laws pertaining to
employment discrimination.”

19 BOLI’s Commissioner is authorized to issue an appropriate cease and desist order
20 reasonably calculated to eliminate the effects of any unlawful practice found. ORS
21 659A.850(4). Among other things, that may include requiring a respondent to:

22 “(a) Perform an act or series of acts designated in the order that are reasonably
23 calculated to:

24 “(A) Carry out the purposes of this chapter;

1 “(B) Eliminate the effects of the unlawful practice that the respondent is
2 found to have engaged in, including but not limited to paying an award of
3 actual damages suffered by the complainant and complying with injunctive
4 or other equitable relief; and
5 “(C) Protect the rights of the complainant and other persons similarly
6 situated[.]”

7 The forum finds the Agency’s requested relief to be appropriate and awards it as
8 reflected in the Order below.

9 **EXCEPTIONS TO THE PROPOSED ORDER**

10 After consideration of the Agency’s Exceptions, the forum grants the Exceptions
11 as reflected above, as appropriate. Any exception not expressly addressed or
12 incorporated is denied.

13 **ORDER**

14 A. NOW, THEREFORE, as authorized by ORS 659A.850(2) and ORS
15 659A.850(4), and to eliminate the effects of the violations of ORS 659A.112(1); ORS
16 659A.112(2)(e); OAR 839-006-0206(5)(a); and OAR 839-006-0200(2),(3)(a) by
17 Respondent **Future Logging Co.**, and as payment of the damages awarded, the
18 Commissioner of the Bureau of Labor and Industries hereby orders Respondent **Future**
19 **Logging Co.** to deliver to the Administrative Prosecution Unit of the Bureau of Labor and
20 Industries, 1800 SW 1st Ave, Suite 500, Portland, Oregon 97201-5322, a certified check
21 payable to the Bureau of Labor and Industries in trust for **Scott Woolley** in the amount
22 of:

23 1) THIRTY-FIVE THOUSAND DOLLARS (\$35,000), representing
24 compensatory damages for emotional and physical suffering experienced by Scott
Woolley as a result of Respondent’s unlawful employment practices found herein;
plus,

2) Interest at the legal rate on THIRTY-FIVE THOUSAND DOLLARS
(\$35,000), until paid.

1 B. NOW, THEREFORE, as authorized by ORS 659A.850(2) and ORS
2 659A.850(4), the Commissioner of the Bureau of Labor and Industries declares that the
3 practices of Respondent **Future Logging Co.** violated the applicable laws and statutes
4 referenced above, and enjoins Respondent **Future Logging Co.** from violating laws
5 pertaining to employment discrimination. The Commissioner further orders Respondent
6 **Future Logging Co.** to train all of its managers, supervisors, and human resources
7 personnel, at Respondent's expense, on the correct interpretation and application of
8 Oregon laws pertaining to preventing discrimination in the workplace, including
9 discrimination based on disability, either through a training offered by the Bureau of Labor
10 and Industries Employer Assistance Unit or another trainer agreeable to the Agency, to
11 be completed by December 31, 2026.

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14 _____
15 Christina Stephenson, Commissioner
16 Bureau of Labor and Industries

17 ISSUED ON: October 8, 2024
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