



2019 Edition

Farm / Forest Labor Contracting

A Handbook for
Oregon Farm/Forest Labor Contractors

Oregon Bureau of Labor and Industries
Wage and Hour Division
Labor Contracting Unit

Bureau of Labor and Industries

Farm/Forest Labor Contracting
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2019 Edition
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Oregon Bureau of Labor and Industries
Wage and Hour Division

Val Hoyle
Commissioner

A WORD TO OUR READERS ...



This handbook is prepared as a general summary and teaching guide to help farm and forest labor contractors understand and comply with Oregon’s regulations for farm labor contractors and camp operators, as well as wage and hour and child labor requirements for all employers. The information in this book reflects legislative changes through the 2018 legislative session and administrative rules in effect as of January 1, 2019.¹ The Oregon Revised Statutes and Oregon Administrative Rules referenced in this handbook are available online at our website www.oregon.gov/boli.

In addition to the farm labor contractor law, labor contractors must also understand and comply with state and federal wage and hour and civil rights regulations, as well as the federal Migrant and Seasonal Agricultural Worker Protection Act.

Companion publications on “Wage and Hour Laws” and “Civil Rights Laws” and other employment law topics are available for purchase through our website at www.oregon.gov/boli/TA/Pages/T_Tabooks.aspx. General information regarding wage and hour, child labor and civil rights laws is also available at www.oregon.gov/boli/TA/pages/index.aspx.

Those with general questions about Oregon farm labor contractor, wage and hour or civil rights regulations may call or send a detailed written inquiry to the Oregon Bureau of Labor and Industries. Questions about federal laws, including compliance with the Migrant and Seasonal Agricultural Protection Act, should be addressed to the United States Department of Labor. Alternatively, you may visit the U.S. Department of Labor (USDOL) website at www.dol.gov. You may also contact USDOL directly at 503-326-3057.

The information in this book is not intended as legal advice. Those wishing legal advice should contact an attorney and not rely on this guide.



¹ The Oregon Legislature is responsible for enacting the legislation (Oregon Revised Statutes) discussed in this handbook. The commissioner of the Bureau of Labor and Industries has been given authority by the Legislature to adopt administrative rules (Oregon Administrative Rules) to carry out these laws.

CONTACTING BOLI

The mission of the Bureau of Labor and Industries is to protect employment rights, advance employment opportunities, and protect access to housing and public accommodations free from discrimination.

The four principal duties of the Bureau of Labor and Industries are to:

- (1) Protect the rights of workers and citizens to equal, non-discriminatory treatment through the enforcement of anti-discrimination laws that apply to workplaces, housing and public accommodations;
- (2) Encourage and enforce compliance with state laws relating to wages, hours, terms and conditions of employment;
- (3) Educate and train employers to understand and comply with both wage and hour and civil rights law; and
- (4) Promote the development of a highly skilled, competitive workforce in Oregon through the apprenticeship program and through partnerships with government, labor, business, and educational institutions.

If you have questions or concerns regarding any of these areas, please feel free to contact us!

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The Labor Contracting Unit is located in the Salem office; the direct number is 503-373-1463.

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Farm/Forest Labor Contracting

WHO IS A FARM/FOREST LABOR CONTRACTOR?

A farm/forest labor contractor is anyone who receives compensation for recruiting, soliciting, supplying, or employing workers to perform agricultural or reforestation work for another. A person is acting as a farm/forest labor contractor even when the person does not directly employ the workers so long as the person is soliciting or supplying the workers to someone else for pay or profit. A person who engages in activities that meet the definition of a farm/forest contractor must be licensed by BOLI.

It is important to note that the mere act of submitting contract offers to supply labor or bidding on contracts to supply labor, whether for farm production/harvest purposes or for the forestation/reforestation of land, is a covered contractor activity which requires a license.

Oregon licensing law distinguishes between the activities of “**farm** labor contracting” and those of “**forest** labor contracting.” It also creates some exemptions. The following sections provide details for each.

ORS 658.405; 658.410.

Defining “Farm labor contractor”

A farm labor contractor generally is involved in obtaining labor for the production and/or harvesting of farm products on either private or public land, or the gathering of certain wild forest products from public lands. A farm labor contractor also includes a person who furnishes board or lodging in connection with obtaining labor for these purposes. The term includes:

- Any person who, for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another in the production or harvesting of farm products;
- Any person who recruits, solicits, supplies or employs workers for an employer who is engaged in the production or harvesting of farm products;
- Any person who recruits, solicits, supplies or employs workers to gather wild forest products;²

² “To gather wild forest products” or “the gathering of wild forest products” means the gathering of evergreen boughs, yew bark, bear grass, salal or ferns, and nothing else, from public lands for sale or market prior to processing or manufacture. This term does not include the gathering of these products from private lands in any circumstance or from public lands when the person gathering the products, or the

- Any person who furnishes board or lodging for workers in connection with the recruiting, soliciting, supplying or employing of workers to be engaged in the production or harvesting of farm products or in the gathering of wild forest products;
- Any person who bids or submits contract offers for the production or harvesting of farm products or the gathering of wild forest products; or
- Any person who subcontracts with another for the production or harvesting of farm products or the gathering of wild forest products.

Defining “Forest labor contractor”

A forest labor contractor generally is involved in obtaining labor for the forestation or reforestation of land, but also includes obtaining labor for forest fire suppression by contract crews and other related activities. A forest labor contractor is licensed as a farm labor contractor with a forestation *indorsement* that permits both farm and forest labor contractor activities. The term includes:

- Any person who, for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another in the forestation or reforestation of lands;
- Any person who recruits, solicits, supplies or employs workers for an employer who is engaged in the forestation or reforestation of lands;
- Any person who furnishes board and lodging for workers in connection with the recruiting, soliciting, supplying or employing of workers to be engaged in the forestation or reforestation of lands;
- Any person who bids or submits contract offers for the forestation or reforestation of lands; or
- Any person who subcontracts with another for the forestation or reforestation of lands.

ORS 658.405; OAR 839-015-0004.

person’s employer, does not sell the products in an unmanufactured or unprocessed state.
OAR 839-015-0004(23).

Licensure Exemptions

Oregon regulations provide certain exemptions to the requirement to obtain a labor contractor license. These exemptions include:

- A farmer or owner or lessee of land intended to be used for the production of timber dealing with workers or worker groups only concerning employment in their own operation
- A nursery owner or operator dealing with workers or worker groups only concerning employment in their own operations
- A processor of farm products dealing with workers or worker groups only concerning employment in their own farm operations
- A permanent employee of a farmer, nursery owner, or processor of farm products, or a permanent employee of an owner or lessee of land intended to be used for the production of timber so long as the employee is engaged solely in activities which would not require the employer to be licensed if the employer were performing the activity
- A person engaged only in the solicitation or recruitment of workers for agricultural day-haul work and not engaged in arranging for board or lodging for migrant workers and not performing as an employer of the workers
- A platoon leader
- A leader, or a leader's agent, of an organization operating as a labor union, provided that the only payment received from the workers is in the form of membership dues for which the workers are accorded membership status in the conduct of the affairs of the organization
- An employee of a farm or forest labor contractor ***except for*** an employee who:
 - (a) Recruits, solicits, supplies or employs workers on behalf of the farm or forest labor contractor; or
 - (b) For an agreed remuneration or rate of pay recruits, solicits, supplies or employs workers to perform labor for any other person in forestation or reforestation of lands or the production or harvesting of farm products; or
 - (c) Recruits, solicits, supplies or employs workers to gather "wild forest products;" or
 - (d) Furnishes board or lodging for such workers (but cooks employed by the contractor are not required to be licensed by reason of this sole activity); or
 - (e) On his or her own behalf bids or submits prices on contracts offers for those activities or enters into a subcontract with another for any of those activities
- A crew leader provided that if the crew leader engages in any activity or receives any compensation with respect to any worker which exceed the permitted

activities or compensation allowed by the definition in OAR 839-015-0004(8), the crew leader is not exempt with respect to any activities or workers

- A person who is primarily a supplier of on-farm equipment (sheep shearer, potato digger, or other farm machinery) or cottonwood tree harvesting machines unless the person also supplies temporary workers other than workers engaged in driving or maintaining the equipment
- The advertising media
- Employees of the Employment Department who are acting within the scope of their employment
- A person performing work of a mental, technical, professional or managerial nature as defined in OAR 839-015-0004(20)
- An individual who performs work, *other than* recruiting, soliciting, supplying or employing workers to perform labor for another, or recruiting, soliciting, supplying or employing workers to gather wild forest products, alone or with only the assistance of the individual's spouse, son, daughter, brother, sister, mother or father
- Individuals who perform labor in connection with an agreement for the exchange of labor or services with each other, provided that the work is performed on land owned or leased by the individuals, and provided further that the labor or services involved are performed solely by said individuals, their immediate families, or their permanent employees
- An educational institution which is recognized as such by the Oregon Department of Education
- An individual who collects tree seed cones or an individual who buys tree seed cones from other individuals. (This exemption applies to *individuals* only and not to persons who are otherwise defined as farm or forest labor contractors.)
- Persons who recruit, solicit, supply or employ workers to perform labor under a contract or agreement solely for the following activities, provided that the person performs no other activities which would require licensing:
 - (a) Stream or creek debris removal;
 - (b) Provision of security services;
 - (c) Any activity which does not have the primary purpose of forestation or reforestation of lands, the gathering of wild forest products or of production or harvesting of farm products. Persons engaged in logging operations who would only otherwise be farm or forest labor contractors because they engage in reforestation activities that are incidental to contracts the primary purpose of which is the sale of timber, provided that they perform such incidental reforestation work using their own employees. (If the incidental reforestation

activities are carried out using a subcontractor, the subcontractor is required to be licensed.)

ORS 658.405; OAR 839-015-0130.



Frequently Asked Questions...

On who needs a license.

Do labor contractor requirements apply to temporary and leasing agencies?

Temporary and worker leasing agencies act as farm labor contractors and are required to be licensed when they recruit, solicit, supply or jointly employ workers to perform labor for another (or others) to work in covered activities. When a temporary or leasing agency provides workers or other covered services to another contractor, **both** the temporary/leasing agency **and** the contractor must be licensed.

Do labor contractor requirements apply to firefighters?

Yes. A person recruiting, soliciting, employing or supplying wildland firefighters for contract crews must have a license.

Do labor contractor requirements apply to logging activities?

No. Persons with logging contracts where the primary purpose is the sale of timber do not require a labor contractor license. Logging contractors who use their own employees to clean up logging slash and build fire trails when such activity is a part of a contract for the harvesting of logs are not subject to the provisions of the labor contracting law, so long as the other activities are incidental to the main activity of harvesting logs and only employees of the logging contractor perform the incidental activities.

However, if the logging contractor subcontracts to another person any of the activities that fall under the definition of labor contractor from that contractor's original contract to harvest logs, the contractor receiving the subcontract and performing the activity would require a labor contractor license.

Do I need a labor contractor license if I recruit or supply workers to a farmer but the farmer actually hires the workers and does the payroll?

Yes. It makes no difference whether you directly hire and pay the workers whom you

recruit and supply to a farmer, or whether you merely recruit and supply workers to a farmer who then employs the workers. Under both situations you need a license.

Do the labor contracting requirements apply to my employee who helps me with my own contracting activity?

The definition of a farm labor contractor under Oregon Revised Statute 658.405 includes “any person... who recruits, solicits, supplies or employs workers on behalf of an employer engaged in these activities.” Persons who engage in these activities are required to first obtain a labor contractor’s license. In addition, ORS 658.411 requires *employees* of labor contractors who engage in these activities to be licensed also. Thus, if you have any of your own employees recruiting, soliciting, supplying, or employing other workers on your behalf, then such employees must first obtain a Farm or Farm/Forest Labor Contractor’s License with an employee indorsement.

To obtain an indorsement for your employee, the employee must complete a Farm/Forest Labor Contractor’s license application (WH-37) and submit it to the Bureau along with a Sponsorship Statement form (WH-36) from you indicating that you are sponsoring the employee under your own license. The employee must also take and pass the farm labor contractor written exam and meet all other conditions for obtaining a farm labor license except that the employee is not required to obtain a bond or workers’ compensation coverage. This is because you, the employer, have agreed by sponsoring the employee to be liable for your employee’s acts under your own bond and insurance coverage. By sponsoring the individual, you also agree to be jointly and severally liable for actions the sponsored employee takes under color of the employee’s indorsement.

I am a farmer. Do I need to comply with labor contracting laws?

If you own or lease your land and hire workers to perform labor on only your own property, then you do not need a labor contractor license. However, if you send your seasonal labor crew to a neighbor’s farm and require such workers to perform labor on your neighbor’s farm as a condition of employment with you, or you otherwise receive compensation from the other farmer, then you are acting as a farm labor contractor and you need a license.

Also, any farmer who knowingly uses the services of an unlicensed labor contractor is personally, jointly and severally liable with the person acting as an unlicensed contractor for any unpaid wages and other damages as provided by law, including costs and reasonable attorney fees in connection with any actions initiated to recover such amounts. ORS 658.465; OAR 839-015-0605.

Must I have license if I perform farm or forest labor work by myself or only with family members?

An individual who performs work, *other than recruiting, supplying, soliciting or employing workers to perform labor for another*, alone or only with the assistance of the

individual's spouse, son, daughter, brother, sister, mother, or father is not required to have a labor contractor license.

If I supply or employ workers to perform farm or forestation work outside of the state of Oregon, do I still need to comply with all the Oregon farm/forest contractor laws and regulations?

Yes. So long as you are recruiting, soliciting, supplying or employing workers from the state of Oregon, then you need to comply with Oregon labor contractor laws and regulations no matter where the actual workplace is located.

LICENSE APPLICATION PROCESS

Overview

The farm labor contractor license is a one-year license. Contractors (apart from those licensed as employee indorsees) who operate two or more consecutive years without a violation of ORS 658 or valid wage claim may request a two or four-year renewal period for their license.

The process for obtaining a labor contractor license begins with completion of the license application packet. License application packets are available for download from our website:

www.oregon.gov/BOLI/WHD/FFL/pages/FFLU-Forms.aspx

Once the Labor Contracting Unit has confirmed receipt of a completed application packet, first time applicants are issued a temporary permit. The temporary permit allows the applicant to begin work as a labor contractor pending successful completion of the license examination. Once an applicant has passed the license examination, a full labor contractor license will be issued.

A completed license application packet requires a variety of documents from several sources. Under OAR 839-015-0165, renewal applications must be made at least **thirty days** prior to the expiration of the previous license.

License Types and Fees

Both **farm** and **forest** labor contractors are required to be licensed by BOLI under Oregon's labor contractor law. A contractor may be licensed as a farm labor contractor, or, if the contractor conducts *any* forest labor contracting activities, as a farm labor contractor with a forestation "indorsement."

ORS 658.410; ORS 658.417; OAR 839-015-0004.

Labor Contractor Indorsements

Oregon law requires labor contractors to obtain an indorsement on their license in order to perform certain activities.

As mentioned above, labor contractors who recruit, solicit, supply or employ workers to another to perform labor in *forestation* or *reforestation* must obtain a farm labor contractor license with a forestation indorsement. ORS 658.405

Labor contractors who furnish board and lodging by way of a camp in connection with the recruiting, soliciting, supplying or employing of workers to another in agriculture or the forestation / reforestation of lands must obtain a *camp operator indorsement*. ORS 658.715.

Finally, the *employees* of licensed farm/forest labor contractors who perform covered contracting activities must obtain a farm labor contractors license with an employee indorsement. See section below on “Employee Indorsement Licenses” for additional requirements. ORS 658.411.

Annual License Fees

- Farm (only) Labor Contractor License - \$150.00
- Farm/Forest Labor Contractor License - \$350.00
- Farm (only) Employee Indorsement - \$150.00
- Farm/Forest Employee Indorsement - \$350.00
- Forest “Exempt” Contractor License³ - \$350.00
- Camp Operator Indorsement - \$50.00

The fee for a license renewed for two or four years is the annual fee established for the license under ORS 658.413 multiplied by the number of years in the renewal term.

Types of Entities Which May Be Licensed

Farm/Forest Labor Contractor licenses may be issued to the following types of contractor businesses:

- **Sole Proprietorship**
- **Partnership or Limited Liability Partnership** – Each partner must make application
- **Corporation** – The corporation **and** majority shareholder(s) must make application unless there are 10 or more shareholders and more than two

³ See page 10 for more information on the exempt forestation/reforestation license.

shareholders collectively own the majority of the corporation

- **Limited Liability Company** – The LLC **and** majority of LLC members must make application unless the LLC has 10 or more members and more than two members collectively own the majority of the LLC
- **Cooperative Corporation**
- **Private Non-Profit Corporation**
- **Agricultural Association**
- **Publicly-Held Corporation (or Limited Liability Company)**
- **Employee(s) of Licensed Farm/Forest Labor Contractor** – Any person acting as a contractor, if different than a licensed sole proprietor, partner, shareholder, or LLC manager of member must be licensed

Assumed business names and corporations **MUST** be registered with the Oregon Secretary of State Corporation Division prior to a license being issued.

Employee Indorsement Licenses

The employee of a licensed labor contractor is eligible for licensure as a labor contractor with an employee indorsement if the employee continuously meets all of the following conditions:

- The employee's employer has filed a signed statement (WH-36) with BOLI agreeing to sponsor the application and to notify BOLI promptly upon the employee's termination
- The employee engages in activities that would require a license on behalf of the sponsoring labor contractor employer *only*.
- The employee does not personally employ any workers and is not responsible for paying workers
- The sponsoring employer maintains proof of financial responsibility
- The sponsoring employer's labor contractor license remains in good standing
- The employee meets all of the conditions required for licensing (with the exception of the proof of financial responsibility and provision of workers' compensation insurance coverage requirements)

- The employee is not otherwise licensed in any manner as a farm or forest labor contractor under these rules

A labor contractor who employs another contractor/employee is personally, jointly and severally liable for any damages, attorney fees or costs awarded against the employee for actions of the employee taken within the scope of the employee’s employment or for actions of the employee taken in the course of the employee’s contracting activities of which the employer contractor is aware or should have been aware.

ORS 658.411.

“Exempt” Forestation / Reforestation Licenses

Forestation or reforestation contractors who are sole proprietors, have no more than two employees, and bid only on contracts less than \$25,000 may apply for an “exempt” license. This license exempts the contractor from the proof of financial responsibility licensing requirements as well as certified payroll filing requirements under labor contractor laws. Contractors applying for this type of license must submit an Application for Exemption from Financial Responsibility and Payroll Submission Requirements for Contractors Engaged in Reforestation Activities form (WH-56) with their license application. WH-56 is available from BOLI’s online forms directory at: www.oregon.gov/boli/WHD/FFL.

ORS 658.418.



Frequently Asked Questions...

On the “exempt” forestation / reforestation license.

May my immediate family members perform work on my contract if I have an “exempt” forestation/reforestation license, which restricts the number of employees I may have to two or fewer?

Yes, however, family members must be counted as employees, and no more than two individuals may be employed by a labor contractor with an “exempt” license, regardless of whether or not they are family members.

If I have an “exempt” forestation/reforestation license and one of my employees gets sick, may I replace that person?

Yes. Labor contractors who hold an “exempt” license may replace employees that quit or are unable to work so long as only two or fewer workers are employed at any one

time.

As an “exempt” forestation/reforestation license holder, am I allowed to have only one contract at a time?

No. You may have multiple contracts at the same time totaling more than \$25,000 so long as no single contract exceeds \$25,000 and you employ two or fewer individuals at any one time.

License Application Contents

To obtain a labor contractor license, each applicant must submit a license application including the following:

- The appropriate license fee
- A completed license application (WH-37)
- One (1) current colored 2” X 2” passport photograph
- Certification of Internal Revenue Service (IRS) Compliance (WH-191)
- Certification of Oregon Department of Revenue (DOR) Tax Compliance (WH-192)
- Certification of Oregon Employment Department Tax Compliance (WH-193)
- A completed Vehicle Information Sheet (WH-150)
- A Certificate of Insurance issued by an auto insurance carrier listing BOLI as the certificate holder and providing a 30-day cancellation notice for all vehicles used to transport workers
- Copies of Forms WH-151 (Rights of Workers) and WH-153 (Agreement between Contractor and Worker) or equivalents used in contracting business (for license *renewal* applicants)
- A Certificate of Insurance issued by a Workers’ Compensation carrier listing BOLI as the certificate holder and providing a 30-day cancellation notice
- Proof of Financial Responsibility
- A Certified Statement (WH-56) if applying for an “Exempt” Forestation / Reforestation Contractor License (see page 9)
- A Sponsorship Statement (WH-36) for labor contractor *employee* indorsement license applicants

- A Certified Statement (WH-35) and proof of IRS 501(c)(3) exemption for private non-profit corporation labor contractor license applicants

Proof of financial responsibility and certificates of vehicle and workers' compensation insurance are not required for labor contractor employee indorsement license applicants.

These forms are available from BOLI's online forms directory at:
www.oregon.gov/boli/WHD/FFL .

Additional Licensing Requirements

To be eligible for a license, an applicant must:

- Be of good character, competence and reliability;
- Not have had a labor contractor license application denied, revoked or suspended in Oregon or any other jurisdiction within the preceding three years;
- Not have persons financially interested in the applicant's business who have a labor contractor license denied, revoked or suspended in Oregon or any other jurisdiction within the preceding three years; and
- Not have any unsatisfied final judgments or final orders requiring the payment of unpaid wages to employees or advances made to the contractor by farmers or owners/lessees of land.

Proof of Financial Responsibility Requirements

Farm/forest labor contractor license applicants must provide proof of financial responsibility with their license applications. Proof of financial responsibility is a Corporate Surety Bond of a company licensed to do business in Oregon, a cash deposit, or deposit the equivalent of cash (such as a Time Certificate of Deposit). All financial responsibility documents are required to be submitted on forms provided by BOLI. The amount of proof of financial responsibility required is based on the maximum number of employees the farm/forest labor contractor expects to employ during the license year:

\$10,000 for 20 or fewer employees

\$30,000 for 21 or more employees and for agricultural associations (regardless of the number of employees employed or contemplated to be employed by the association)

ORS 658.415.

Additional Amount Required for Farmworker Camp Operators

Farm/forest labor contractors who operate farmworker camps and are required to have a camp operator license indorsement must provide proof of financial responsibility for no less than \$15,000, regardless of the number of employees employed.

ORS 658.735.



Frequently Asked Questions...

On financial responsibility.

Must each applicant required to be licensed in a business entity obtain proof of financial responsibility?

If more than one person is required to be licensed in a business entity, such as in the case of a partnership or a corporation with more than one majority shareholder, each party must provide the applicable proof of financial responsibility the first year the business entity is licensed. After the entity has been licensed for at least one year, the parties may apply for a reduction in the amount of required aggregate bond or deposit. If the commissioner determines that the business has operated for at least one year without a valid claim against its bond or deposit, the commissioner may grant an application for a reduction in the aggregate amount of the required bond or deposit equal to amount that would be required for only one of the licensees/applicants.

ORS 658.415; OAR 839-015-0157.

Can the amount of bond/deposit required be reduced?

In addition to the aggregate bond reduction for more than one applicant/licensee in a business entity, farm and forest labor contractors who employ 21 or more employees and have been licensed for at least two consecutive years may apply for a reduction in the bond or deposit required. If the commissioner determines that the applicant has operated as a licensed contractor for at least two years in compliance with all laws pertaining to the operation of the contractor’s business, and no valid claims for unpaid wages have been made against the applicant, the amount of bond or deposit may be reduced as follows:

- After two years.....\$27,500
- After three years.....\$25,000
- After four years\$22,500
- After five years\$20,000

There is no bond reduction available for contractors with 20 or fewer employees.

Temporary Permits

Once a first-time labor contractor license applicant has submitted a completed license application, the BOLI Labor Contracting Unit will issue a temporary permit to the contractor. Temporary permits are valid for 60 days and may not be extended. Only one temporary permit may be issued to a contractor in a 12-month period. After a temporary permit is issued, the contractor may lawfully act as a licensed contractor until the permit expires, is revoked by the agency, or a license is issued in its place. Before a labor contractor license can be issued to a new license applicant, the applicant must take and pass an examination designed to test the applicant’s ability, knowledge and proficiency to conduct and manage the business of a labor contractor. (See the section on “License Examination,” below.)

ORS 658.425.

License Examination

License applicants are required to schedule and take a qualifying examination within 45 days of being issued a temporary permit. Applicants may make arrangements with BOLI staff to take the examination after receipt of a letter of authorization from the Labor Contracting Unit. Examinations are available in English and Spanish.

If an applicant desires to have an interpreter assist the applicant while taking the exam, the applicant must submit a request no fewer than 15 calendar days in advance of the date of the scheduled examination. (Only interpreters approved by BOLI are permitted.)

The applicant must obtain a score of 75% in order to pass the exam. Applicants failing to pass an examination may request a review of their examination within 30 days. Applicants who fail an examination may retake the exam, but are required to wait the following periods of time between examinations:

First failure.....7 days⁴
Second failure14 days
Third failure30 days
Subsequent failures60 days

ORS 658.412; OAR 839-015-0170 – 839-015-0195.

EXPIRATION AND RENEWAL OF LICENSES

Labor contractor licenses are valid for one year unless sooner revoked by the commissioner of the Bureau of Labor and Industries. The expiration date of the license is the last day of the month in which the license was issued, one year later.

⁴ Re-examinations may not be scheduled any sooner than seven days after review of a failed examination.

If the commissioner finds that an applicant has operated as an Oregon licensed labor contractor, other than as an employee indorsee, for at least two consecutive years in compliance with ORS 658.405 to 658.503 and with any other laws pertaining to the conduct of labor contractors, and that no valid claims for unpaid wages have been made against the applicant, at the request of the applicant the commissioner may renew the license for a term of two or four years. The fee for a license renewed for two or four years is the annual fee established for the license under ORS 658.413 multiplied by the number of years in the renewal term.

Renewal notices are mailed to licensed labor contractors by BOLI approximately two months prior to the expiration date of the current license. Completed renewal applications and all required documents are required to be submitted by the applicant to BOLI **no fewer than 30 days prior to the expiration date of the license**. License application materials are available on BOLI's website or on request from the Labor Contracting Unit.

ORS 658.435; OAR 839-015-0165.

DUTIES OF FARM LABOR CONTRACTORS

Prior to beginning work on any contract, labor contractors are required to display *and* provide a copy of the contractor's license or temporary permit to the person to whom workers are being provided (or the person's agent).

Labor contractors are also required to:

- Carry their license at all times and exhibit it upon request to any person with whom the contractor intends to deal in their capacity as a labor contractor
- Immediately file with the U.S. post office notice of any change of address if the address change is permanent, and notify BOLI each time an address change is made
- Promptly pay or distribute all money or things of value to entitled individuals for which the labor contractor has been entrusted
- Comply with the terms and provisions of all legal and valid agreements or contracts entered into in the contractor's capacity as a labor contractor
- File information relating to work agreements between the labor contractor and farmers (if applicable) and between the labor contractor and workers with BOLI as required
- Notify BOLI of any changes in the circumstances under which the labor contractor's license was issued

- Furnish to each worker at the time of hiring, recruiting, soliciting or supplying, whichever occurs first, a written summary of the terms and conditions of employment in English and any other language used by the labor contractor to communicate with workers
- Execute a written agreement between the worker and labor contractor at the time of hiring and prior to the worker performing any work for the contractor containing the terms and conditions of employment as required (both in English and any other language used by the labor contractor to communicate with the worker)
- Furnish to each worker at the time the worker is paid, a written statement itemizing the total amount paid, amount and purpose of each deduction, the hours worked and rate of pay, (or piece rate and number of pieces done if the work is done on a piece rate basis), and information regarding work done under the federal Service Contract Act or related federal or state laws if applicable
- Comply with applicable field sanitation and housing health, safety or habitability if applicable
- Timely submit to BOLI certified true copies of all payroll records for work done as a farm labor contractor when the contractor pays employees directly.

ORS 658.440.

Payment of Travel, Food and Lodging Expenses Requirements

If a labor contractor recruits or solicits workers to travel from one place to another prior to work being available, the contractor must furnish lodging and an adequate supply of food to workers at no charge until employment begins.

If employment does not begin within 30 days from the date the contractor represented work would be available, the contractor must refund to workers all sums paid by workers to the contractor and provide the costs of transportation, including meals and lodging in transit, to return workers to the place from where the workers were induced to travel (or the costs of transportation, meals, and lodging in transit to another worksite selected by the workers, whichever is less).

ORS 658.440.

REQUIRED FORMS

All of the forms mentioned in this section are available from BOLI's online forms directory at: www.oregon.gov/boli/WHD/FFL. Most are available in both English and Spanish. Labor contractors may use these forms as templates or develop their own forms so long as they contain all the elements set out in the template.

Required Notices to Workers

ORS 658.440(1)(f) requires that labor contractors provide each worker with (1) a statement of specific worker rights and (2) a disclosure of certain terms and conditions at the time of recruiting, soliciting, supplying or hiring, *whichever occurs first*.

Under ORS 658.440(1)(g), labor contractors must also execute a *written agreement* with each worker containing the terms and conditions of work *as well as* the statement of worker rights *at the time of hire and prior to beginning work*.

Rights of Workers (Form WH-151)

BOLI has prepared Form WH-151 for use by contractors in complying with the requirement to provide workers with a statement of their rights and remedies under specific laws.

CONTRACTORS MUST KEEP COPIES of Forms WH-151 (or equivalent) used by the contractor for three years. OAR 839-015-0400.

Disclosure Statement & Work Agreement (Form WH-153)

BOLI has prepared Form WH-153 which may be used by contractors to provide workers with a disclosure of *specific terms and conditions* at the time of recruiting, soliciting, supplying or hiring, *whichever occurs first*.

The disclosure statement & work agreement is required to contain a description of:

- The method of computing the rate of compensation.
- The terms and conditions of any bonus offered, including the manner of determining when the bonus is earned.
- The terms and conditions of any loan made to the worker.
- The conditions of any housing, health and child care services to be provided.
- The terms and conditions of employment, including the approximate length of season or period of employment and the approximate starting and ending dates thereof.
- The terms and conditions under which the worker is furnished clothing or equipment.
- The name and address of the owner of all operations where the worker will be working as a result of being recruited, solicited, supplied or employed by the farm labor contractor.

- The existence of a labor dispute at the worksite.
- The worker's rights and remedies under ORS chapters 654 and 656, ORS 658.405 to 658.503, the Service Contract Act (41 U.S.C. 351-401) and any other such law specified by the commissioner of the Bureau of Labor and Industries, in plain and simple language in a form specified by the commissioner.

CONTRACTORS MUST KEEP COPIES of Forms WH-153 (or equivalent) used by the contractor for three years. OAR 839-015-0400.

Forms WH-151 and WH-153 may also be used together to provide (1) the statement of worker rights and (2) a written agreement of the terms and conditions of work required *at time of hire and prior to beginning work* by ORS 658.440(1)(g).

Written notification of any changes in the terms and conditions of employment must be provided any time any of the elements listed in the original statement change. With the exception of notice of pay decreases, if it is not feasible to provide written notice at the time changes to the terms and conditions of employment are made, written notice of such changes may be made as soon as practicable.

NOTE: Labor contractors must provide information relating to changes in work locations (i.e., the name(s) and address(es) of the owner(s) of operations where workers are employed) no later than the next regularly scheduled payday following a change in location of work. This information may be provided in writing in an amended form WH-153 (or equivalent), by notifying BOLI in writing, or by providing this information on any documents issued to workers (such as picking tickets or itemized deduction statements).

Written notice of pay decreases must be provided either prior to or at the time such decrease is implemented, before any work at the new rate is performed.

Labor contractor renewal applicants are required to submit the forms they use for this purpose when renewing their license.

ORS 658.440(1)(f); OAR 839-015-0310; OAR 839-015-0360.

Statement of Earnings (Form WH-154)

Labor contractors are required to furnish each worker, each time the worker receives a compensation payment from the contractor, with a written itemized statement of earnings. Form WH-154 or any form which contains all the elements of WH-154 may be used to satisfy this requirement. OAR 839-015-0370.

The written statement must include the following information:

- The name and business registry number or business identification number;
- The address and telephone number of the employer;
- The name of the employee;
- The date of the payment;
- The dates of work covered by the payment;
- The total number of hours worked during the time covered by the payment;
- Whether the employee is paid by the hour, shift, day or week or on a salary, piece or commission basis;
- The rate or rates of pay;
- If the employee is paid a piece rate, the applicable piece rate or rates of pay, the number of pieces completed at each piece rate and the total pay for each rate;
- Unless the employee is paid on a salary basis and is exempt from overtime compensation as established by local, state or federal law, the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked and pay for those hours, and the number of overtime hours worked and pay for those hours;
- Allowances, if any, claimed as part of minimum wage;
- Gross wages;
- The amount and purpose of each deduction made during the respective period of service that the payment covers; and
- Net wages.

If the worker is being paid for work done under any law which requires the payment of a prevailing rate of wage (such as the Federal Service Contract Act, Davis-Bacon Act or state prevailing wage law), a written statement specifying the amount of the prevailing wage rate required to be paid.

ORS 652.610(1)(b); ORS 658.440(1)(h); OAR 839-015-0370; and OAR 839-020-0080.

Certified Payroll Statements for Farm/Forest Labor Contractors (WH-141)

Labor contractors are required to submit certified payroll statements to BOLI when the contractor pays employees directly. (ORS 658.440(1)(i)).

Contractors may use form WH-141 in reporting their payroll. While contractors may develop their own form, that form must provide all of the information contained in the form WH-141, and the certified statement on the back of the form must be signed and submitted with the contractor's payroll. The certified statement required to be signed certifies the accuracy of the information reported on the payroll, including representations pertaining to the provision of fringe benefits to employees.

The first report is due no later than 35 days from the time the contractor begins work on each contract and must include whatever payrolls the contractor has paid out at the time of the report. The second report is due no later than 35 days following the end of the first 35-day period on each contract, with subsequent payroll reports due at successive 35-day intervals, e.g., 35 days, 70 days, 105 days, 140 days, etc. from the time the contractor begins work on the contract and must include whatever payrolls have been issued as of the time of the report.

Contractors who have employed workers from the state of Oregon on contracts located outside the State of Oregon must also file certified payroll reports.

Agreements between Farm Labor Contractor and Farmers and/or Owners/Lessees of Land (WH-152)

Farm labor contractors are required to file information relating to their agreements with farmers with BOLI by April 30 of each year. (OAR 839-015-0350). Form WH-152 may (but is not required to) be used to comply with this rule. Labor contractors may use any form for filing the information required so long as it contains all the elements of this form. Amended or updated information may be filed at any time. Contractors who conduct **forest** labor contractor activities exclusively (and do no **farm** labor contracting) are required to submit this form. There is a box to check on the form if you perform exclusively reforestation activities.

POSTING AND RECORDKEEPING REQUIREMENTS

Notice of Compliance with Bond Requirements (Form WH-155)

ORS 658.415(15) requires contractors to **keep conspicuously posted** on the **JOB SITE** the information provided on Form WH-155, **Notice of Compliance with Bond Requirements**.

In addition to these requirements under labor contractor law, there are several other posting requirements under other state and federal laws. For more information, see

http://www.oregon.gov/boli/TA/Pages/Req_Post.aspx or contact the Technical Assistance for Employers Unit of the Bureau of Labor and Industries at (971)673-0824.

Recordkeeping requirements

Labor contractors are required to keep and preserve all records necessary to determine their compliance with the farm labor contracting laws for a period of three years. This requires preserving all workers' names, addresses, and individual payroll records; copies of each work agreement executed by each worker; and all written agreements between the contractor and farmer. Additional recordkeeping requirements are found in OAR 839-015-0400.

Labor contractors are required to make these records available for inspection to representatives of the Bureau of Labor and Industries upon request. OAR 839-015-0410.

In addition to the recordkeeping requirements in the labor contractor law, state and federal wage and hour laws require that employers keep and maintain certain time and payroll records (see the section on "Recordkeeping" under the "Summary of Select Wage and Hour Laws" below).

PROHIBITED ACTIVITIES

Labor contractors are prohibited from the following:

- Making misrepresentations, false statements or willful concealments in applying for a license;
- Willfully making or causing to be made to any person any false, fraudulent or misleading representation, or publishing or circulating any false, fraudulent or misleading information concerning the terms, conditions or existence of employment at any place or by any person;
- Soliciting or inducing (or causing to be solicited or induced) violations of existing employment contracts;
- Knowingly employing aliens not legally present or employable in the United States;
- Assisting an unlicensed person to act in violation of labor contractor laws;
- Forcing, intimidating, threatening dismissal or deportation, or inducing in any other manner an employee to give up any part of the compensation to which an employee is entitled under the employee's employment contract or state or federal wage laws;

- Soliciting or inducing (or causing to be solicited or induced) the travel of a worker from one place to another by representing to a worker that employment is available when employment is not available within 30 days of the date work was represented as being available; or
- Discharging or discriminating in any other manner against an employee because the employee has made a wage claim against the labor contractor or employer; caused to be instituted or participated in any proceedings under or related to Oregon's farm labor contractor law; or discussed or consulted with anyone concerning the employee's rights under farm labor contractor law.

ORS 658.440; ORS 658.452.

CIVIL PENALTIES

In addition to other penalties provided by law, BOLI may assess a civil penalty of up to \$2,000 for each violation of labor contractor law including the following:

- Recruiting, soliciting, supplying or employing a worker without a labor contractor license or without the required license indorsement;
- Failing to carry, display or provide a copy of the contractor's license or temporary permit to the person to whom workers are to be provided;
- Failing to post a notice in English and in any other language used to communicate with workers that the contractor has a bond or deposit and where claims can be made against the bond or deposit;
- Failing to comply with contracts or agreements entered into as a contractor;
- Failing to furnish each worker at the time of hiring, recruiting, soliciting or supplying a written statement containing the terms and conditions of employment as required;
- Failing to execute a written agreement between the worker and the labor contractor containing the terms and conditions of employment at the time of hiring and prior to the worker performing work for the labor contractor;
- Failing to provide required itemized deduction statements;
- Making misrepresentations, false statements or willful concealments on the license application;

- Willfully making false, fraudulent or misleading information concerning the terms, conditions and existence of employment;
- Knowingly employing an alien not legally employable or present in the United States;
- Failing to provide certified payroll records to BOLI (except for “exempt” contractors);
- Failing to provide workers’ compensation insurance;
- Inducing in any manner an employee or subcontractor to give up any part of the employee’s or subcontractor’s compensation to which they are entitled under an employment contract or state or federal wage laws;
- Unlawfully discharging or discriminating against an employee; or
- Assisting an unlicensed farm labor contractor.

ORS 658.453; OAR 839-015-0508.

REVOCAION, SUSPENSION OR REFUSAL TO RENEW LICENSE

BOLI is authorized to revoke, suspend or refuse to renew a license to act as a labor contractor under the following circumstances:

- The licensee or agent has violated or failed to comply with any provision of Oregon’s farm labor contractor law;
- The conditions under which a license was issued have changed or no longer exist;
or
- The licensee’s character, reliability or competence makes the licensee unfit to act as a labor contractor.

ORS 658.445.

DUTIES OF PERSONS USING SERVICES OF LABOR CONTRACTORS

Prior to allowing work to begin on any contract or agreement with a farm labor contractor, the person to whom workers are to be provided or the person’s agent is required to do the following:

- Examine the license or temporary permit of the labor contractor and identify the contractor providing the workers as the same individual whose photo appears on the license or temporary permit; **and**
- Retain a copy of the license or temporary permit provided by the labor contractor.

ORS 658.437; OAR 839-015-0509.

Liability of Person Using Services of Unlicensed Labor Contractor

Any person who knowingly uses the services of an unlicensed labor contractor is personally, jointly and severally liable with the person acting as an unlicensed contractor for any unpaid wages and other damages as provided by law, including costs and reasonable attorney fees in connection with any actions initiated to recover such amounts.

ORS 658.465; OAR 839-015-0605.

Civil Penalties

In addition to liability for unpaid wages and other damages, persons using the services of an unlicensed labor contractor may be assessed civil penalties of up to \$2,000 per violation.

ORS 658.850; OAR 839-015-0508.

FARMWORKER CAMPS

What is a Farmworker Camp?

A farm worker camp is defined as any place or area of land where there are sleeping places for workers provided by a farmer, farm labor contractor, employer, or other person in connection with the recruitment or employment of workers to work in the production and harvesting of farm crops or in the reforestation of lands.

Oregon law expressly excludes from the definition of a farm worker camp:

- A single, isolated dwelling unit occupied solely by members of the same family, or by five or fewer unrelated individuals, or

- A hotel or motel which provides housing with the same characteristics on a commercial basis to the general public on the same terms and conditions as housing is provided to such workers.

ORS 658.705.

Who is a Farmworker Camp Operator?

A farmworker camp operator is a person who, as a practical matter, exercises the ultimate right to determine terms and conditions of occupancy of a farm worker camp and who controls its maintenance and operation. Such a person is required to have a farm labor contractor license with an indorsement to operate the farm worker camp unless the operator is otherwise exempted from the licensing requirements.

Farmworker camp operators are not required to be licensed if the operator has a substantial ownership interest (at least 30%) in the real property on which the camp is located; or has any form of ownership interest in the business organization that operates the camp; or is related by blood or marriage to a person with such interests provided:

- a) The property on which the camp is located is subject to a special farm use assessment under law; **and**
- b) The business organization which operates the camp filed a tax return reporting farm activity.

Permanent employees of a farmworker camp operator are not required to obtain a farmworker camp operator indorsement, provided they have no financial interest in the camp or the business other than the wages paid to the employee.

ORS 658.715.

Requirements of Farmworker Camp Operators

Licensing and Registration Requirements

Persons who operate farmworker camps, unless exempt, must be licensed as a farm labor contractor and obtain a camp operator's indorsement to the Farm Labor Contractor license. In addition to the applicable Farm Labor Contractor license fee, there is an additional application fee of \$50 for a camp operator's indorsement to the license.

Labor contractors who operate farmworker camps and are required to have a camp operator license indorsement must provide proof of financial responsibility for no less than \$15,000, regardless of the number of employees employed. Under certain circumstances, as a condition of indorsement, the commissioner may require the farmworker camp operator to submit proof of financial ability in an amount up to three times that ordinarily required of an indorsee applicant.

In addition to the Farm Labor Contractor license exam, applicants for a farmworker camp operator's indorsement, may be required to take and pass an additional exam relating to Farmworker Camp Operator regulations.

Farmworker camp operators are required to register each farmworker camp operated by the operator with the Department of Consumer and Business Services.

ORS 658.715; ORS 658.735; ORS 658.750.

Farmworker Camp Operator Duties and Prohibitions

Farmworker camp operators are required to comply with the following laws and regulations:

- Farm labor contractor law
- Occupational safety and health laws
- Applicable building codes and health and safety laws
- Unlawful employment discrimination provisions

Farmworker camp operators are also required to:

- Pay or distribute promptly when due all money or other things of value entrusted to the farmworker camp operator
- Comply with the terms and provisions of all legal and valid agreements or contracts entered into

Farmworker camp operators are prohibited from:

- Operating a camp which is not registered with the Department of Consumer and Business Services
- Making misrepresentations, false statements or willful concealments in the application for a license/indorsement or registration
- Willfully making or causing to be made any false, fraudulent or misleading representations concerning the terms and conditions of occupancy in the farmworker camp
- Knowingly publishing or circulating false or misleading information concerning the terms, conditions or existence of housing or employment at any place

- Assisting a person who is not entitled to operate a farmworker camp to act in violation of the law
- By force, intimidation or threat in any manner whatsoever, inducing any occupant of a farmworker camp to give up any part of the compensation to which the occupant is entitled by contract or by any state or federal wage payment law
- By force, intimidation or threat in any manner whatsoever, restraining any person who wishes to leave the camp from doing so
- Discharging, evicting or otherwise discriminating against any person because the person has made a claim for compensation or initiated an action relating to unlawful employment discrimination or occupational safety and health provisions; has testified or is about to testify in any such proceedings; or has discussed or consulted with anyone concerning the occupant's rights under the farm labor contractor or farmworker camp laws.

ORS 658.755; 658.760.

Requirements of Farmworker Camp Operator in Case of Vacation of Camp

If any government agency authorized to enforce building, health or safety standards orders a camp vacated because the camp is not habitable, the camp operator is required to provide lodging, without charge, that meets the health and safety standards of the Department of Consumer and Business Services for seven days or until the camp is made habitable, whichever is less. (These provisions do not apply if the Department of Consumer and Business Services determines that the cause of the camp's closure was beyond the control of the camp operator.)

ORS 658.790.

Required Postings

Farmworker camp operators are required to conspicuously post a copy of the camp operator's Farm Labor Contractor's license with farmworker camp operator indorsement in an exterior area of the camp that is open to all employees and in a manner easily visible to the occupants of and to the visitors of the camp. In addition, farmworker camp operators are required to keep conspicuously posted a notice specifying the indorsee's compliance with the requirement to provide proof of financial responsibility, specifically required information about the bond or deposit, and the name and Oregon address of the surety on the bond or a notice that a deposit in lieu of the bond has been made with the commissioner, together with the address of the commissioner.

Farmworker camp operators are also required to post a notice on a form provided by the Department of Consumer and Business Services in an area of the farmworker camp frequented by the occupants with the following information

- The name and address of the camp operator
- The address and phone number of the Department of Consumer and Business Services
- A statement that inquiries regarding health and sanitation matters or the terms and conditions of occupancy may be made to the Department of Consumer and Business Services
- A statement that the farmworker camp is registered with the Department of Consumer and Business Services

This notice must be published in English and any other languages used to communicate with occupants of the farmworker camp.

ORS 658.717; 658.730; OAR 839-014-0350.

Required Records

In addition to the recordkeeping requirements of the labor contractor and wage and hour laws, farmworker camp operators are required to make and maintain the following records for a period of three years:

- The name and permanent home mailing address of each resident of the farmworker camp
- The dates each resident resided in the camp
- Records of financial transactions between the operator and the residents
- Records of any inspection or citations of the camp issued by an agency of government responsible for health, safety or sanitation inspections, and correspondence with any such agency
- Notices posted at the camp to comply with the Farmworker Camp Operator regulations
- Any notices and rules for access to an operating telephone

Right of Access to Employer-Owned Housing

Oregon law prohibits employers from restricting access by authorized persons or invited persons to employees residing in housing owned, rented or in any manner controlled by the employer where employees are residing. These laws apply to farm-worker camps.

“Authorized persons” are government officials, medical doctors, certified education providers, county health care officials, representatives of religious organizations, or any other providers of services for farm-workers funded in whole or in part by the state, federal, or local government (Legal Aid Services of Oregon or Oregon Law Center employees, for example).

Authorized persons or invited guests must announce their presence on the premises upon request. Authorized persons shall also, upon request, provide credentials identifying the person as representing a qualifying agency or organization.

“Invited persons” include persons invited to a dwelling unit by an employee or a member of the employee's family residing with the employee.

An invited person need not disclose to the employer the name of the employee who issued the invitation prior to gaining access to the housing, but an invited person must do so in order to assert a right to access as an invited person in any judicial proceeding concerning the right to access provided in the law. If an invited person does not disclose the name of the inviter to the employer, the employer may deny access until the invited person obtains a court order.

Interference with these persons may result in both civil and criminal sanctions under state and federal laws.

ORS 659A.250 to 659A.262.

Access to Telephone Requirements

Employers who own or control their employees' housing must ensure that employees occupying the housing have reasonable access to an operating telephone at all times for emergency use. The telephone may be a pay telephone. The employer must allow employees access to a telephone for emergency use at the request of the employee.

Employers are also required to provide a telephone for the private use of the employees. The telephone must be located within two-miles by road or foot of the farmworker housing.

When the telephone designated by the employer for personal use of the employees is located in the employer's residence or place of business, the employer may establish reasonable rules for the private use of the telephone by the employees. Any such rules must be posted in a conspicuous place where all occupants can easily view them in English and any language used by the employer to communicate with the employees.

An employer may request a waiver from the requirements to provide telephone access if to do so would constitute an “unreasonable hardship” for the employer.

ORS 659A.253.

Penalties

In addition to any other penalty provided by law, the commissioner of the Bureau of Labor and Industries may assess a civil penalty of up to \$2,000 for violations of the provisions of the Farmworker Camp Law:

Violations of many of the Farm Labor Contractor and Farmworker Camp laws are also punishable as misdemeanors. Some violations of the law are punishable as felonies if the person has previously been convicted of violating certain provisions of the law; if the person’s license has been suspended, revoked or denied; or if the person is acting in violation of an outstanding order of the court in connection with previous violations of the Farm Labor Contractor or Farmworker Camp laws.

The commissioner of the Bureau of Labor and Industries may deny, refuse to issue or renew, suspend or revoke a license indorsement for violations of the law.

If the bureau finds there is a serious danger to the public health or safety, it may immediately suspend or refuse to renew a license indorsement.

ORS 658.785; 658.850; 658.991.

SUMMARY OF SELECT WAGE AND HOUR LAWS

The following information is intended only as a summary of select wage and hour laws of which every employer should be aware before hiring employees. It is not a complete summary of wage and hour laws. All the wage and hour laws discussed in this section are applicable to farm labor contractors *in addition to* the specific obligations of a farm labor contractor discussed elsewhere in this handbook.

Minimum Wage

Unless exempt, all employees, including agricultural workers, are entitled to receive the applicable minimum wage rate for all hours worked. Such employees must receive at least the equivalent of the hourly minimum wage even if they are paid on a piece-rate basis. If the agreed upon piece-rate produces a rate of pay higher than the hourly minimum wage, then the worker is entitled to receive the higher amount.

Note that, under ORS 653.025, Oregon’s minimum wage will go up on July 1st of every year through 2022. Beginning on July 1, 2023, the minimum wage rate will be indexed to

inflation based on the Consumer Price Index (CPI), a figure published by the United States Bureau of Labor Statistics.

ORS 653.025 also establishes two regional rates in addition to the standard minimum wage rate. The first of these applies to employers located in the urban growth boundary of a metropolitan service district. (Currently, only the Portland metropolitan area has an urban growth boundary.) Finally, a separate rate applies to employers within certain “nonurban” counties, identified in ORS 653.026:

Minimum wage beginning:	Standard	Portland Metro	Nonurban Counties
July 1, 2017	\$10.25	\$11.25	\$10.00
July 1, 2018	\$10.75	\$12.00	\$10.50
July 1, 2019	\$11.25	\$12.50	\$11.00
July 1, 2020	\$12.00	\$13.25	\$11.50
July 1, 2021	\$12.75	\$14.00	\$12.00
July 1, 2022	\$13.50	\$14.75	\$12.50
July 1, 2023	Adjusted annually based on the increase, if any, to the US City average Consumer Price Index for All Urban Consumers	\$1.25 over the standard minimum wage	\$1 less than the standard minimum wage

Standard Rate

The Standard rate listed above applies unless an employer is located within the urban growth boundary of the Portland metropolitan service district or one of the nonurban counties listed below.

Portland Metro Rate

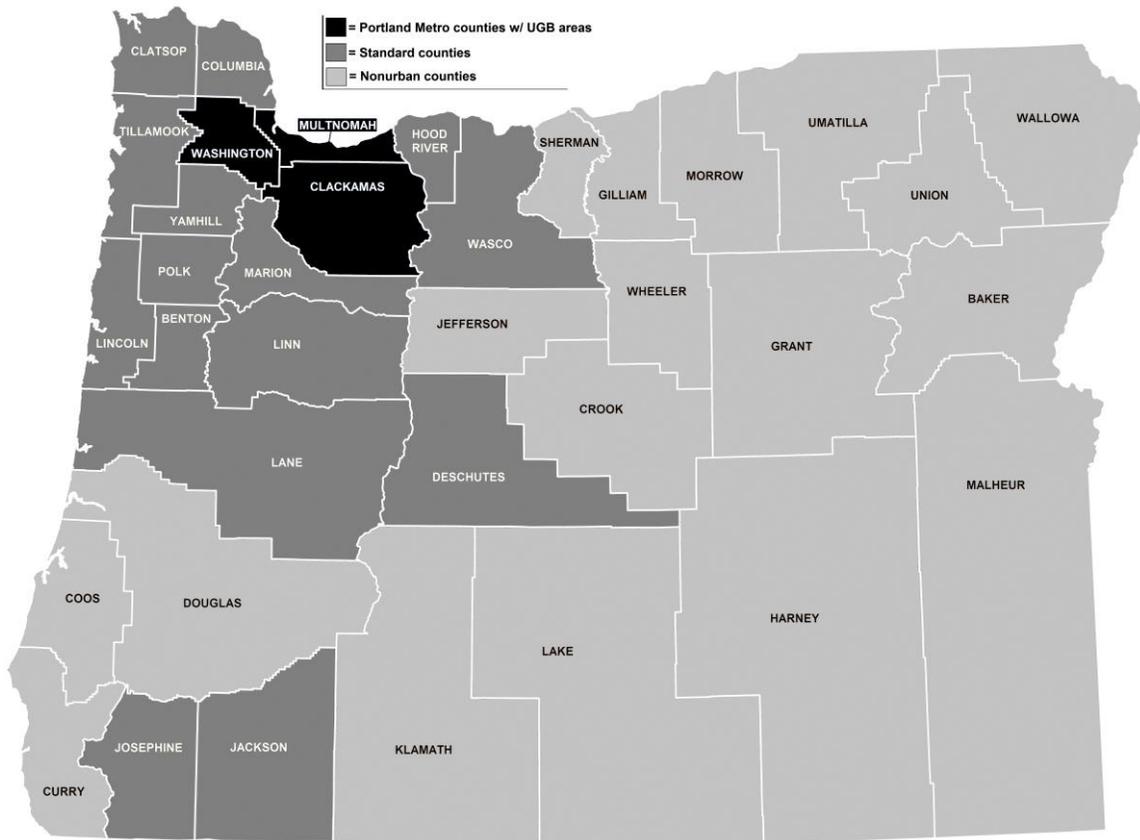
The Portland Metro rate applies to employers located within the urban growth boundary (UGB) of the metropolitan service district. A search tool is available online to assist contractors to determine whether a site is located within the UGB. That tool as well as a map of the UGB is available on our website at:

<http://www.oregon.gov/boli/WHD/OMW/Pages/Minimum-Wage-Rate-Summary.aspx>.

Nonurban Counties Rate

The nonurban counties rate applies to employers located within the following eighteen counties:

- | | |
|--------------|--------------|
| 1. Baker | 10. Klamath |
| 2. Coos | 11. Lake |
| 3. Crook | 12. Malheur |
| 4. Curry | 13. Morrow |
| 5. Douglas | 14. Sherman |
| 6. Gilliam | 15. Umatilla |
| 7. Grant | 16. Union |
| 8. Harney | 17. Wallowa |
| 9. Jefferson | 18. Wheeler |



Exemptions from Minimum Wage

Wage and hour laws include a number of exemptions from minimum wage obligations. These include an exemption for specific types of *agricultural* workers ***if the individual worker is:***

- A hand harvest or pruning laborer paid a piece-rate and is employed by an employer who did not use over 500 piece-rate work days of agricultural labor in any calendar quarter of the previous year;⁵
- The parent, spouse, child or other member of the employer’s immediate family;
- A hand harvest or pruning laborer who commutes daily from the individual’s permanent residence to the farm and has been employed in agricultural labor fewer than 13 weeks the previous calendar year;
- 16 years of age or under and is employed as a hand harvest laborer paid the same piece-rate as employees over 16 years of age; or
- Principally engaged in the range production of livestock, earns a salary, and is paid on a salary basis.

ORS 653.020; 653.022; 653.025; OAR 839-020-0010.

Overtime

Most agricultural workers are exempt from the right to receive time and a half their regular hourly rate for each hour worked over forty hours in a workweek.

The following employees, however, are not employed in “agriculture”⁶ and therefore must receive time and a half their regular hourly rate when they work over forty hours in a work week:

- Workers employed in forestation, reforestation, and firefighting;

⁵ “Piece-rate workday” is defined as any day during which an employee performs any agricultural labor on a piece-rate basis for not less than one hour. If the employer is a farm labor contractor, the combined total of all piece-rate workdays of workers employed at each individual farm where the farm labor contractor provided labor in the same quarter of the previous year will determine the number of piece-rate workdays employed by the farm labor contractor and the contractor’s eligibility for this limited exemption from the obligation to pay workers the hourly minimum wage. (This exemption rarely applies in the case of farm labor contractor employers.)

⁶ Under OAR 839-020-0004(4) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

- Workers who collect wild forest products including mushrooms, evergreen boughs, bear grass, yew bark, salal, or ferns; and
- Workers employed on a farm handling agricultural products *produced on another farm*. For example, a farm may operate a transportation service that also ships produce raised on neighboring farms or a fresh market sales operation that sells some produce not actually produced on the farm. Whenever a worker handles agricultural products produced on a farm other than the farm on which the worker is actually working, the worker is no longer considered to be employed in “agriculture,” and is entitled to be paid overtime.

ORS 653.261; OAR 839-020-0004(4); 839-020-0135.

Deductions from Wages

It is lawful to make deductions from wages only under the following circumstances:

- The employer is required to do so by law (examples: federal and state taxes, social security, or a garnishment order);
- The employee has voluntarily signed an authorization for the deduction, the deduction is for the employee’s benefit and is recorded in the employer’s books (Examples: Goods or services purchased from the employer for the employee’s benefit, group health insurance premiums, cash loans made to employees for their own benefit);
- The employee has voluntarily signed an authorization for a deduction for any other item, provided that the ultimate recipient of the money withheld is not the employer, and the deduction is recorded in the employer’s books;
- The deduction is made in accordance with a collective bargaining agreement to which the employer and employee are parties (Example: Union dues); or
- The deduction is from the employee’s final paycheck for the repayment of money loaned to the employee under certain circumstances.

When an employer deducts an amount from an employee’s wages as required or authorized by law or agreement, the employer is required to pay the amount deducted to the appropriate recipient within the time required by the law or by the agreement. If there is no time specified, the employer must pay the amount within seven days after the date the wages from which the deductions are made are due.

Note that some deductions are not permitted at all, even when the employer has obtained the worker’s written consent. For example, deductions may **not** be made from the wages of employees for the following items:

- Uniforms, tools, and transportation that are required to do the job (or “draws” for the purchase of such items)
- Deposits for equipment, shortages, breakages, losses, or theft
- Meals and lodging if they are required by the employer

An employee may be required to pay for these items (so long as a deduction is not made from the employee’s wages) if the amount paid by the employee does not have the effect of reducing the employee’s earnings below the applicable wage rate (i.e., state minimum wage, federal minimum wage, Service Contract Act, or Migrant and Seasonal Agricultural Worker Protection Act wage rate) for all hours worked and the requirement to pay for such items is disclosed in advance to the employee.

Payroll deductions may be made for items such as raingear, gloves and hats, meals and lodging **ONLY** if they are not required, are for the private benefit of the employee, and are authorized in writing by the employee and recorded in the employer’s books. Lodging or other facilities or services are considered to be required by the employer and may therefore *not* be deducted when:

- Acceptance of the lodging or other facilities or services is a condition of the employee’s employment;
- The expense is incurred by an employee who must travel away from the employee’s home on the employer’s business;
- The acceptance of the lodging or other facilities or services is involuntary or coerced; or
- The provision of lodging or other facilities or services is necessary in order for the employer to maintain an adequate work force at the times and locations the employer needs them.

ORS 652.610; OAR 839-020-0020; 839-020-0025.

Paydays and Paychecks

Every employer must establish and maintain a regular payday. Under state law, paydays must be scheduled at least every 35 days. (However, federal law requires agricultural employers to have a regularly scheduled payday at least every two weeks for migrant and seasonal agricultural workers.)

Employers must furnish each employee, each time the employee is paid, a written itemized statement of earnings. The written itemized statement must include:

- The name and business registry number or business identification number of the employer;
- The address and telephone number of the employer;
- The name of the employee;
- The date of the payment;
- The dates of work covered by the payment;
- The total number of hours worked during the time covered by the payment;
- Whether the employee is paid by the hour, shift, day or week or on a salary, piece or commission basis;
- The rate (or rates) of pay;
- If the employee is paid a piece rate, the applicable piece rate or rates of pay, the number of pieces completed at each piece rate and the total pay for each rate;
- Unless the employee is paid on a salary basis and is exempt from overtime compensation as established by local, state or federal law, the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked and pay for those hours, and the number of overtime hours worked and pay for those hours;
- Allowances, if any, claimed as part of minimum wage;
- Gross wages;
- The amount and purpose of each deduction made during the respective period of service that the payment covers; and
- Net wages.

ORS 652.610(1)(b); ORS 658.440(1)(h); OAR 839-015-0370; and OAR 839-020-0080.

Direct Deposit and Electronic Transfers

An employee's wages may be paid without discount through a direct deposit system, however, an employer must pay wages due to an employee by check upon written or oral request of the employee. Where the employer and employee mutually agree and the employee is able to make an initial withdrawal of the entire amount of net pay due without cost to the employee, wages due may also be paid through automated teller machine card, payroll card or other means of electronic transfer.

An employee is entitled to revoke any agreement to receive wages by means of an electronic transfer by giving written notice to the employer. The revocation is ordinarily effective 30 days after the employer receives the written revocation; however, the requirements of the law with regard to revoking an agreement to receive wages by means of an electronic transfer are different with regard to seasonal farm workers and workers employed in packing, canning, freezing, or drying of agricultural crops. These workers may give the employer notice of revocation of the agreement *either orally or by written notice*, and the revocation is effective *ten* days after the employer receives the notice.

Underpayments

When an employer has notice that an employee has not been paid the full amount the employee is owed on a regular payday and there is no dispute between the employer and the employee regarding the amount of the unpaid wages, if the unpaid amount is five percent or more of the employee's gross wages due on the regular payday, the employer must pay the employee the unpaid amount within three days after the employer has notice of the unpaid amount, excluding Saturdays, Sundays and holidays. (However, to comply with *final* pay requirements, see below.)

ORS 652.120; OAR 839-020-0012.

Final Paychecks

- Seasonal agricultural/forest workers are entitled to receive their last paycheck on their last day of work in the event the employer terminates their employment. The employer of a seasonal agricultural/forestry worker is NOT permitted to wait until the next regularly scheduled payday to provide the final paycheck to an employee whom the employer has terminated.
- Final wages of seasonal farmworker may be paid by noon on the day after termination *provided* (1) the termination occurs at the end of the harvest season; (2) the employer is a farmworker camp operator described in ORS 658.715(1)(b) or (c); and (3) the farmworker is provided housing that complies with ORS 658.705 to 658.850 at no cost to the worker from the termination of work until wages due are paid.
- So long as the seasonal agricultural/forestry worker gives 48 hours' notice before voluntarily ending employment, the employer **MUST** give the employee the employee's final paycheck on the employee's last day of employment.
- If the seasonal agricultural/forestry worker voluntarily quits employment without giving the employer 48 hours' notice, then the employer is required to pay the employee the employee's final paycheck within 48 hours or at the next regularly scheduled payday after the employee has quit, whichever event occurs first.

ORS 652.140; ORS 652.145.

Meal and Rest Periods

All employees, including agricultural workers not exempt from minimum wage, must be provided meal and rest periods.

Oregon agricultural employers must provide employees with at least a 30-minute unpaid **meal period** when the “work period” is six hours or greater. The meal period is an uninterrupted period in which the employee is relieved of all duties. No meal period is required if the work period is less than six hours.

Employers must also provide such employees with a paid, uninterrupted 10-minute **rest break** for every four-hour segment (or major portion of four hours) in the “work period.”

OAR 839-020-0050.

Meal periods and rest breaks may not be combined. They must be taken separately.

The following chart shows the number of rest and meal periods to which workers are entitled, depending on the length of the work period.

To determine the number of hours in the “work period,” count the number of hours between the time the employee begins work and the time the employee ends work (including rest periods), but exclude meal periods in which the employee is relieved of duty.

Rest Break and Meal Period Entitlements

If the length of work period is...	Number of rest breaks required is	Number of meal periods required is
2 hrs. or less	0	0
2 hrs., 1 min – 5 hrs., 59 min.	1	0
6 hrs.	1	1
6 hrs., 1min -10 hrs.	2	1
10 hrs., 1min-13 hrs., 59 min.	3	1
14 hrs.	3	2
14 hrs., 1min – 18 hrs.	4	2
18 hrs., 1min – 21 hrs., 59 min.	5	2
22 hrs.	5	3
22 hrs., 1 min – 24 hrs.	6	3

Rest Breaks: 10 minutes, paid (15 minutes for minors)

Meal Period: 30 minutes, unpaid

Oregon's Sick Time Law

Effective January 1, 2016, employers that employ employees in the state of Oregon are required to implement sick time policies and provide sick time to employees. Employers are also required to provide employees with a notice of the law's provisions. This section summarizes the major provisions of the law, but should not be relied upon as a full and complete summary of the law. The full text of the law and administrative rules adopted by the bureau are available at www.oregon.gov/boli.



Frequently Asked Questions...

On Oregon sick time.

How much sick time does the law require?

Employees begin accruing sick time on the first day of employment and earn one (1) hour of sick time for every 30 hours worked or 1 1/3 hours for every 40 hours worked. Employees may use accrued sick time on the 91st calendar day of employment and may use sick time as it is accrued.

Employers may choose to simply give employees (“front load”) 40 hours of sick time at the beginning of the year rather than track the number of sick time hours accrued. Employers may also select the 12-month period to be used as the designated “year”, e.g., calendar year, fiscal year, employee anniversary date, etc.

Employees may carry over up to 40 hours of unused sick time from one year to the next; however, employers may adopt policies that limit employees to accruing no more than 40 hours of sick time in a year. Employers may also limit total accrual of sick time to 80 hours. Finally, employers may limit an employee to using no more than 40 hours of sick time in a given year.

Paid time off (PTO) policies that include time off for other purposes (such as vacation and other personal time off) comply with the sick time law as long as the policy is substantially equivalent to or more generous than the requirements of the law. “Substantially equivalent” means that employees are allowed to use at least the same number of hours for the same purposes under the same or more generous rules as outlined in this notice.

Employees must use accrued sick time in hourly increments unless to do so would pose an undue hardship to the employer, in which case the employer may require sick time to be taken in minimum increments of four hours if the employer allows employees to use at least 56 hours of paid leave per year for absences covered by this law.

When must sick time be paid?

Employers with 10 or more employees in the state (6 or more if the employer maintains a location in Portland) must pay employees for sick time taken at the employee's regular rate of pay. All other employers must provide unpaid sick time.

The number of all employees employed by the employer in Oregon must be counted – including fulltime, part-time and temporary employees.

For what purposes may sick time be used?

Employees are entitled to use sick time for the following purposes:

- For an employee's or family member's mental or physical illness, injury or health condition or need for medical diagnosis of these conditions or need for preventive medical care.
- To care for an infant or newly adopted child under 18, or for a newly placed foster child under 18, or for a child over 18 if the child is incapable of self-care because of mental or physical disability.
- To care for a family member with a serious health condition.
- To recover from or seek treatment for a serious health condition that renders the employee unable to perform at least one of the essential functions of the employee's job.
- To care for a child of the employee who is suffering from a non-serious illness, injury or condition.
- To deal with the death of a family member by attending the funeral or alternative, making arrangements necessitated by the death of a family member, or grieving the death of a family member.
- To seek medical treatment, legal or law enforcement assistance, remedies to ensure health and safety, or to obtain other services related to domestic violence, sexual assault, harassment or stalking incidents to the employee or employee's minor child or dependent.
- To donate sick time to another employee for qualifying purposes if the employer has a policy allowing such donations.
- For certain public health emergencies including closure by a public official of the employee's place of business, school or place of care of the employee's child, or a determination by a public health authority or health care provider that the presence of the employee or a family member presents a health risk to others.

Sick Time Notices and Verification

In addition to providing a notice to employees of the requirements of the law, employers are required to provide **quarterly notifications** to employees of the amounts of accrued and unused sick time. Employers may require employees to provide notices, verifications and certifications for using sick time under certain circumstances. For example, if the need for sick time is foreseeable, employers may require employees to provide up to 10 days' notice of the need to use sick time.

Discrimination/Retaliation Regarding Sick Time Prohibited

It is unlawful for an employer to deny, interfere with, restrain or fail to pay for sick time to which an employee is entitled; or retaliate or in any way discriminate against an employee because the employee has inquired about the provisions of the law, submitted a request for or taken sick time.

Sick Time Exception for Collective Bargaining Agreements

The sick time law does not apply to certain employees who are covered by a collective bargaining agreement, employed through a hiring hall and whose benefits are provided by a joint multi-employer-employee trust or benefit plan.

Recordkeeping

Wage and hour laws require employers to keep the following records for a period of at least two years (labor contractors are required to keep and preserve all records for a period of 3 years):

- Each employee's name, social security number, address, and employment position. If the employee is under 19 years of age, the employer must also record the birthdate.
- The hours worked each day by each employee and the total hours each employee worked in each workweek.
- A record indicating the time of day and day of week when the employee's workweek begins.
- The basis on which the wages are paid, including the regular rate of pay, the amount and nature of each payment excluded from the regular rate of pay, total daily or weekly straight-time earnings, total daily or weekly overtime earnings, total additions to or deductions from the employee's wages for each pay period, total wages paid each pay period, and the date of each payment and the pay period covered by each payment.

Employers must make these records available to the commissioner of the Bureau of Labor and Industries upon request.

ORS 653.045; OAR 839-020-0080.

Employer Liability for Violations of Wage and Hour Laws

An employer's failure to comply with wage and hour laws may subject the employer to civil penalties, penalty wages that may amount to up to 30 days of extra wages for the employee, and sometimes attorney fees. In order to avoid the risk of substantial liability, employers should always take special care to timely pay the agreed hourly rate for each

and every hour the employee worked. The employer should also always timely pay all overtime due to an eligible employee and make sure to timely pay an employee's final wages when due.

ORS 653.055; 652.150; 653.256; 652.900.

Employer Liability for Issuance of Dishonored Check in Payment of Wages

Pursuant to ORS 30.701, an employer that issues a dishonored check to an employee for payment of wages due is liable to the employee for damages in an amount equal to \$100 or triple the amount for which the check is drawn, whichever is greater, in addition to the amount for which the check was drawn. The amount of damages may not exceed the amount for which the check was drawn by more than \$500. The commissioner of the Bureau of Labor and Industries may assess a civil penalty payable to the employee in an amount equal to the statutory damages provided by ORS 30.701 against an employer that issues a dishonored check to an employee for payment of wages due.

ORS 652.195; OAR 839-001-0300.



Frequently Asked Questions...

On wage and hour laws.

I pay my workers a piece-rate. Sometimes family members request to work together on one "ticket." Is that all right?

No. Wage and hour laws require that you keep accurate records of hours worked and wages earned by *each* employee. In addition, the employer must furnish *each* employee each time an employee is paid an itemized statement that must include a statement of earnings and deductions for that particular employee. Note: If you permit an employee's relative or friend to assist your employee in the workplace, then under wage and hour law, you have "suffered or permitted" that person to work and that person will also be considered your employee even though you may believe you did not "hire" the extra help.

Do I have to pay overtime to my workers who harvest wild forest products like evergreen boughs, salal, bear grass, yew bark, and ferns?

Yes. Since the harvesting of wild forest products is not considered “agriculture” the workers who are employed to collect these forest products are entitled to overtime for all hours worked over forty in a workweek. Note: Workers harvesting other wild forest products such as mushrooms or moss, which are not regulated by Oregon’s farm/forest contractor laws, must also receive overtime for all hours worked over forty in a workweek.

Sometimes I pay my workers by the number of boxes they fill and sometimes I pay them by the pound. Do I still have to keep track of the hours that they work?

Yes. Unless the employee is exempt from minimum wage, wage and hour law requires that you keep a record of the hours worked each day by each employee. Recording the hours worked by each employee daily is required regardless of the method used to compute the wages actually earned pursuant to the agreed rate of pay. An employer should always ensure the employee’s piece rate earnings equal or exceed the number of hours worked multiplied by the applicable minimum wage. If an employee’s earnings do not equal or exceed what that employee would have earned for all hours worked at minimum wage, the employer must also pay the difference between these amounts.

STATE AND FEDERAL LAWS REGULATING THE EMPLOYMENT OF MINORS IN AGRICULTURE

State and federal child labor laws set out different requirements for different age groups of minors working in agriculture. Where state and federal laws address the same issue, the stricter standard applies. The following is a summary of some of the provisions of state and federal regulations pertaining to the employment of minors in agriculture. For more information, contact the U.S. Department of Labor, Wage and Hour Division at (503)326-3057 or Bureau of Labor and Industries, Wage and Hour Division at (971)673-0836.

Definition of Agriculture

Agriculture includes farming in all its branches when performed by a farmer or on a farm as an incident to or in conjunction with such farming operations.⁷ If the employee of a grower or processor handles goods grown by another farmer, they may no longer meet

⁷ Under OAR 839-020-0004(4) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

the definition of agriculture and might lose any agricultural exemptions under the law for that workweek.

Minimum Age Requirements

Minors age 16 and above may work at any time in jobs not declared hazardous by the Secretary of Labor (U.S.). (See the section below on “Prohibited Work”.)

Minors ages 14 and 15 may work outside school hours in jobs not declared hazardous by the Secretary of Labor (U.S.).

Minors ages 12 and 13 may work in jobs not declared hazardous outside school hours either with written parental consent or on the same farm where their parents are employed.

Minors ages 9 through 11 may pick berries and beans outside school hours if the child has the written consent of his/her parents or guardians. The produce must be sold within the state AND the produce is not transported outside the state in any form. The container must be distinctly marked so as to prevent the product from entering interstate commerce. The individuals paid at the same rate as other employees of the employer who are 12 years or older and are engaged in picking beans or berries.

Local minors ages 10 and 11 may hand harvest short-season crops outside school hours for no more than 8 weeks between June 1 and October 15 IF their employers have obtained special waivers from the Secretary of Labor (U.S.).

Minors of any age may work in any job on a farm owned or operated by their parents.

Hours Limitations for Minors Under 16

Minors under age 16 may not work while school is in session. A maximum of three hours/day may be worked on school days; 10 hours/day on non-school days; and a maximum of 25 hours/week may be worked during school weeks. During the summer months or other school vacation periods of one week or more, a maximum of 10 hours/day and 60 hours/week may be worked unless a special permit is first obtained from the Bureau of Labor and Industries. No more than six days/week may be worked.

Minors under age 16 employed to operate, assist in the operation of or ride in or on power-driven farm machinery may work a maximum of eight hours/day on non-school days; and 18 hours/week during school weeks. During the harvest season (summer months), a maximum of 10 hours/day and 60 hours/week may be worked unless a special permit is first obtained from the Bureau of Labor and Industries. Outside the harvest season, a maximum of 44 hours/week is allowed without an emergency overtime permit.

There is no restriction on starting and quitting times for minors employed in agriculture, so long as the minor does not work when school is in session.

Hours Limitations for Minors Over 16

Minors 16 and 17 years of age who are employed to operate, assist in the operation of or ride in or on power-driven farm machinery may work a maximum of 25 hours/week during school weeks and 60 hours/week during the harvest season unless a special permit is first obtained from the Bureau of Labor and Industries.

Emergency and special overtime permits may be obtained by applying to the Bureau of Labor and Industries.

Prohibited Work

Federal law

Federal law prohibits the employment of any minor under 16 in any agricultural occupations which the Secretary of Labor finds and declares to be particularly hazardous for persons under the age of 16, or detrimental to their health and well-being. The Secretary of Labor has found and declared that the following occupations are hazardous for minors under 16 years of age.⁸

1. Operating a tractor of over 20 power-take-off (PTO) horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.
2. Operating or assisting to operate (including starting, stopping, adjusting, feeding or any other activity involving physical contact associated with the operation) any of the following machines:
 - a. corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, mobile pea viner;
 - b. feed grinder, crop dryer, forage blower, auger conveyer, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or
 - c. power post hole diggers, power post driver, or nonwalking type rotary tiller.
3. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
 - a. trencher or earthmoving equipment;
 - b. forklift;
 - c. potato combine; or
 - d. power-driven circular, band, or chain saw.
4. Working on a farm in a yard, pen, or stall occupied by a:
 - a. bull, boar, or stud horse maintained for breeding purposes;
 - b. a sow with suckling pigs, or a cow with a newborn calf (with umbilical cord present).

⁸ These Orders are published in Subpart E-1 of Part 570 of Title 29 of the Code of Federal Regulations.

5. Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.
6. Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.
7. Driving a bus, truck, or automobile when transporting passengers or riding on a tractor as a passenger or helper.
8. Working inside:
 - a. a fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;
 - b. an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;
 - c. a manure pit; or
 - d. a horizontal silo while operating a tractor for packing purposes.
9. Handling or applying toxic agricultural chemicals (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying such chemicals). Such toxic chemicals are identified by the word “poison,” or “warning,” or are identified by a “skull and crossbones” on the label.
10. Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or
11. Transporting, transferring, or applying anhydrous ammonia.

Oregon law

Under Oregon law, minors under 16 may not be employed in feed mills, flour mills, grain warehouses, or any workplace where power-driven machinery is used in or incidental to adapting articles or goods for sale. Within an agricultural warehouse, no minor under age 18 may be employed to operate or assist in the operation of power-driven machinery, however, under certain circumstances, agricultural employers may employ 16 and 17 year olds to operate or assist in the operation of power-driven machinery in an agricultural warehouse.

In addition, Oregon law also prohibits the employment of all minors in any occupation declared particularly hazardous or detrimental to their health or well-being, except under terms and conditions specifically set forth by rules of the Bureau. Those occupations are set out in Title 29 CFR, Part 570.51 to and including Part 570.68 as amended July 19, 2010.⁹ While federal law exempts agriculture from these restrictions, they are specifically applied to agriculture under Oregon administrative rule.

Fourteen and 15-year-old student learners enrolled in vocational agricultural programs are exempt from some of the hazardous occupations provisions when certain requirements are met. For a complete listing of prohibited/hazardous occupations or operations or for more information, contact the Bureau of Labor and Industries or U.S. Department of Labor.

⁹ A complete list of prohibited occupations is available from BOLI’s Child Labor unit in Portland at (971) 673-0836.

Youths employed on farms owned or operated by their parents may be employed in any occupation.

Power-Driven Farm Machinery

Minors employed to operate, assist in operating or ride in or on power-driven farm machinery or conveyances connected to power-driven farm machinery must first complete training relating to the safe operation of the machinery. (For more information regarding specific training requirements, contact the Bureau of Labor and Industries.)

Employment Certificates

Employers who employ minors to operate, assist in operating or ride in or on power-driven farm machinery are first required to obtain an annual employment certificate from BOLI. Agricultural employers who do not employ minors to operate power-driven farm machinery are not required to obtain an employment certificate.

Employment certificate applications may be obtained from any BOLI office by calling (971)673-0836 or downloading the application from the Child Labor Unit's webpage at: www.oregon.gov/BOLI/WHD/CLU/pages/index.aspx.

Rest and Meal Period Requirements for Minors

Special rules pertaining to meal periods apply to minors. Contact the Bureau of Labor and Industries for more information.

Paid rest periods of at least 15 minutes must be provided to minor employees during each four-hour period (or major portion) of work time. Rest periods may not be added to the meal period or deducted from the beginning or end of the work period in order to reduce the length of the work period.

SUMMARY OF SELECT CIVIL RIGHTS LAWS

The following information is intended only as a summary of select civil rights laws which every employer should be aware of before hiring employees. It is not a complete summary of civil rights laws. There are federal, state, county, and city discrimination laws banning discrimination because of an individual's protected classes or protected activities. For more information on the application of civil rights laws, employers are encouraged to contact the Technical Assistance for Employers unit at (971)673-0824 or by emailing bolita@boli.state.or.us. Fact sheets and frequently asked questions are also available on BOLI's website at www.oregon.gov/boli.

Civil rights laws ban discrimination against individuals because of characteristics that make them part of a protected class. Discrimination is generally defined as the treatment

of a person on the basis of something other than personal merit. Discrimination is unlawful when carried out because of an individual's race, color, gender, or other characteristic protected by law. Civil rights laws also ban discrimination against individuals based on protected activities, such as invoking protected family leave or reporting and opposing an unlawful employment practice.

In order to be protected by Oregon's anti-discrimination laws, employees must be employed by a company with at least one or more employees, except where noted. Protected classes and activities recognized in Oregon include, but are not limited to, the following:

- Race / color
- National origin
- Sex (includes gender, pregnancy and sexual harassment)
- Sexual orientation (includes gender identity)
- Religion
- Retaliation for opposing an unlawful employment practice
- Retaliation for reporting or opposing a health or safety hazard
- Association with individuals who are members of specific protected classes
- Age (18 or older)
- Marital status
- Physical/Mental disability (6 or more employees)
- Injured workers (6 or more employees)
- Family relationship
- Invocation of sick leave or family medical leave

Race, Color and National Origin Discrimination

State and federal laws prohibit different terms or conditions of employment based on race, color or national origin. An employer may not provide separate facilities, unequal benefits or unequal opportunities because of race, color or national origin.

Sex Discrimination

Oregon law, ORS 659A.030, prohibits discrimination in employment on the basis of sex. Employers with one or more employees are covered by this law. Sex discrimination is prohibited in hiring, compensation, terms or conditions of employment, on-the-job treatment and termination. For example, refusing to hire a woman because of assumptions about the comparative employment characteristics of women in general constitutes sex discrimination, such as assuming that the turnover rate among women is higher than among men. Another example of sex discrimination is terminating employees based on gender stereotypes, such as terminating female employees before male employees on the assumption that men are the primary source of financial support for their families.

Only in rare instances is it permissible to discriminate based upon a protected class such as an individual's gender, and then only when it is compelled by business necessity.

Sex Harassment

Sexual harassment is a form of sex discrimination prohibited by both state and federal law. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal, physical, or visual conduct of a sexual nature. It also includes conduct that is not sexual in nature but is gender-based and offensive. This conduct rises to the level of sexual harassment when:

- 1) Submission to the conduct is made a term or condition of employment or is the basis for employment decisions about the employee; or
- 2) The conduct is sufficiently severe or pervasive to create a hostile, intimidating or offensive work environment. OAR 839-005-0030.

Sexual harassment can occur in a variety of circumstances, including situations where the harasser and the victim are of the same sex. Sexual harassment includes offensive conduct of a sexual nature by a supervisor, an agent of the employer, a co-worker, or even a non-employee. A victim of sexual harassment does not have to be the person harassed but could be anyone affected by the offensive conduct.

Examples of sexual harassment could include:

- Unwanted / persistent sexual advances;
- Offering employment benefits in exchange for sexual favors;
- Actual or threatened retaliation for objecting to harassing behavior;
- Leering; making sexual gestures; or displaying sexually suggestive objects, pictures, cartoons, or posters;
- Making or using derogatory comments, epithets, slurs, or jokes;
- Sexual comments including graphic comments about an individual's body; sexually degrading words used to describe an individual; or suggestive or obscene letters, emails, text messages, notes, invitations, etc.; or

- Physical touching or assault, as well as impeding or blocking movements.
- A single incident, if sufficiently severe, may be enough to establish a violation.

Employer Liability

Employers may be held liable for sexual harassment of employees by supervisors, co-workers and non-employees. Employers may also be liable for sexual harassment when the harasser qualifies as the employer's proxy due to holding a position of sufficiently high rank such as a president, owner, partner, or corporate officer. An employer may be liable for sexual harassment by a supervisor when the harassment results in a tangible employment action that the supervisor takes or causes to be taken against that individual (including but not limited to constructive discharge). Employers may also be held liable for sexual harassment of a supervisor when no tangible employment action has been taken if it is determined that the employer *knew* or *should have known* of the harassment. Similarly, employers may be held liable for harassment by co-workers and non-employees, even when they do not know of the harassment, if it is determined that they *should have known*. An employee alleging sexual harassment can file a lawsuit or a complaint with an administrative agency, such as BOLI or the Equal Employment Opportunity Commission (EEOC), without first exhausting intra-company remedies. A court or administrative law judge may award damages including: back pay; counseling or medical costs; attorney fees; as well as pain and suffering.

Preventive Action

Prevention is one of the best tools for eliminating sexual harassment in the workplace. As a preventative tool, employers should develop a written policy prohibiting sexual harassment. To increase its effectiveness, the sexual harassment policy should, at a minimum:

- Define sexual harassment;
- Emphatically state that sexual harassment will not be tolerated and that immediate and appropriate corrective action will be taken if it is determined that harassment took place;
- Create a verbal or written complaint procedure that includes a way for employees to bypass an immediate supervisor if the supervisor is the alleged harasser;
- Commit to a prompt and thorough investigation of all alleged incidents of harassment;
- Describe the disciplinary actions for harassers that may be taken, up to and including termination; and
- Assure employees that those who make complaints of harassment or provide information related to such complaints will be protected and that no retaliatory action will be tolerated for reporting sexual harassment.

Employers should also consider how best to clearly communicate their anti-sexual harassment policy and consider providing training to their employees and supervisory staff. In workplaces where a variety of languages are used, the policy and training should

be translated into those languages. The training should include procedures for identifying and reporting instances of sexual harassment.

Investigation

In the event an employer receives a complaint or otherwise learns of possible sexual harassment, the employer should conduct a prompt and thorough investigation. The employer should take detailed statements from the complaining person, the alleged harasser, and witnesses. The employer should also review any documents or physical evidence that may be available. All steps of the investigation should be thoroughly documented. Employers may wish to consult an attorney for assistance with harassment investigations.

Corrective Action

If an investigation leads an employer to believe that harassment may have occurred, the employer should take “immediate and appropriate corrective action,” which means doing whatever is necessary to put a stop to the harassment. Depending on the severity of the harassment, appropriate corrective action could include any of the following: verbal or written warning; counseling; suspension; sensitivity training or education on harassment laws and appropriate workplace conduct; reassignment of workers to different locations or shifts; or dismissal of the harasser. Employers should make follow-up inquiries to ensure that any harassment has not resumed, and that any complaining individual or witnesses have not suffered retaliation. Employers should remember that reassignment or other methods that employers use to separate an alleged harasser and victim should never be punitive for the victim.



Frequently Asked Questions...

On sex harassment.

How does sexual conduct become “a term or condition of employment or is the basis for employment decisions about the employee”?

This terminology describes harassment that typically involves a supervisor giving or withholding employment benefits based upon an employee’s willingness to grant sexual favors.

Example: Donald tells Ivana she’ll get the promotion if she sleeps with him.

Example: Demi tells Michael his workload will double if he doesn’t join her for dinner.

Example: Geraldo implies Sally must continue dating him if she wishes to keep her job.

How is an employer to know if conduct is “sufficiently severe or pervasive” to create a “hostile environment”?

A “hostile environment” is a work atmosphere in which a pattern of offensive sexual conduct is involved. Oregon’s administrative rules describe it as, “Any unwelcome verbal or physical conduct that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating an intimidating, hostile, or offensive working environment.” OAR 839-005-0030(1)(b).

Example: Tom, Nicole’s supervisor, regularly compliments her figure and clothing. He frequently walks up behind her and massages her shoulders, despite her flinching and moving away. On Monday mornings, Tom tells the crew the “dirty joke of the week” from his Saturday night poker game. Other employees laugh, but Nicole usually walks away. Tom also keeps a calendar of semi-nude women posted in his office, despite Nicole’s comments that she finds the calendar demeaning. Based on all of the foregoing conduct by Tom, Nicole files a hostile environment sexual harassment claim.

Roseanne, an employee of mine, used to delight in telling off-color and sexually explicit jokes, but has now joined a new church and is strongly objecting when other employees tell such jokes. Is the company obligated to take any action?

Yes. Even though Roseanne previously consented to and even actively participated in the conduct, the company must act if she communicates that she now finds it offensive. Sexual jokes or conversations in the workplace can form the basis of a hostile environment claim, and an employer is liable if he or she knew or should have known that the offended employee withdrew consent to such conduct.

Pay Equity

As of January 1, 2019, Oregon law prohibits discrimination in wages or other compensation based on various protected classes, including sex, when the work is of comparable character. Pay differentials between workers performing work of comparable character may be justified when based on a seniority system, merit system, production measuring system, workplace location, travel, education, training, experience, or any combination of these factors. Oregon’s prior law required equal pay between the sexes when performing work of comparable character unless a pay differential was based on a good faith factor not based on sex, including the use of a merit or seniority system that was not based on sex.

Discrimination Based on Religion

ORS 659A.030 makes it unlawful for any Oregon employer to discriminate against an individual in hiring, termination or any terms and conditions of employment on the basis of religion, unless such discrimination results from a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business. ORS 659A.006 excepts bona fide churches and other religious institutions that may include schools, hospitals and church camps.

Injured Worker Discrimination

Oregon provides certain rights to employees who are injured on the job. Most Oregon employers are prohibited from discriminating against employees because of such injuries. Also, an employer may not discriminate against a worker because a worker has invoked workers' compensation provisions or applied for workers' compensation benefits. ORS 659A.040. Workers' compensation provisions may be considered invoked even if an employee does not apply for benefits if the employee reported an on-the-job injury or if the employer perceives that either the employee was injured on the job or will report an on-the-job injury. OAR 839-006-0105(7).

Discrimination Based on Disability

Federal and state laws protect people with mental and physical disabilities against discrimination in terms, conditions or privileges of employment. Both sets of laws also protect individuals for whom there is a perception, regard, or record of disability. Employers of six or more employees must comply with Oregon's disability law. Employers with 15 or more employees must comply with the federal Americans with Disabilities Act (ADA) and the federal Americans with Disabilities Act Amendments Act (ADAAA). Both Oregon and federal law require employers to provide reasonable accommodations for both qualified applicants with disabilities and employees with disabilities.

Discrimination Based on Age

Oregon prohibits an employer from firing, refusing to hire, or discriminating against an individual in compensation, or other terms, conditions or privileges of employment because that person is 18 or older. ORS 659A.030.

Discrimination Based on Family Relationships

Oregon prohibits an employer from discriminating against an individual solely because another member of that individual's family works or has worked for that employer. However, an employer can refuse to hire an individual in limited circumstances, including if the individual's family member would work in a supervisory capacity over the individual. ORS 659A.309.

Discrimination Based on Sexual Orientation

Oregon prohibits an employer from discriminating against an individual on the basis of an individual's actual or perceived heterosexuality, homosexuality, bisexuality, or gender identity.

Pre-Employment Inquiries of Protected Classes

Federal and state laws establish prohibitions against employers advertising or making inquiries expressing a preference based on protected class status. Therefore, all pre-employment questions should be evaluated for appropriateness by assessing the relationship between the information sought and the abilities that are necessary to perform the job.

When considering employing an individual, the best practice is to avoid questions:

- Asking for direct information about an individual's race, sex, sexual orientation, age, marital status, or membership in other protected classes.
- Asking for information typically evaluated differently for men and women, such as questions regarding child care arrangements.
- Asking for information about a person's prior workers' compensation claims.
- Asking where a person was born or if the person was born in the United States.
- Asking about a person's religious affiliation.
- Asking a person's age or full date of birth.

CONTACTS AND RESOURCES

AGENCY/ORGANIZATION	INFORMATION/ SERVICES AVAILABLE	CONTACT INFORMATION
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STATE AGENCIES

Agriculture, Department of	Agripedia (available on line): Information and contacts for: employment, worker health and safety, tax, water, land use, waste and hazardous materials, livestock, plant and crop production, farm vehicles, measurement standards and dispute resolution	Website: www.oregon.gov/oda Telephone: 503-986-4550 (Salem) Cost: First 5 copies are free \$5.00 each for each additional copy.
Bureau of Labor and Industries	Apprenticeship and Training Child Labor Civil Rights Farm/Forest Labor Contractor Licensing and Technical Assistance Required Posters Seminars for Employers Technical Assistance for Employers Wage and Hour	Website: www.oregon.gov/boli Telephone: 503-378-3292 (E/SP) (Salem office/Farm Labor Unit and Licensing) Technical Assistance for Employers Unit: 971-673-0824 (Portland)
Corporation Division (Secretary of State)	Business registration Notary public information/registration	Website: www.filinginoregon.com Telephone: 503-986-2200 (Salem)
Employment Department	Farm Labor Monitor Advocate Employment information and assistance H2A and H2B Program Information Unemployment Insurance information	Website: www.oregon.gov/employ Telephone: 1-800-237-3710
Forestry, Department of (ODF)	State Forestry contracts Fire Crew contracts	Website: www.oregon.gov/odf/ Telephone: 503-945-7249 (Salem) 503-945-7479 (Salem)
Insurance Division	Rates and forms	Website: www.oregon.gov/dcbs/insurance/pages/index.aspx
Insurance Portability Option	Consumer Protection Section: Complaints against insurance companies Oregon Medical Insurance Pool (administered by Regence Blue Cross Blue Shield) Certification to bid on government contracts	Telephone: 888-877-4894 Website: www.omip.state.or.us Telephone: 1-800-699-9075
Minority Business (Office of Minority, Women, and Emerging Small Business)	Certification to bid on government contracts	Website: http://www.oregon4biz.com/How-We-Can-Help/ Telephone: 503-986-0123 (Salem)

CONTACTS AND RESOURCES

AGENCY/ORGANIZATION	INFORMATION/ SERVICES AVAILABLE	CONTACT INFORMATION
Occupational Safety and Health (Oregon – OSHA)	Workplace/field safety and health consultations and information (5 field offices) General information Labor Camp registration and Labor Camp consultations	Website: http://osha.oregon.gov/Pages/index.aspx Telephone: 1-800-922-2689 503-378-3272 (Salem)
Revenue, Department of	State tax/withholding information	Website: www.oregon.gov/dor/ Telephone: 503-378-4988 (Salem) 971-673-0700 (Portland) 1-800-356-4222
Small Business Ombudsman	Call with questions Worker Compensation Specialist	Website: www.oregon.gov/dcbs/sbo/ Telephone: 503-378-4209 (Salem)
State Accident Insurance Fund (SAIF)	Workers compensation insurance coverage/information	Website: www.saif.com Telephone: 1-800-285-8525 503-373-8000 (Salem)
Workers' Compensation Division	Employer compliance information Re-employment assistance Information Employer Compliance Unit Information in Spanish	Website: http://wcd.oregon.gov/Pages/index.aspx Telephone: 1-800-452-0288 1-888-877-5670 503-947-7815 (Salem) 1-800-843-8086
Oregon On Line- State Services and Programs Information: www.oregon.gov State Agency Information- State of Oregon Government Directory Assistance:		
<u>FEDERAL AGENCIES</u>		
Bureau of Land Management (BLM)	Information regarding federal BLM contracts only available online	Websites: www.fbo.gov (re: contracts over \$25,000); www.nbc.gov (re: contracts under \$25,000)
Forest Service, U.S. (USFS)	Information regarding USFS contracts only available online	Websites: www.fs.fed.us (engine tender contracts); www.fbo.gov (all federal contracts)
Government Contract Assistance Program (GCAP)	Information and assistance to Oregon Small businesses desiring to compete in this market	Website: www.gcap.org Telephone: 1-800-497-7551

CONTACTS AND RESOURCES

AGENCY/ORGANIZATION	INFORMATION/ SERVICES AVAILABLE	CONTACT INFORMATION
Immigration (U.S. Citizenship and Immigration Services)	Information and Form I-9 Information Employer Services	Website: https://www.uscis.gov/ Telephone: 1-800-375-5283 (E/SP) 1-800-357-2099
Internal Revenue Service	Federal tax and withholding information Forms distribution center	Website: www.irs.gov Telephone: 1-800-829-1040; 1-800-829-3676 (E/SP)
Labor, Department of (U.S. DOL)	Federal Wage and Hour Information Minimum Wage/Family Leave Posters Child Labor FMLA Hotline	Website: www.dol.gov Telephone: 503-326-3057 (Portland) 1-866-487-9243 (E/SP)
Occupational Safety and Health	Federal safety and health regulations/information	Website: www.osha.gov/ Telephones: 1-800-321-6742 (National) (E/SP) 503-231-2017 (Portland)
Small Business Administration (SBA)	Small business assistance	Website: www.sba.gov/or Telephone: 503-326-2682 (Portland)
Federal Agency Information: www.firstgov.gov		
Telephone: 1-800-688-9889 (E/SP); 1-800-333-4636 (E/SP)		
<u>OTHER</u>		
Oregon State Bar Referral Service	Attorney referral services	Website: www.osbar.org/public/ris/ Telephone: 1-800-452-7636
National Human Trafficking Resource Center	Hotline / information	Website: https://humantraffickinghotline.org/ Telephone: 1-888-373-7888 (E/SP)

E/SP = English and Spanish

Rev. 12-2018

Farm / Forest Labor Contracting

A Handbook for Oregon Farm/Forest Labor Contractors

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Oregon Bureau of Labor and Industries

Wage and Hour Division

Labor Contracting Unit