BUREAU OF LABOR
AND INDUSTRIES

Construction Labor Contracting

A HANDBOOK FOR
CONSTRUCTION LABOR
CONTRACTORS

2025 Edition
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Oregon Bureau of Labor and Industries
Wage and Hour Division

CHRISTINA STEPHENSON
COMMISSIONER

Bureau of Labor and Industries

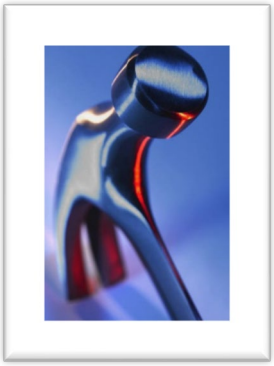
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Oregon Bureau of Labor and Industries
Wage and Hour Division

Christina Stephenson
Commissioner

A WORD TO OUR READERS …



This handbook is prepared as a general summary and teaching guide to help construction labor contractors understand and comply with Oregon's regulations for construction labor contractors as well as wage and hour and child labor requirements for all employers. The information in this book reflects legislative changes through the 2022 legislative session and administrative rules in effect as of January 1, 2023.[1] The Oregon Revised Statutes and Oregon Administrative Rules are available online at our website: www.oregon.gov/boli/about/pages/statutes-and-rules.aspx. In addition to the construction contractor law, labor contractors must also understand and comply with state and federal wage and hour and civil rights regulations. 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/employers/Pages/purchase-employment-law-handbooks.aspx. General information regarding wage and hour, child labor and civil rights laws is also available at Oregon.gov/BOLI.

Those with general questions about Oregon construction 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 Davis Bacon Act or the Service Contract Act, should be addressed to the United States Department of Labor. Alternatively, you could 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.

The Construction Labor Contractor Handbook is also available on BOLI's website at www.oregon.gov/boli/employers/Pages/construction-labor-contractors.aspx in both English and Spanish.

BOLI

[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.

OFFICE	ADDRESS	PHONE
PORTLAND	1800 SW 1st Ave, Suite 500 Portland, OR 97201	971-245-3844 Ore. TTY Relay: 711 Fax: 971-673-0762
EUGENE	1400 Executive Pkwy Suite 200 Eugene, OR 97401	971-245-3844
SALEM	3865 Wolverine Ave NE Building E, Ste 1 Salem, OR 97305-1268	971-245-3844
Oregon.gov/BOLI		

BOLI's Labor Contracting Unit is located in Salem; the direct telephone number is 971-353-2305.

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Construction Labor Contracting

WHO IS A CONSTRUCTION LABOR CONTRACTOR?

In general, a construction labor contractor (or "CLC") includes anyone who receives compensation for recruiting, soliciting, supplying or employing workers to perform labor for another in construction. This includes anyone who performs these activities for his or her employer, as well as those who subcontract with another to perform the activities of a CLC. ORS 658.405 & OAR 839-015-0004.

Note: A person is acting as a CLC (and would need a license) even when that 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.

That said, the law defining a CLC excludes several entities that would otherwise be required to obtain a license.

WHO IS *NOT* A CONSTRUCTION LABOR CONTRACTOR?

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

- A person that has a construction contract with the owner of real property where the construction work is performed;
- A person that has obtained building permits to perform construction work;
- A person that supplies building materials or machinery, other than manual tools or hand-operated power tools, for a construction project;
- An owner of real property engaged in the solicitation or recruitment of persons to perform construction work on the owner's property;
- The Employment Department;
- A crew leader;
- Individuals who perform labor pursuant to an agreement for exchanging their own labor or services with each other, provided the work is performed on land owned or leased by the individuals;
- An educational institution that is recognized as such by the Department of Education;

- A labor union;
- A local joint apprenticeship committee formed under ORS 660.135; or
- A staffing agency whose primary purpose is to provide workers to the client employers of the agency, typically representing a range of industries, under the terms of a client agreement, if the agency provides workers' compensation coverage for all employees as required by ORS 656 and pays employment and income taxes in accordance with applicable law.

Who Needs a License? Frequently Asked Questions:

Does the CLC law apply to temporary and leasing agencies?

No. A bona fide staffing agency (meaning one that provides workers to multiple clients who represent a range of industries under the terms of a client agreement, provides required workers' compensation coverage and pays employment and income taxes) is excluded from the definition of a construction labor contractor.

Do I need a CLC license if I recruit or supply workers to another but that person 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, or whether you merely recruit and supply workers to another who then employs the workers. Under both situations you need a license.

Does the CLC law apply to my employee who helps me with my own contracting activity?

The definition of a construction labor contractor under ORS 658.405 includes "any person… who recruits, solicits, supplies or employs workers on behalf of an employer engaged in construction." Persons who engage in these activities are required to first obtain a construction labor contractor's license. In addition, ORS 658.411 requires *employees* of construction labor contractors who engage in these activities to also be licensed. 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 construction labor contractor's license with an employee indorsement.

To obtain an indorsement for your employee, the employee must complete a 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 labor contractor written exam and meet all other conditions for obtaining a labor contractor license except that the employee is not required to provide financial security or workers' compensation coverage. This is

because you, as 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 licensed construction contractor. Do I need to comply with the CLC laws?

If you meet the requirements for exemption from the definition of a CLC (see above on "Who is *not* a construction labor contractor,") you do not need a CLC license. However, if you send your crew to perform construction labor for another on a job site where you do not, for example, have a construction contract and you have not obtained building permits, etc., and you receive compensation for this, then you are acting as a construction *labor* contractor and, yes, you would need a license.

Also, any construction contractor who knowingly uses the services of an unlicensed CLC is personally, jointly and severally liable with that person 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)

If I supply or employ workers to perform construction work outside of the state of Oregon, do I still need to comply with all the Oregon labor 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 construction contractor laws and regulations no matter where the actual workplace is located, including filing certified payroll forms.

If I supply building materials like screws, nails, drywall mud and tape along with the drywall crews I contract out, do I still need to get a license?

Yes. The exemption from licensure for a person that supplies building materials or machinery, other than manual tools or hand-operated power tools, for a construction project applies to those who are making a substantial investment in the project. Supplying structural building materials such as drywall panels, lumber, or concrete would be a substantial investment in the construction project. Supplying incidental materials like screws, nails, drywall mud, safety goggles and the like is not a substantial investment in the project.

LICENSE APPLICATION PROCESS

Overview

The construction 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/employers/Pages/construction-labor-contractors.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

The Labor Contracting Unit issues both a construction labor contractor license and a construction labor contractor license *with an employee indorsement*. The fee for both licenses is the same: $150.00 per year. Annual license renewal fees are the same as the fees for new licenses. The fee for a license renewed for two or four years is the annual fee for the license multiplied by the number of years in the renewal term.

Types of Entities Which May Be Licensed

A construction labor contractor license may be issued to any of the following types of contractor businesses:

- **Sole Proprietorship**
- **Partnership or Limited Liability Partnership** – Each partner must make application for his or her own license
- **Corporation** – The corporation **and** the majority shareholder(s) must make application unless there are 10 or more shareholders and more than two 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 Construction Labor Contractor** – Any person acting as a labor contractor if different than a licensed sole proprietor, partner, shareholder, or LLC manager of member must be licensed (see below)

Note: All assumed business names and corporations MUST be registered with the Corporation Division prior to a license being issued. (See Appendix for contact information.)

Employee Indorsement Licenses

The employee of a licensed labor contractor may be licensed as a construction 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 labor contractor license *only* on behalf of the sponsoring labor contractor employer
- 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 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); and
- The employee is not otherwise licensed in any manner as a construction labor contractor.

Note: 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.

License Application Contents

To obtain construction labor contractor license, each applicant is required to submit 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 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 (see "*Proof of Financial Responsibility"* below)
- A Sponsorship Statement (WH-36) for *employee indorsement* license applicants
- A Certified Statement (WH-35) and proof of IRS 501(c)(3) exemption for private non-profit corporation license applicants

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

These forms are available from the Wage and Hour Division's online forms directory at

www.oregon.gov/boli/employers/Pages/construction-labor-contractors.aspx.

Proof of Financial Responsibility

Construction 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 labor contractor expects to employ during the license year:

$10,000 for 20 or fewer employees

$30,000 for 21 or more employees

ORS 658.415.



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 the 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, construction 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.

Additional Licensing Requirements

To be eligible for a license, an applicant must:

- Be of good character, competence and reliability
- Not have had a construction 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 construction labor contractor license denied, revoked or suspended in Oregon or any other jurisdiction within the preceding three years
- Not have any unsatisfied final judgments or final orders requiring the payment of unpaid wages to employees or advances made to the contractor by owners/lessees of construction property.

Temporary Permits

As mentioned in the overview, once a first-time license applicant has submitted a completed license application, the 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 full license can be issued to a new 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 construction labor contractor.

ORS 658.425.

License Examination

License applicants are required to schedule and take an exam within 45 days of being issued a temporary permit. Examinations may be scheduled and administered in any of the bureau's offices. 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 days[2]
Second failure .....14 days
Third failure .....30 days
Subsequent failures .....60 days

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

EXPIRATION AND RENEWAL OF LICENSES

Construction 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.

If the commissioner finds that an applicant has operated as an Oregon licensed labor contractor, other than as an employee endorsee, 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 license applications are mailed to licensed labor contractors by BOLI approximately two months prior to the expiration date of the license. In order to complete the renewal application process prior to the expiration of the licensee's previous license, all required documents must be submitted by the applicant to BOLI **no fewer than 30 days prior to the expiration date of the license**.

ORS 658.435; OAR 839-015-0165.

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

DUTIES OF CONSTRUCTION LABOR CONTRACTORS

Prior to beginning work on any contract, construction 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).

Construction 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 construction property owners (if applicable) and between the labor contractor and each worker with BOLI

- Notify BOLI of any changes in the circumstances under which the 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 contractor to communicate with workers (see "Required Forms" below)

- Execute a written agreement between the worker and contractor at the time of hiring and prior to the worker performing any work for the contractor containing the terms and conditions of employment (both in English and any other language used by the 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 (see "Required Forms" below)

- Comply with applicable field sanitation and housing health, safety or habitability requirements, if applicable

- Timely submit to BOLI certified true copies of all payroll records for work done as a labor contractor when the contractor pays employees directly.

ORS 658.440.

Payment of Travel, Food and Lodging Expenses

If a construction 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 described in this section are available from BOLI's online forms directory at www.oregon.gov/boli/employers/pages/construction-labor-contractors.aspx. Most are available in both English and Spanish. Labor contractors may use these forms as templates or develop their own.

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 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.

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.

Payroll Statements for Construction Labor Contractors (WH-141)

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

Contractors may (but are not required) to use form WH-141 in reporting their payroll. If a contractor chooses to use an alternate form, the alternate form must provide all of the information required by WH-141, and the certified statement on the back of form WH-141 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 Labor Contractor and Construction Property Owners and/or Lessees of Land (WH-152)

Construction labor contractors are required to file information relating to their agreements with construction property owners 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. 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.

POSTING AND RECORDKEEPING REQUIREMENTS

Notice of Compliance with Bond Requirements (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 oregon.gov/boli/employers/Pages/required-worksite-postings.aspx or contact Employer Assistance at 971-361-8400 or employer.assistance@boli.oregon.gov.

Recordkeeping requirements

Construction labor contractors are required to keep and preserve all records necessary to determine their compliance with the 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 construction property owners. 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 "Recordkeeping" under the section on a Summary of Select Wage and Hour Laws).

PROHIBITED ACTIVITIES

Construction 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 the construction labor contracting 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

- Discharging or discriminating in any other manner against an employee because the employee has made a wage claim against the contractor or employer; caused to be instituted or participated in any proceedings under or related to the construction labor contractor law; or discussed or consulted with anyone concerning the employee's rights under the construction 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 the construction labor contracting law including the following:

- Recruiting, soliciting, supplying or employing a worker without a 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 contractor
- Failing to provide required itemized statements of earnings and deductions
- 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
- 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
- Assisting an unlicensed labor contractor

ORS 658.453; OAR 839-015-0508.

REVOCATION, SUSPENSION OR REFUSAL TO RENEW LICENSE

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

- The licensee or agent has violated or failed to comply with any provision of the construction labor contractor law
- The conditions under which a license was issued have changed or no longer exist
- 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 CONSTRUCTION LABOR CONTRACTORS

Prior to allowing work to begin on any contract or agreement with a construction 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 construction 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 construction 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.

In addition, any person who uses the services of a labor contractor who has failed to comply with any of the provisions of ORS 658.415 regarding, among other things, labor contractor licensing, or ORS 658.419 shall:

(a) Be personally and jointly and severally liable to any employee as far as the employee has not been paid wages in full for the work done for that person.
(b) Be personally liable for all penalty wages that have occurred under ORS 652.150 for the wages due under this section.

ORS 658.415(8)

Civil Penalties

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

ORS 658.850; OAR 839-015-0508.

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 construction contractors *in addition to* the specific obligations of a labor contractor discussed elsewhere in this handbook.

Minimum Wage

Unless exempt, all employees 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 has gone up on July 1st of every year through 2022. As of July 1, 2025, the minimum wage rate has been 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 named 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	$14.20	$15.45	$13.20
July 1, 2024	$14.70	$15.95	$13.70
July 1, 2025	$15.05	$16.30	$14.05
July 1, 2026	Rate will be 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 UBG. That tool as well as a map of the UBG is available on our website at: https://www.oregon.gov/boli/workers/pages/minimum-wage.aspx.

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

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

Overtime

Most construction workers are entitled to payment at one and one-half times their "regular rate" of pay for any time worked over 40 hours in a workweek (a recurring period of seven consecutive days).

When a construction worker is paid by the hour, overtime computations are fairly straightforward; their hourly rate is the "regular rate" which is multiplied by 1.5 and paid for each hour worked over forty in a workweek.

When construction workers are paid on a piece rate, day rate or job rate, however, the employer must still keep and maintain an accurate record of the actual hours worked by each worker. The employee's piece rate earnings represent his or her straight time earnings for all hours worked. In any workweek where an employee works more than 40 hours, the "regular rate" is arrived at by dividing that employee's earnings for the period by the actual hours worked in that period. In addition to the employee's piece rate earnings, the employer must also pay half again the employee's "regular rate" for each hour worked over forty in a workweek.

Example: An employee installs 600 square feet of siding at $1.25 per square foot over the course of a 50-hour workweek.

1. Total piece rate earnings for the week are $750.00 (600 sq. ft. @ $1.25)
2. The "regular rate" for this week is $15.00 per hour ($750.00 / 50 hours)
3. Overtime earnings are $75.00 (½ x $15.00 x 10 overtime hours)

In this example, the employee would need to be paid gross wages of $825.00 ($750.00 in piece rate earnings + $75.00 in overtime earnings).

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 is a party (Example: union dues);
- 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 or Service Contract 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; OAR 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.

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.

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

Oregon's wage collection law sets out specific requirements for the timing of the payment of final wages in the event of a termination.

If an employee quits with less than 48 hours' notice, excluding weekends and holidays, the paycheck is due within five days, excluding weekends and holidays, or on the next regular payday, whichever comes first. ORS 652.140(2).

> *Example:* An employee quits without notice on Monday, one week before Labor Day. The final check must be paid by the Tuesday after Labor Day, unless a regular payday occurs before that date.

If an employee quits with notice of at least 48 hours, the final check is due on the final day worked.

> *Example:* An employee gives three days' notice that Saturday will be the last day worked. The final check is due on Saturday.

If an employee is discharged, the final paycheck is due not later than the end of the next business day. ORS 652.140(1).

> *Example:* If an employee is discharged on Saturday, the check is due on Monday by the end of the day. If an employee is discharged on Monday, the check is due by the end of the day on Tuesday.

When an employer and employee mutually agree to terminate the relationship, the check is due by the end of the following business day, as in the case of discharge. ORS 652.140(1).

If an employer willfully fails to pay any part of an employee´s final wages when due, then, the employer may be held liable for a penalty of eight hours pay at the employee's regular rate for each day that final wages go unpaid or until an action for collection is filed. The maximum penalty is for 30 days' compensation. ORS 652.150.

Meal and Rest Periods

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

Oregon 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., 1 min – 10 hrs.	2	1
10 hrs., 1 min – 13 hrs., 59 min	3	1
14 hrs.	3	2
14 hrs., 1 min – 18 hrs.	4	2
18 hrs., 1 min – 21 hrs., 59 min	5	2

If the length of work period is…	Number of rest breaks required is	Number of meal periods required is
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 BOLI are available at https://www.oregon.gov/boli/workers/pages/sick-time.aspx.

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

All employers are required to keep the following records for a period of at least two years generally, however, construction labor contractors are required to keep and preserve these records for a period of three 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; ORS 652. 150; ORS 653.256; ORS 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 piece-rate wages.

I pay my workers a piece-rate. Sometimes crew 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.

Sometimes I pay my workers a piece rate and sometimes I pay them a fixed amount per day. 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 check to make sure that the hours the employee actually works reflect earnings at least equal to the minimum hourly wage regardless of the method used to compute wages earned by the employee pursuant to the agreed rate. If an employee's earnings do not equal or exceed what they would have earned for all hours worked multiplied by the applicable minimum wage, the employer must also pay the difference between these amounts.

STATE AND FEDERAL LAWS REGULATING THE EMPLOYMENT OF MINORS IN CONSTRUCTION

State and federal child labor laws set out different requirements for different age groups of minors working in construction. 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 construction. For questions regarding how child labor laws apply to your business, contact Employer Assistance at (971) 361-8400 or employer.assistance@boli.oregon.gov. For questions about child labor permits and certificates, contact the Child Labor Unit at (971) 353-2289 or child.labor@boli.oregon.gov. For information regarding federal regulations, contact the U.S. Department of Labor, Wage and Hour Division at (503)326-3057.
In Oregon, the process of hiring a minor employee is very much like the process for hiring an adult employee. There are, however, three additional administrative requirements which pertain to the employment of any minor:

1. Obtaining an annual Employment Certificate;
2. Verifying the applicant's age; and
3. Meeting special posting / recordkeeping requirements.

Annual Employment Certificate

Employers who employ minors must first obtain an Employment Certificate from the Child Labor Unit of BOLI's Wage and Hour Division. This employment certificate is renewable annually. Individual work permits are not required, but employers are required to verify the ages of all minors hired.

Employment Certificate applications may be obtained from the BOLI website at https://www.oregon.gov/boli/employers/pages/employment-certificate-application.aspx

or by calling BOLI's Child Labor Unit at 971-353-2289. Yearly renewal applications are sent to employers who have been issued an Employment Certificate. Each employer who applies for an employment certificate receives a summary of state and federal child labor laws. ORS 653.307.

The Employment Certificate application requires: the name and address(es) of the employer and the company representative who completes the application, an estimate of the number of minors to be employed during the year, the ages of the minors anticipated to be employed, and a description of the duties to be performed, including any equipment or machinery to be operated by minors. If any changes in the duties or equipment to be operated are made after the Employment Certificate is issued, the employer must complete and submit a "Notice of Change in Duties" form. OAR 839-021-0220(2)(b).

BOLI's Process for Issuing Employment Certificates

BOLI's Child Labor Unit reviews each Employment Certificate application. If the proposed employment complies with state and federal child labor regulations, BOLI will issue a validated Employment Certificate to the employer. The validated certificate must be posted in a conspicuous location where employees may easily review it. If the employer employs minors at multiple sites, a copy of the Employment Certificate must be posted at each site.

If the employment proposed by the employer in the Employment Certificate application appears not to comply with state or federal law, the employer will be contacted by the Child Labor Unit. Sometimes the Employment Certificate is issued with restrictions relating to the work which may be performed by minors.

Age Verification

When an employer hires a minor, the employer must require the minor to produce an acceptable document that verifies his or her age, such as a birth certificate or hospital birth record, driver's license or state-issued photo ID card, passport, alien registration card, U.S military card, certificate of U.S. citizenship, or a baptism record that includes the minor's date of birth. Records must be maintained to show that the employer has met this requirement. A notation in the employee's personnel file of which document was used to verify the minor's age or a copy of the document will meet the recordkeeping requirement. OAR 839-021-0185.

Minimum Age Requirement

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

NOTE: Minors under the age of 16 ***may not*** work in construction. OAR 839-021-0102.

Posting / Recordkeeping Requirements

In addition to records and postings required for employers of adult employees, there are requirements which apply specifically to employers of minors.

A List of All Minors Employed

Oregon law requires employers to maintain a list of all minors employed. ORS 653.310; OAR 839-021-0170.

In addition to the minor employee's full name (as used for social security recordkeeping purposes) the employer's records are required to contain the following information for each minor employed:

- Any identifying symbol or number if such is used in place of name on any time, work or payroll records;
- Home address, including zip code;
- Date of birth;
- Sex;
- Occupation in which the minor is employed;
- Time of day and day of week on which the minor's workweek begins;
- Hours worked each workday and total hours worked each workweek; and
- Date the minor became employed by the employer and date employment was terminated.

Records Availability

Any record required to be maintained under child labor law must be preserved for two years. The record must be kept in a safe place which is readily accessible; the records must be made available for inspection and or transcription by the Bureau.

Hours Limitations for Minors Age 16 and Older

Minors age 16 and 17 are free to perform work at any time of the day, however, they may not be required to work more than 44 hours in any one workweek, unless the employer has obtained a special emergency permit from BOLI's Wage and Hour Division, Child Labor Unit.

Rest and Meal Period Requirements for Minors

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.

Prohibited Work

The following 17 occupations and operations have been declared by the U.S. Department of Labor to be particularly hazardous for all minors, or detrimental to their health and well-being, regardless of whether the minor is employed by a parent or person standing in the place of a parent.

Construction labor contractors should pay particular attention to numbers hazardous orders number 2, 5, 7, 8, and 14-17 below:

Hazardous Occupations Orders [3]

1. Manufacturing and storing of explosives. (Oregon law further prohibits the employment of minors in occupations where explosives are used).
2. Motor-vehicle driving and outside helper on a motor vehicle.
3. Coal mining.
4. Occupations in forest fire fighting, forest fire prevention, timber tract operations, forestry service, logging, and sawmilling.
5. [†] Power-driven woodworking machines.
6. Exposure to radioactive substances.
7. Power-driven hoisting apparatus, including forklifts.
8. [†] Power-driven metal-forming, punching, and shearing machines.
9. Mining, other than coal mining.
10. [†] Operating power-driven meat processing equipment, including meat slicers and other food slicers, in retail establishments (such as grocery stores, restaurants kitchens and delis) and wholesale establishments, and most occupations in meat and poultry slaughtering, packing, processing, or rendering.
11. Power-driven bakery machines including vertical dough or batter mixers.
12. [†] Power-driven balers, compactors, and paper processing machines.
13. Manufacturing bricks, tile, and kindred products.

[3] The full text of these orders as adopted by state law may be found in 29 C.F.R. § 570.50-68.
[†] Exemptions for hazardous occupations nos. 5, 8, 10, 12, 14, 16, and 17 are provided for 16 and 17-year-old apprentices and student-learners so long as they meet the requirements for "student-learners" and "apprentices". Contact BOLI's Child Labor Unit for additional information.

14. † Power-driven circular saws, bandsaws, chain saws, guillotine shears, wood chippers, and abrasive cutting discs.
15. Wrecking, demolition, and shipbreaking operations.
16. † Roofing operations and all work on or about a roof.
17. † Excavation operations.

These hazardous occupations apply either on an industry basis, specifying the occupations in the industry that are not permitted, or an occupational basis irrespective of the industry in which they are found.

Oregon law adopts the federal Hazardous Occupations Orders within state law and applies them to ***all minors under the age of 18***. OAR 839-021-0104; 29 C.F.R. 570.50-570.68.

SUMMARY OF SELECT CIVIL RIGHTS LAWS

The following information is intended only as a summary of select civil rights laws of which every employer should be aware before hiring employees. It is not a complete summary of civil rights laws. There are federal, state, county, and city 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 Employer Assistance at 971-361-8400 or by emailing employer.assistance@boli.oregon.gov. Fact sheets and frequently asked questions are also available on BOLI's website at oregon.gov/boli/civil-rights/Pages/default.aspx.

Civil rights laws prohibit discrimination against individuals because of characteristics that make them part of a protected class. Discrimination is generally defined as the treatment of a person or group of people differently than others. Discrimination is unlawful when it is based on an individual's race, color, gender, or other characteristic protected by law. Civil rights laws also prohibit discrimination against individuals based on their engagement in protected activities, such as invoking protected family leave or reporting and opposing an unlawful employment practice.

Only in rare instances is it permissible to discriminate based on a protected class such as an individual's gender, and then only when it is compelled by business necessity. Employees are protected under Oregon's anti-discrimination laws if they are 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
- Opposing an unlawful employment practice
- Reporting or opposing a health or safety hazard
- Association with individuals who are members of specific protected classes
- Age (18 or older)
- Marital status
- Disability (6 or more employees)
- Injured workers
- Family relationship
- Invocation of sick leave or family medical leave

Race, Color and National Origin Discrimination

State and federal laws prohibit discrimination in hiring, compensation, terms or conditions of employment, on-the-job treatment and termination 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. Other examples of discrimination based on race, color or national origin include disciplining workers of a certain race for conduct that does not result in discipline for workers of other races, "English Only" rules that prohibit workers from speaking with each other in the language of their choice, or assigning workers of a certain national origin to less favorable tasks than workers of other national origins.

Sex Discrimination

State and federal laws prohibit discrimination in employment on the basis of sex. 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.

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 toward whom the conduct is directed 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 are also 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 compensation for pain and suffering or emotional distress.

Preventive Action

Prevention is one of the best tools for eliminating sexual harassment in the workplace. All employers are required to have a clear policy to reduce and prevent harassment, discrimination, and sexual assault and provide notice to employees in the workplace and on other occasions. A model policy, including minimum policy requirements, can be found on BOLI's website: https://www.oregon.gov/boli/employers/Documents/SB726_model_policy_03292022.docx.

Employers must make this policy available to employees within the workplace and also provide a copy of the policy to new employees upon hire. 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 must conduct a prompt and thorough investigation, even if the employee does not request an 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 must 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. 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 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). To rise to the level of a hostile work environment, the conduct need only be either pervasive – occurring repeatedly over a period of time – or severe. A single occurrence of unwanted sexual conduct, if it is sufficiently offensive, can be enough to create a hostile work environment.

> **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's Pay Equity law prohibits discrimination in wages or other compensation based on various protected classes, including sex, when employees are performing work 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 other than sex, including the use of a merit or seniority system.

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. Employers also must make reasonable accommodations for employees' sincerely held religious beliefs, such as the need to wear specific religious attire.

Injured Worker Discrimination

Oregon provides certain rights to employees who are injured on the job. All Oregon employers are prohibited from discriminating against employees because of such injuries. Employers may not discriminate against a worker because a worker has invoked workers' compensation provisions, applied for workers' compensation benefits or inquired about their rights under Oregon Workers' Compensation laws. 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).

Workers who are injured on the job may also have rights to reemployment and reinstatement when they are able to return to work in some capacity. Employers with six or more employees must offer "available and suitable" light-duty work to workers who are injured but cannot perform the duties of their usual position. ORS 659A.046. A position is considered "available" if it is vacant and the injured worker meets seniority or other employment restrictions contained in any applicable valid collective bargaining agreement. OAR 839-006-0135(2). A position is considered "suitable" if it meets the injured worker's medical restrictions and the worker possesses the necessary skills and abilities to qualify for the position. OAR 839-006-0135(3).

Employers with 21 or more employees must also reinstate an injured worker to their former full-duty position if the position is available and the worker is medically released to perform the duties of the position. A position is considered "available" even if it has been filled by someone else while the injured worker was absent. If the injured worker's former position is no longer available because, for example, the position was eliminated, the employer must provide the injured worker with a different position that is vacant and suitable. ORS 659A.043.

Discrimination Based on Disability

Federal and state laws protect people with mental and physical disabilities from discrimination in employment. Both sets of laws also protect individuals for whom there is a perception, regard, or record of disability. Employers with six or more employees must comply with Oregon's disability law. Employers with 15 or more employees must also 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 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. Employers with 20 or more employees must also comply with federal law, which applies to individuals aged 40 and older. Examples of age discrimination include: requiring employees to retire at a certain age (with a few limited exceptions), hiring younger employees because they are perceived to be inexperienced and more impressionable, and making insulting jokes or comments based on an employee's age.

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 and Gender Identity

State law prohibits employers from discriminating against an individual on the basis of the individual's actual or perceived sexual orientation or gender identity. This includes firing, refusing to hire, or discriminating against an individual in compensation, or other terms, conditions or privileges of employment because the individual is heterosexual, homosexual, bisexual, cisgender, transgender, non-binary, genderfluid, etc.

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 and job postings 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.