

D R A F T

SUMMARY

Specifies that amateur athlete who plays for junior ice hockey team is not employee for purposes of certain employment-related provisions when amateur athlete is playing for team.

A BILL FOR AN ACT

Relating to amateur athletes; creating new provisions; and amending ORS 652.210, 652.310, 653.010, 653.362 and 656.027.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 656.027 is amended to read:

656.027. All workers are subject to this chapter except those nonsubject workers described in the following subsections:

(1) A worker employed as a domestic servant in or about a private home. For the purposes of this subsection “domestic servant” means any worker engaged in household domestic service by private employment contract, including, but not limited to, home health workers.

(2) A worker employed to do gardening, maintenance, repair, remodeling or similar work in or about the private home of the person employing the worker.

(3)(a) A worker whose employment is casual and either:

(A) The employment is not in the course of the trade, business or profession of the employer; or

(B) The employment is in the course of the trade, business or profession of a nonsubject employer.

(b) For the purpose of this subsection, “casual” refers only to employ-

1 ments where the work in any 30-day period, without regard to the number
2 of workers employed, involves a total labor cost of less than \$500.

3 (4) A person for whom a rule of liability for injury or death arising out
4 of and in the course of employment is provided by the laws of the United
5 States.

6 (5) A worker engaged in the transportation in interstate commerce of
7 goods, persons or property for hire by rail, water, aircraft or motor vehicle,
8 and whose employer has no fixed place of business in this state.

9 (6) Firefighter and police employees of any city having a population of
10 more than 200,000 that provides a disability and retirement system by ordi-
11 nance or charter.

12 (7)(a) Sole proprietors, except those described in paragraph (b) of this
13 subsection. When labor or services are performed under contract, the sole
14 proprietor must qualify as an independent contractor **to be a nonsubject**
15 **worker under this subsection.**

16 (b) Sole proprietors actively licensed under ORS 671.525 or 701.021. When
17 labor or services are performed under contract for remuneration, notwith-
18 standing ORS 656.005 (30), the sole proprietor must qualify as an independent
19 contractor **to be a nonsubject worker under this subsection.** Any sole
20 proprietor licensed under ORS 671.525 or 701.021 and involved in activities
21 subject thereto is conclusively presumed to be an independent contractor.

22 (8) Except as provided in subsection (23) of this section, partners who are
23 not engaged in work performed in direct connection with the construction,
24 alteration, repair, improvement, moving or demolition of an improvement on
25 real property or appurtenances thereto. When labor or services are performed
26 under contract, the partnership must qualify as an independent contractor
27 **to be a nonsubject worker under this subsection.**

28 (9) Except as provided in subsection (25) of this section, members, in-
29 cluding members who are managers, of limited liability companies, regardless
30 of the nature of the work performed. However, members, including members
31 who are managers, of limited liability companies with more than one mem-

1 ber, while engaged in work performed in direct connection with the con-
2 struction, alteration, repair, improvement, moving or demolition of an
3 improvement on real property or appurtenances thereto, are subject workers.
4 When labor or services are performed under contract, the limited liability
5 company must qualify as an independent contractor **to be a nonsubject**
6 **worker under this subsection.**

7 (10) Except as provided in subsection (24) of this section, corporate offi-
8 cers who are directors of the corporation and who have a substantial own-
9 ership interest in the corporation, regardless of the nature of the work
10 performed by such officers, subject to the following limitations:

11 (a) If the activities of the corporation are conducted on land that receives
12 farm use tax assessment pursuant to ORS chapter 308A, corporate officer
13 includes all individuals identified as directors in the corporate bylaws, re-
14 gardless of ownership interest, and who are members of the same family,
15 whether related by blood, marriage or adoption.

16 (b) If the activities of the corporation involve the commercial harvest of
17 timber and all officers of the corporation are members of the same family
18 and are parents, daughters or sons, daughters-in-law or sons-in-law or
19 grandchildren, then all such officers may elect to be nonsubject workers. For
20 all other corporations involving the commercial harvest of timber, the max-
21 imum number of exempt corporate officers for the corporation shall be
22 whichever is the greater of the following:

23 (A) Two corporate officers; or

24 (B) One corporate officer for each 10 corporate employees.

25 (c) When labor or services are performed under contract, the corporation
26 must qualify as an independent contractor **to be a nonsubject worker un-**
27 **der this subsection.**

28 (11) A person performing services primarily for board and lodging re-
29 ceived from any religious, charitable or relief organization.

30 (12) A newspaper carrier utilized in compliance with the provisions of
31 ORS 656.070 and 656.075.

1 (13)(a) A person who:

2 (A) Has been declared an amateur athlete under the rules of the United
3 States Olympic Committee or the Canadian Olympic Committee [*and who*];
4 **and**

5 (B) Receives no remuneration for performance of services as an athlete
6 other than board, room, rent, housing, lodging or other reasonable incidental
7 subsistence allowance[,]; or

8 (b) Any amateur sports official who is certified by a recognized Oregon
9 or national certifying authority, which requires or provides liability and ac-
10 cident insurance for such officials. A roster of recognized Oregon and na-
11 tional certifying authorities will be maintained by the Department of
12 Consumer and Business Services, from lists of certifying organizations sub-
13 mitted by the Oregon School Activities Association and the Oregon Park and
14 Recreation Society.

15 (14) Volunteer personnel participating in the ACTION programs, organ-
16 ized under the Domestic Volunteer Service Act of 1973, P.L. 93-113, known
17 as the Foster Grandparent Program and the Senior Companion Program,
18 whether or not the volunteers receive a stipend or nominal reimbursement
19 for time and travel expenses.

20 (15) A person who has an ownership or leasehold interest in equipment
21 and who furnishes, maintains and operates the equipment. As used in this
22 subsection "equipment" means:

23 (a) A motor vehicle used in the transportation of logs, poles or piling.

24 (b) A motor vehicle used in the transportation of rocks, gravel, sand, dirt
25 or asphalt concrete.

26 (c) A motor vehicle used in the transportation of property by a for-hire
27 motor carrier that is required under ORS 825.100 or 825.104 to possess a
28 certificate or permit or to be registered.

29 (16) A person engaged in the transportation of the public for recreational
30 down-river boating activities on the waters of this state pursuant to a federal
31 permit when the person furnishes the equipment necessary for the activity.

1 As used in this subsection, “recreational down-river boating activities”
2 means those boating activities for the purpose of recreational fishing, swim-
3 ming or sightseeing utilizing a float craft with oars or paddles as the pri-
4 mary source of power.

5 (17) A person who receives no wage other than ski passes or other non-
6 cash remuneration for performing volunteer:

7 (a) Ski patrol activities; or

8 (b) Ski area program activities sponsored by a ski area operator, as de-
9 fined in ORS 30.970, or by a nonprofit corporation or organization.

10 (18) A person 19 years of age or older who contracts with a newspaper
11 publishing company or independent newspaper dealer or contractor to dis-
12 tribute newspapers to the general public and perform or undertake any nec-
13 essary or attendant functions related thereto.

14 (19) A person performing foster parent or adult foster care duties pursu-
15 ant to ORS 412.001 to 412.161 and 412.991 or ORS chapter 411, 418, 430 or 443.

16 (20) A person performing services on a volunteer basis for a nonprofit,
17 religious, charitable or relief organization, whether or not such person re-
18 ceives meals or lodging or nominal reimbursements or vouchers for meals,
19 lodging or expenses.

20 (21) A person performing services under a property tax work-off program
21 established under ORS 310.800.

22 (22) A person who performs service as a caddy at a golf course in an es-
23 tablished program for the training and supervision of caddies under the di-
24 rection of a person who is an employee of the golf course.

25 (23)(a) Partners who are actively licensed under ORS 671.525 or 701.021
26 and who have a substantial ownership interest in a partnership. If all part-
27 ners are members of the same family and are parents, spouses, sisters,
28 brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren,
29 all such partners may elect to be nonsubject workers. For all other partner-
30 ships licensed under ORS 671.510 to 671.760 or 701.021, the maximum number
31 of exempt partners shall be whichever is the greater of the following:

1 (A) Two partners; or

2 (B) One partner for each 10 partnership employees.

3 (b) When labor or services are performed under contract for
4 remuneration, notwithstanding ORS 656.005 (30), the partnership qualifies as
5 an independent contractor. Any partnership licensed under ORS 671.525 or
6 701.021 and involved in activities subject thereto is conclusively presumed
7 to be an independent contractor.

8 (24)(a) Corporate officers who are directors of a corporation actively li-
9 censed under ORS 671.525 or 701.021 and who have a substantial ownership
10 interest in the corporation, regardless of the nature of the work performed.
11 If all officers of the corporation are members of the same family and are
12 parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or
13 sons-in-law or grandchildren, all such officers may elect to be nonsubject
14 workers. For all other corporations licensed under ORS 671.510 to 671.760
15 or 701.021, the maximum number of exempt corporate officers shall be
16 whichever is the greater of the following:

17 (A) Two corporate officers; or

18 (B) One corporate officer for each 10 corporate employees.

19 (b) When labor or services are performed under contract for
20 remuneration, notwithstanding ORS 656.005 (30), the corporation qualifies as
21 an independent contractor. Any corporation licensed under ORS 671.525 or
22 701.021 and involved in activities subject thereto is conclusively presumed
23 to be an independent contractor.

24 (25)(a) Limited liability company members who are members of a company
25 actively licensed under ORS 671.525 or 701.021 and who have a substantial
26 ownership interest in the company, regardless of the nature of the work
27 performed. If all members of the company are members of the same family
28 and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-
29 law or sons-in-law or grandchildren, all such members may elect to be non-
30 subject workers. For all other companies licensed under ORS 671.510 to
31 671.760 or 701.021, the maximum number of exempt company members shall

1 be whichever is the greater of the following:

2 (A) Two company members; or

3 (B) One company member for each 10 company employees.

4 (b) When labor or services are performed under contract for
5 remuneration, notwithstanding ORS 656.005 (30), the company qualifies as
6 an independent contractor. Any company licensed under ORS 671.525 or
7 701.021 and involved in activities subject thereto is conclusively presumed
8 to be an independent contractor.

9 (26) A person serving as a referee or assistant referee in a youth or adult
10 recreational soccer match whose services are retained on a match-by-match
11 basis.

12 (27) A person performing language translator or interpreter services that
13 are provided for others through an agent or broker.

14 (28) A person who operates, and who has an ownership or leasehold in-
15 terest in, a passenger motor vehicle that is operated as a taxicab or for
16 nonemergency medical transportation. As used in this subsection:

17 (a) "Lease" means a contract under which the lessor provides a vehicle
18 to a lessee for consideration.

19 (b) "Leasehold" includes, but is not limited to, a lease for a shift or a
20 longer period.

21 (c) "Passenger motor vehicle that is operated as a taxicab" means a ve-
22 hicle that:

23 (A) Has a passenger seating capacity that does not exceed seven persons;

24 (B) Is transporting persons, property or both on a route that begins or
25 ends in Oregon; and

26 (C)(i) Carries passengers for hire when the destination and route traveled
27 may be controlled by a passenger and the fare is calculated on the basis of
28 any combination of an initial fee, distance traveled or waiting time; or

29 (ii) Is in use under a contract to provide specific service to a third party
30 to transport designated passengers or to provide errand services to locations
31 selected by the third party.

1 (d) “Passenger motor vehicle that is operated for nonemergency medical
2 transportation” means a vehicle that:

3 (A) Has a passenger seating capacity that does not exceed seven persons;

4 (B) Is transporting persons, property or both on a route that begins or
5 ends in Oregon; and

6 (C) Provides medical transportation services under contract with or on
7 behalf of a mass transit or transportation district.

8 **(29) An individual who is an amateur athlete, as described in sub-**
9 **section (13)(a) of this section, who is at least 16 years of age and not**
10 **older than 21 years of age and who plays for a junior ice hockey team,**
11 **as defined in ORS 652.210, when the individual is playing for the team.**

12 **SECTION 2.** ORS 652.210, as amended by section 1, chapter 197, Oregon
13 Laws 2017, is amended to read:

14 652.210. As used in ORS 652.210 to 652.235, unless the context requires
15 otherwise:

16 (1) “Compensation” includes wages, salary, bonuses, benefits, fringe ben-
17 efits and equity-based compensation.

18 (2)(a) “Employee” means any individual who[, *otherwise than as a*
19 *copartner of the employer, as an independent contractor or as a participant in*
20 *a work training program administered under the state or federal assistance*
21 *laws,]* renders personal services wholly or partly in this state to an employer
22 who pays or agrees to pay such individual at a fixed rate. [*However, when*
23 *services are rendered only partly in this state, an individual is not an employee*
24 *unless the contract of employment of the employee has been entered into, or*
25 *payments thereunder are ordinarily made or to be made, within this state.*]

26 **(b) “Employee” does not include:**

27 **(A) A partner or copartner of the employer;**

28 **(B) An independent contractor;**

29 **(C) A participant in a work training program that is administered**
30 **under state or federal assistance laws;**

31 **(D) An individual who renders services to an employer only partly**

1 **in this state, unless the contract of employment of the employee has**
2 **been entered into, or payments are made or to be made, within this**
3 **state; or**

4 **(E) An individual who is an amateur athlete, as described in ORS**
5 **656.027 (13)(a), who is at least 16 years of age and not older than 21**
6 **years of age and who plays for a junior ice hockey team, when the**
7 **individual is playing for the team.**

8 (3)(a) “Employer” means any person employing one or more employees,
9 including the State of Oregon or any political subdivision thereof or any
10 county, city, district, authority, public corporation or entity and any of
11 *[their]* **its** instrumentalities organized and existing under law or charter.

12 (b) “Employer” does not include the federal government.

13 (4) “Equal-pay analysis” means an evaluation process to assess and cor-
14 rect wage disparities among employees who perform work of comparable
15 character.

16 **(5) “Junior ice hockey team” means a team that:**

17 **(a) Is organized under a regional, national or international junior**
18 **hockey league; and**

19 **(b) Has entered into a contract agreement to play in an arena that**
20 **is owned or partially owned, operated or managed by a public entity.**

21 *[(5)]* **(6) “Protected class” means a group of persons distinguished by race,**
22 **color, religion, sex, sexual orientation, national origin, marital status, vet-**
23 **eran status, disability or age.**

24 *[(6)]* **(7) “Rate” with reference to wages means:**

25 **(a) The basis of compensation for services by an employee for an em-**
26 **ployer; and**

27 **(b) Compensation based on the time spent in the performance of the ser-**
28 **vices, on the number of operations accomplished or on the quantity produced**
29 **or handled.**

30 *[(7)]* **(8) “Sexual orientation” has the meaning given that term in ORS**
31 **174.100.**

1 [(8)] (9) “Unpaid wages” means the difference between the wages actually
2 paid to an employee and the wages required under ORS 652.220 to be paid
3 to the employee.

4 [(9)] (10) “Veteran status” means an individual is a veteran as defined in
5 ORS 408.225.

6 [(10)] (11) “Wages” means all compensation for performance of service by
7 an employee for an employer, whether paid by the employer or another per-
8 son, or paid in cash or any medium other than cash.

9 [(11)] (12) “Working conditions” includes work environment, hours, time
10 of day, physical surroundings and potential hazards encountered by an em-
11 ployee.

12 [(12)] (13) “Work of comparable character” means work that requires
13 substantially similar knowledge, skill, effort, responsibility and working
14 conditions in the performance of work, regardless of job description or job
15 title.

16 **SECTION 3.** ORS 652.310 is amended to read:

17 652.310. As used in ORS 652.310 to 652.414, unless the context requires
18 otherwise:

19 [(1) “Employer” means any person who in this state, directly or through an
20 agent, engages personal services of one or more employees and includes any
21 successor to the business of any employer, or any lessee or purchaser of any
22 employer’s business property for the continuance of the same business, so far
23 as such employer has not paid employees in full. “Employer” includes the State
24 of Oregon or any political subdivision thereof or any county, city, district, au-
25 thority, public corporation or entity and any of their instrumentalities organ-
26 ized and existing under law or charter but does not include:]

27 [(a) The United States.]

28 [(b) Trustees and assignees in bankruptcy or insolvency, and receivers,
29 whether appointed by federal or state courts, and persons otherwise falling
30 under the definition of employers so far as the times or amounts of their pay-
31 ments to employees are regulated by laws of the United States, or regulations

1 *or orders made in pursuance thereof.]*

2 [(2)] (1)(a) “Employee” means any individual who [*otherwise than as*
3 *copartner of the employer or as an independent contractor*] renders personal
4 services wholly or partly in this state to an employer who pays or agrees to
5 pay such individual at a fixed rate, based on the time spent in the perform-
6 ance of such services or on the number of operations accomplished, or
7 quantity produced or handled. [*However:*]

8 [(a) *Where services are rendered by an independent contractor, an individ-*
9 *ual shall not be an employee under this section unless the individual is a*
10 *musician or supporting technical person.*]

11 [(b) *Where services are rendered only partly in this state, an individual*
12 *shall not be an employee under this section unless the contract of employment*
13 *of the employee has been entered into, or payments thereunder are ordinarily*
14 *made or to be made, within this state.*]

15 (b) “Employee” does not include:

16 (A) A partner or copartner of the employer;

17 (B) An independent contractor, unless the individual is a musician
18 or supporting technical person;

19 (C) An individual who renders services to an employer only partly
20 in this state, unless the contract of employment of the employee has
21 been entered into, or payments are made or to be made, within this
22 state; or

23 (D) An individual who is an amateur athlete, as described in ORS
24 656.027 (13)(a), who is at least 16 years of age and not older than 21
25 years of age and who plays for a junior ice hockey team, as defined in
26 ORS 652.210, when the individual is playing for the team.

27 (2)(a) “Employer” means:

28 (A) Any person who in this state, directly or through an agent,
29 engages personal services of one or more employees and includes any
30 successor to the business of any employer, or any lessee or purchaser
31 of any employer’s business property for the continuance of the same

1 **business, so far as such employer has not paid employees in full.**

2 **(B) The State of Oregon or any political subdivision thereof or any**
3 **county, city, district, authority, public corporation or entity and any**
4 **of its instrumentalities organized and existing under law or charter.**

5 **(b) “Employer” does not include:**

6 **(A) The United States.**

7 **(B) Trustees and assignees in bankruptcy or insolvency, and re-**
8 **ceivers, whether appointed by federal or state courts, and persons**
9 **otherwise falling under the definition of employers so far as the times**
10 **or amounts of their payments to employees are regulated by laws of**
11 **the United States, or regulations or orders made in pursuance thereof.**

12 **SECTION 4.** ORS 653.010 is amended to read:

13 653.010. As used in ORS 653.010 to 653.261, unless the context requires
14 otherwise:

15 (1) “Commissioner” means the Commissioner of the Bureau of Labor and
16 Industries.

17 (2)(a) “Employ” includes to suffer or permit to work [*but*].

18 **(b) “Employ” does not include:**

19 **(A) Voluntary or donated services performed for no compensation or**
20 **without expectation or contemplation of compensation as the adequate con-**
21 **sideration for the services performed:**

22 **(i) For a public employer referred to in subsection (3) of this section[,**
23 ***or*];**

24 **(ii) For a religious, charitable, educational, public service or similar**
25 **nonprofit corporation, organization or institution for community service, re-**
26 **ligious or humanitarian reasons [*or for services performed*]; **or****

27 **(iii) By general or public assistance recipients as part of any work**
28 **training program administered under the state or federal assistance laws[.];**
29 **or**

30 **(B) Services performed by an individual who is an amateur athlete,**
31 **as described in ORS 656.027 (13)(a), who is at least 16 years of age and**

1 **not older than 21 years of age and who plays for a junior ice hockey**
2 **team, as defined in ORS 652.210, when the individual is playing for the**
3 **team.**

4 (3) “Employer” means:

5 (a) Any person who employs another person [*including*].

6 (b) The State of Oregon or a political subdivision thereof or any county,
7 city, district, authority, public corporation or entity and any of [*their*] **its**
8 instrumentalities organized and existing under law or charter.

9 (4) “Minor” means any person under 18 years of age.

10 (5) “Occupation” means any occupation, service, trade, business, industry,
11 or branch or group of industries or employment or class of employment in
12 which employees are gainfully employed.

13 (6) “Organized camp” means a day or resident camp, whether or not op-
14 erated for profit, established to give campers recreational, creative, religious
15 or educational experience in cooperative group living wherein the activities
16 are conducted on a closely supervised basis, whether or not the camp is used
17 primarily by an organized group or by members of the public and whether
18 or not the activities or facilities are furnished free of charge or for the
19 payment of a fee.

20 (7) “Outside salesperson” means any employee who is employed for the
21 purpose of and who is customarily and regularly engaged away from the
22 employer’s place or places of business in making sales, or obtaining orders,
23 or obtaining contracts for services and whose hours of work of any other
24 nature for the employer do not exceed 30 percent of the hours worked in the
25 workweek by the nonexempt employees of the employer.

26 (8) “Piece-rate” means a rate of pay calculated on the basis of the quan-
27 tity of the crop harvested.

28 (9) “Salary” means no less than the wage set pursuant to ORS 653.025,
29 multiplied by 2,080 hours per year, then divided by 12 months.

30 (10) “Wages” means compensation due to an employee by reason of em-
31 ployment, payable in legal tender of the United States or check on banks

1 convertible into cash on demand at full face value, subject to such de-
2 ductions, charges or allowances as are permitted in ORS 653.035.

3 (11) "Work time" includes both time worked and time of authorized at-
4 tendance.

5 **SECTION 5.** ORS 653.362 is amended to read:

6 653.362. The provisions of ORS 653.305 to 653.370 do not apply to:

7 (1) A person under 18 years of age serving as a referee or assistant referee
8 in a youth or adult recreational soccer match.

9 (2) **An individual who is an amateur athlete, as described in ORS
10 656.027 (13)(a), who is at least 16 years of age and not older than 21
11 years of age and who plays for a junior ice hockey team, as defined in
12 ORS 652.210, when the individual is playing for the team.**

13 **SECTION 6.** Section 7 of this 2018 Act is added to and made a part
14 of ORS 657.043 to 657.094.

15 **SECTION 7.** (1) "Employment" does not include services performed
16 by an individual who is an amateur athlete, as described in ORS 656.027
17 (13)(a), who is at least 16 years of age and not older than 21 years of
18 age and who plays for a junior ice hockey team, as defined in ORS
19 652.210, when the individual is playing for the team.

20 (2) The provisions of subsection (1) of this section do not apply to
21 services performed by an individual described in subsection (1) of this
22 section who plays for a junior ice hockey team for:

23 (a) A nonprofit employing unit;

24 (b) This state;

25 (c) A political subdivision of this state; or

26 (d) An Indian tribe.

27