

House Bill 2938

Sponsored by Representative HUDSON; Senator TAYLOR (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act would make changes to laws regarding penalty wages. (Flesch Readability Score: 61.3).

Permits a collective bargaining agreement to prescribe due dates for the payment of wages upon termination that do not require interpretation. Provides that penalty wages may be imposed against employers who fail to pay such wages by the prescribed due date.

A BILL FOR AN ACT

1 Relating to the payment of wages upon termination; amending ORS 652.140, 652.150 and 652.160.

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

3 **SECTION 1.** ORS 652.140 is amended to read:

4 652.140. (1) When an employer discharges an employee or when employment is terminated by
5 mutual agreement, all wages earned and unpaid at the time of the discharge or termination become
6 due and payable not later than the end of the first business day after the discharge or termination.

7 (2)(a) When an employee who does not have a contract for a definite period quits employment,
8 all wages earned and unpaid at the time of quitting become due and payable immediately if the
9 employee has given to the employer not less than 48 hours' notice, excluding Saturdays, Sundays
10 and holidays, of intention to quit employment.

11 (b) Except as provided in paragraph (c) of this subsection, if the employee has not given to the
12 employer the notice described in paragraph (a) of this subsection, the wages become due and payable
13 within five days, excluding Saturdays, Sundays and holidays, after the employee has quit, or at the
14 next regularly scheduled payday after the employee has quit, whichever event first occurs.

15 (c) If the employee has not given to the employer the notice described in paragraph (a) of this
16 subsection and if the employee is regularly required to submit time records to the employer to en-
17 able the employer to determine the wages due the employee, within five days after the employee has
18 quit the employer shall pay the employee the wages the employer estimates are due and payable.
19 Within five days after the employee has submitted the time records, all wages earned and unpaid
20 become due and payable.

21 (3) For the purpose of this section, if employment termination occurs on a Saturday, Sunday or
22 holiday, all wages earned and unpaid shall be paid no later than the end of the first business day
23 after the employment termination, except that if the employment is related to activities authorized
24 under ORS chapter 565, all wages earned and unpaid shall be paid no later than the end of the
25 second business day after the employment termination.

26 (4) The employer shall forward such wages by mail to any address designated by the employee
27 if the employee requests the employer so to do. An employer may deposit such wages without dis-
28 count in the employee's account in a financial institution, as defined in ORS 706.008, in this state,
29

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 provided the employee and the employer have agreed to such deposit.

2 (5) This section does not [*apply to employment for which*] **prohibit** a collective bargaining
 3 agreement **from** otherwise [*provides*] **providing** for the payment of wages upon termination of em-
 4 ployment, **including prescribing a due date for the payment of such wages that differs from**
 5 **the due dates specified under this section to the extent that the due date is not subject to**
 6 **interpretation.**

7 (6) When a termination of employment results from the sale of a business or business property
 8 and the purchaser employs or continues the employment of an individual employed at the business,
 9 this section does not apply to the payment to such an individual of wages for earned but unused
 10 accrued holiday leave, sick leave, vacation leave or other leave benefits payable upon termination
 11 of employment pursuant to a collective bargaining or other employment agreement or employer
 12 policy, if the following conditions are met:

13 (a) On the first day of such an individual's continued employment the purchaser of the business
 14 credits the individual with all such earned but unused accrued leave; and

15 (b) The leave, when used, is paid at a rate not less than the rate at which the leave was earned
 16 or, if paid at a lesser rate, the number of hours credited is increased to compensate the individual
 17 for any difference.

18 **SECTION 2.** ORS 652.150 is amended to read:

19 652.150. (1) Except as provided in subsections (2) and (3) of this section, if an employer willfully
 20 fails to pay any wages or compensation of any employee whose employment ceases, as provided in
 21 ORS 652.140 and 652.145, **or in accordance with a due date prescribed in a collective bargaining**
 22 **agreement pursuant to ORS 652.140 (5)**, then, as a penalty for the nonpayment, the wages or
 23 compensation of the employee shall continue from the due date thereof at the same hourly rate for
 24 eight hours per day until paid or until action therefor is commenced. However:

25 (a) In no case shall the penalty wages or compensation continue for more than 30 days from the
 26 due date; and

27 (b) A penalty may not be assessed under this section when an employer pays an employee the
 28 wages the employer estimates are due and payable under ORS 652.140 (2)(c) and the estimated
 29 amount of wages paid is less than the actual amount of earned and unpaid wages, as long as the
 30 employer pays the employee all wages earned and unpaid within five days after the employee sub-
 31 mits the time records.

32 (2)(a) If the employee or a person on behalf of the employee submits a written notice of non-
 33 payment, the penalty may not exceed 100 percent of the employee's unpaid wages or compensation
 34 unless the employer fails to pay the full amount of the employee's unpaid wages or compensation
 35 within 12 days after receiving the notice.

36 (b) If the employee or a person on behalf of the employee fails to submit a written notice of
 37 nonpayment, the penalty may not exceed 100 percent of the employee's unpaid wages or compen-
 38 sation.

39 (c) A written notice of nonpayment must include the estimated amount of wages or compensation
 40 alleged to be owed or an allegation of facts sufficient to estimate the amount owed. Submission of
 41 a written notice of nonpayment that fails to include the estimated amount of wages or compensation
 42 alleged to be owed or an allegation of facts sufficient to estimate the amount owed does not satisfy
 43 the requirement for written notice under this subsection unless the employer has violated ORS
 44 652.610, 652.640 or 653.045.

45 (d) For purposes of determining when an employer has paid wages or compensation under this

1 subsection, payment occurs on the date the employer delivers the payment to the employee or sends
2 the payment by first class mail, express mail or courier service.

3 (3)(a) For purposes of this section, a commission owed to an employee by a business that pri-
4 marily sells motor vehicles or farm implements is not due until all of the terms and conditions of
5 an agreement between the employer and employee concerning the method of payment of commissions
6 are fulfilled. If no such agreement exists, the commission is due with all other earned and unpaid
7 wages or compensation as provided in ORS 652.140.

8 (b) Notwithstanding subsection (2) of this section, when there is a dispute between an employer
9 and an employee concerning the amount of commission due under paragraph (a) of this subsection,
10 if the amount of unpaid commission is found to be less than 20 percent of the amount of unpaid
11 commission claimed by the employee, the penalty may not exceed the amount of the unpaid com-
12 mission or \$200, whichever is greater.

13 (4) Subsections (2) and (3)(b) of this section do not apply when:

14 (a) The employer has violated ORS 652.140 or 652.145 one or more times in the year before the
15 employee's employment ceased; or

16 (b) The employer terminated one or more other employees on the same date that the employee's
17 employment ceased.

18 (5) The employer may avoid liability for the penalty described in this section by showing finan-
19 cial inability to pay the wages or compensation at the time the wages or compensation accrued.

20 **SECTION 3.** ORS 652.160 is amended to read:

21 652.160. In case of dispute over wages, the employer must pay, without condition, and within the
22 time set by ORS 652.140, **or by a collective bargaining agreement pursuant to ORS 652.140 (5),**
23 all wages conceded by the employer to be due, leaving the employee all remedies the employee might
24 otherwise have or be entitled to as to any balance the employee might claim.