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LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

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CHAPTER 839

BUREAU OF LABOR AND INDUSTRIES

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FILING CAPTION: Amends child labor rules to implement civil penalty provisions of chapter 1, Oregon Laws 2024.

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CONTACT: Josh Nasbe

971-269-4431

josh.d.nasbe@boli.oregon.gov

1800 SW 1st Ave, Suite 500

Portland, OR 97201

Filed By:

Josh Nasbe

Rules Coordinator

RULES:

839-019-0004, 839-019-0020, 839-019-0025, 839-021-0006

AMEND: 839-019-0004

NOTICE FILED DATE: 05/24/2024

RULE SUMMARY: Amends rule to clarify scope of definitions.

CHANGES TO RULE:

839-019-0004

Definitions ¶¶

As used in ORS 653.365 to 653.370 and in these rules, unless the context requires otherwise:¶¶

(1) "Bureau" means the Bureau of Labor and Industries of the State of Oregon.¶¶

(2) "Commissioner" means the Commissioner of the Bureau of Labor and Industries or ~~the Commissioner's~~ authorized deputies and officers.¶¶

(3) "Employ" ~~shall have the same meaning as given that which appears term~~ in ORS 653.010(2).¶¶

(4) "Employer" ~~shall have the same meaning as given that which appears term~~ in ORS 653.010(3).¶¶

(5) "Employment Certificate" means the employment certificate issued to employers for the employment of minors pursuant to ORS 653.307 and the employment permits referred to in ORS ~~653.360~~ chapter 653 and rules adopted thereunder.¶¶

(6) "Minor" means any person under 18 years of age.¶¶

(7) "Person" includes the term "employer" as defined in section (4) of this rule and school districts required to comply with ORS 653.307(3).¶¶

(8) "Violation" means a transgression of any statute, rule or order, or any part thereof, and includes both acts and omissions.¶¶

(9) "Willful" means intentional and includes failure to act. A person commits a willful act when the person knows what ~~the/he person~~ is doing, intends to do what ~~the/he person~~ is doing and is a free agent.¶¶

~~(10) "Work Permit" means the employment certificate issued to minors pursuant to ORS 653.307. Willfulness does not require malice.~~

Statutory/Other Authority: ORS 651.060(4), ~~653.525~~, ORS 653.370, ORS 653.400

Statutes/Other Implemented: ~~2013 SB 135~~, ORS 653.370

REPEAL: 839-019-0020

NOTICE FILED DATE: 05/24/2024

RULE SUMMARY: Repeals rule.

CHANGES TO RULE:

~~839-019-0020~~

~~Determination of the Amount of the Civil Penalty to Be Imposed~~

~~(1) Except as provided in section (4) of this rule, when determining the amount of civil penalty to be imposed, the Commissioner shall consider the following circumstances and shall cite those the Commissioner finds applicable:¶¶~~

~~(a) The history of the employer in taking all necessary measures to prevent or correct violations of statutes and rules;¶¶~~

~~(b) Prior violations, if any, of statutes and rules;¶¶~~

~~(c) The magnitude and seriousness of the violation;¶¶~~

~~(d) The opportunity and degree of difficulty to comply;¶¶~~

~~(e) Any other mitigating circumstances.¶¶~~

~~(2) It shall be the responsibility of the employer to provide the Commissioner with evidence of the mitigating circumstances set out in section (1) of this rule.¶¶~~

~~(3) In arriving at the actual amount of the civil penalty, the Commissioner shall consider whether the minor was injured while employed in violation of the statute and rules.¶¶~~

~~(4) Notwithstanding section (1) of this rule, in the case of a serious injury to or the death of a minor while employed in violation of the statutes or rules, the Commissioner may impose the maximum penalty allowed by ORS 653.370.¶¶~~

~~(5) Notwithstanding any other section of this rule, the Commissioner shall consider all mitigating and aggravating circumstances presented by the employer for the purpose of reducing the amount of the civil penalty to be imposed.~~

~~Statutory/Other Authority: ORS 651, 653~~

~~Statutes/Other Implemented: ORS 653.370~~

AMEND: 839-019-0025

NOTICE FILED DATE: 05/24/2024

RULE SUMMARY: Amends rule to establish framework for assessment of civil penalties pursuant to chapter 1, Oregon Laws 2024.

CHANGES TO RULE:

839-019-0025

Schedule of Civil Penalties to Be Imposed ¶

~~(1) The civil penalty for any one violation shall~~ In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed \$10,000. The actual amount of the for each violation described in OAR 839-019-0010.¶

~~(2)(a) The Commissioner may enter into a settlement agreement with an employer, pursuant to which a civil penalty will depend on all the facts and any mitigating and aggravating circumstances be suspended pending successful fulfillment of the agreement.¶~~

~~(b) The Commissioner may enter into a compliance agreement with an employer, pursuant to which an employer agrees to perform or not to perform specified acts, in exchange for a reduction in the amount or number of civil penalties assessed.¶~~

~~(2c) When This section (2) does not limit the authority of the Commissioner to enter into an agreement to impose a civil penalty for the employment of to a consent order or any other form of agreement with an employer.¶~~

~~(3)(a) The civil penalty for violation of ORS 653.307, or otherwise employing a minor without a valid employment certificate, shall be minimum civil penalty shall be as follows:¶~~

~~(a) \$100 for the first offense;¶~~

~~(b) \$300 for the second offense;¶~~

~~(c) \$500 for the third and subsequent offenses. the amount of \$250 if:¶~~

~~(A) The only violation alleged in the notice of intent to assess civil penalties is the failure to obtain an employment certificate;¶~~

~~(3B) The civil penalties set out employer was not subject to an agreement described in section (2) of this rule shall be in addition to any other penalty imposed by law or rule.¶~~

~~(4) When a minor incurs a serious injury or dies while employed in violation of any of the following statutes and that the time the violation was committed;¶~~

~~(C) The employer has cured the violation; and¶~~

~~(D) The Bureau has not issued the employer a final order for a violation described in OAR 839-019-0010 within the past five years.¶~~

~~(b) Unless, the violation is considered to be so serious and of such magnitude that the maximum penalty will be imposed when the Commissioner determines to impose a civil penalty:¶~~

~~(a) Employment of a minor under 14 years of age in violation of ORS 653.320, provisions of subsection (a) of this section apply, the civil penalty for violating ORS 653.307, or otherwise employing a minor without a valid employment certificate, shall be in the amount of \$1,000.¶~~

~~(4) The civil penalty for violating any of the following statutes or rules shall be in an amount not less than \$5,000 and not exceeding \$10,000:¶~~

~~(ba) Employment of a minor in violation of ORS 653.330, 653.335, 653.340 or 653.360.¶~~

~~(eb) Employment of a minor in violation of OAR 839-021-0097(1)(a), 839-021-0097(1)(c) or 839-021-0097(2).¶~~

~~(ec) Employment of a minor in violation of OAR 839-021-0102, 839-021-0104, or 839-021-01046.¶~~

~~(ed) Employment of a minor in violation of OAR 839-021-0280(2) or 839-021-0282.¶~~

~~(f) Employment of a minor in the entertainment industry in violation of OAR 839-021-0355, Prohibited Performances.¶~~

~~(5) Willful and repeated 067, 839-021-0070, or 839-021-0087 for the third or subsequent time.¶~~

~~(5) The civil penalty for violation of any of the following statutes or rules shall be in an amount not less than \$1,000 and not exceeding \$2,500:¶~~

~~(a) Employment of a minor in violations of the provisions of ORS 653.305 to 653.370 or OAR 839-021-0091 to 839-021-0500 are considered to be of such seriousness and magnitude that no less than \$500 for each willful or repeated violation will be that is not specifically identified in section (4) of this rule.¶~~

~~(b) Employment of a minor in violation of OAR 839-021-0067, 839-021-0070, or 839-021-0087 for the first and second time.¶~~

~~(6) When this rule provides a range of civil penalties, the Commissioner may consider the value of deterrence and any aggravating or mitigating circumstances, including:¶~~

- (a) Measures taken by the employer to promptly prevent or correct violations of the law;¶
(b) Any prior violations of the law committed by the employer;¶
(c) The magnitude and seriousness of the violation; and¶
(d) Each of the factors described in 29 CFR 579.5.¶
(7) Notwithstanding any other provision of this rule:¶
(6a) The civil penalty for all other violations shall be set in accordance with the determinations and considerations referred to in OAR 839-019-0020;¶
(A) Is willful and repeated; or¶
(B) Resulted in an imminent danger to minor employees, or a substantial probability that death or a serious injury, illness or condition could have occurred, while performing duties on behalf of the employer.¶
(b) The civil penalty when a minor incurs a serious injury, illness or condition, or dies, while performing duties on behalf of the employer in violation of the provisions of ORS 653.305 to 653.370 or OAR 839-021-0001 to 839-021-0500, may be in an amount that does not exceed \$10,000.¶
(8) As used in this rule, "serious injury, illness or condition" includes "serious injury" as that phrase is defined in 29 CFR 579.2.

Statutory/Other Authority: ORS 651, 653.060, ORS 653.400

Statutes/Other Implemented: ORS 653.370

AMEND: 839-021-0006

NOTICE FILED DATE: 05/24/2024

RULE SUMMARY: Amends rule to clarify scope of definitions.

CHANGES TO RULE:

839-021-0006

Definitions for ORS 653.305 to 653.370 and OAR 839-021-0001 to 839-021-0500 ¶¶

As used in ORS 653.305 to 653.370 and in OAR 839-021-0001 to 839-021-0500, unless the context requires otherwise:¶¶

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

(2) "Bureau" means Bureau of Labor and Industries of the State of Oregon.¶¶

(3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries or designee.¶¶

(4) "Employ" has the same meaning as given that which appears term in ORS 653.010(2).¶¶

(5) "Employer" has the same meaning as given that which appears term in ORS 653.010(3).¶¶

(6) "Employment Certificate" means the employment certificate issued to employers for the employment of minors pursuant to ORS 653.307, and the employment permit referred to in ORS ~~653.320(3)~~ chapter 653 and the rules adopted thereunder.¶¶

(7) "Harvest Season" means a period of time during which the crop or crops of the agricultural employer for whom a minor is employed are harvested. Work performed during the harvest season includes work in connection with the gathering of the crop but does not include cultivation and tillage of the soil or cultivation and growing of agricultural commodities.¶¶

(8) "Minor" means any person under 18 years of age.¶¶

(9) "Workday" means any fixed period of 24 consecutive hours.¶¶

(10) "Workweek" means any fixed and regularly recurring period of seven consecutive workdays.

Statutory/Other Authority: ORS 651.060(4), ORS 653.261

Statutes/Other Implemented: ~~S.B. 135, 77th Leg., Reg. Ses. (Or. 2013)~~, ORS 653.370