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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

FILED

05/24/2024 9:31 AM
ARCHIVES DIVISION
SECRETARY OF STATE

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

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/15/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later.

If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S)

These rule amendments are necessary to implement chapter 1, Oregon Laws 2024.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Chapter 1, Oregon Laws 2024 (Enrolled House Bill 4004) is available here:
<https://olis.oregonlegislature.gov/liz/2024R1/Measures/Overview/HB4004>.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Chapter 1, Oregon Laws 2024, increased the maximum penalty for violating child labor laws. These increased penalties, and the rules that impose them, are likely to deter violations of Oregon's child labor laws. To the extent that child labor violations are disproportionately experienced by minors of color, the increased deterrence is likely to promote racial equity in this state by ensuring that minors of color are not disproportionately subjected to risks of harm in the workplace.

FISCAL AND ECONOMIC IMPACT:

Except for those employers found to have violated Oregon child labor laws, these rules are unlikely to result in a fiscal or economic impact to Oregon employers.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

All state agencies, units of local government and private employers that employ minors may be subject to these rules. Those employers found to have violated Oregon's child labor laws are likely to be economically affected by these rules. According to the Oregon Employment Department, there are nearly 165,000 small businesses in Oregon with at least one payroll employee. If a small business is found to have violated child labor laws, the business may incur costs associated with advocating for a specific outcome or a specific penalty. The Bureau does not, however, anticipate these rule amendments creating any additional reporting, recordkeeping or administrative activities or costs. Similarly, the Bureau does not anticipate any increase in professional services, equipment, supplies, labor or administration costs necessary to comply with these rule amendments.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses, as well as all members of the public, are invited to comment on these rules. In addition, the Bureau will post notice of this rulemaking on its webpage and in the Oregon bulletin, while also disseminating this notice to the Bureau's mailing list.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Given the breadth of employers subject to these rules, and the resources available to the Bureau, it is likely that providing this notice to business organizations, labor organizations and the public at large, will efficiently surface feedback from the persons and communities likely to be affected by the rule amendments.

RULES PROPOSED:

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

AMEND: 839-019-0004

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~~ the person is doing, intends to do what ~~the/he~~ the 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, and actions that are careless can be willful.

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

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

RULE SUMMARY: Amends rule to establish framework for imposition 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 impose a civil penalty not to exceed \$10,000. The actual amount of the civil penalty will depend for each violation described in all the facts and any mitigating ~~OAR 839-019-0010.~~ ¶¶

~~(2) The Commissioner may enter into and aggravating circumstances.~~ ¶¶

~~(2) When the Commissioner determines to impose a civil penalty for the employment of~~ ement with an employer, pursuant to which a civil penalty imposed under this rule will be suspended pending successful fulfillment of the agreement. ¶¶

~~(3)(a) The civil penalty for violation of ORS 653.307, or otherwise employing a minor without a valid employment certificate, th~~ shall be minimum civil penalty shall be as follows: the amount of \$250 if: ¶¶

~~(aA) \$100 for the first offense;~~ ¶¶

~~(b) \$300 for the second offense;~~ No other alleged violations described in OAR 839-019-0010 are pending against the employer. ¶¶

~~(cB) \$500 for the third and subsequent offenses.~~ ¶¶

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

~~(4C) W~~ hen a minor incurs a serious injury or dies while employed in violation of any of the following statutes and ~~an~~ employer has cured the violation; and ¶¶

~~(D) The employer has not committed a substantiated violation described in OAR 839-019-0010 within the past three years.~~ ¶¶

~~(b) Unles~~ s the violat ~~provision 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;~~ s 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).~~ ¶¶

~~(dc) 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 839-021-0282067, 839-021-0070, or 839-021-0087 for the third or subsequent time.~~ ¶¶

~~(f5) Employment of a minor in the entertainment industry in violation of OAR 839-021-0355, Prohibited Performances. 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:~~ ¶¶

~~(5a) Willful and repeated~~ Employment of a minor in violations of the provisions of ORS 653.305 to 653.370 or OAR 839-021-0001 to 839-021-0500 are considered to be of such seriousness and magnitude that no ~~l~~ 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 penaltiess, than \$500 for each willful or repeated violation will be~~ 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 i~~ mposed when the Commissioner determines to impose a civil penalty. ¶¶

~~(6) The civil penalty for all o~~ loyer; ¶¶

~~(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:~~ ¶¶

~~(a) No less than the maximum civil penalty amount identified in sections (4) and (5) of this rule shall be imposed if~~

~~ther 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

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 appearsterm in ORS 653.010(2).¶

(5) "Employer" has the same meaning as given that which appearsterm 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