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**JEAN OHMAN BACK\***  
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### I. (§3.1) SCOPE OF CHAPTER

This chapter discusses which individuals are covered under ORS chapter 656 as employers and workers. Sections 3.2–3.12 discuss the definitions of *employers* and *workers* under ORS chapter 656. Sections 3.13–3.23 discuss the analysis to determine whether an individual is a worker or a nonworker (i.e., an independent contractor). Sections 3.24–3.41 discuss workers and employers who are excluded from coverage by statute. Sections 3.42–3.45 discuss how nonsubject employers and employees may elect to become covered under ORS chapter 656. Sections 3.46–3.55 discuss coverage of nonworkers and statutory employers. Finally, sections 3.56–3.60 discuss the tests to determine which employer must cover an employee in situations of multiple employment.

## II. WORKERS AND EMPLOYERS

### A. Employers

#### 1. (§3.2) Employer

The term *employer* means “any person, including receiver, administrator, executor or trustee, and the state, state agencies, counties, municipal corporations, school districts and other public corporations

or political subdivisions, who contracts to pay a remuneration for and secures the right to direct and control the services of any person.” ORS 656.005(13)(a).

The client of a *temporary service provider*, as defined by ORS 656.850(1)(c), is not an employer of the temporary workers provided by the temporary service provider. ORS 656.005(13)(b). For further discussion of temporary service providers, see §3.56.

NOTE: The “contract” to pay remuneration can be implied. *See* §3.15. Furthermore, an “implied contract” does not require volition to enter into the contract. Therefore, the federal government, which drafts persons to serve in the military, is an “employer” because it pays remuneration and compensation to a person who is obligated to provide personal services and is subject to the direction and control of the federal government. *Wallowa County v. Fordice*, 181 Or App 222, 225–226, 45 P3d 963 (2002).

## **2. (§3.3) Subject Employer**

A *subject employer* means an employer who is subject to ORS chapter 656 as provided by ORS 656.023. ORS 656.005(27). “Every employer employing one or more subject workers in the state” is a subject employer. ORS 656.023.

The key determination is subject-worker status under ORS 656.027. *Bell v. Hartman*, 289 Or 447, 452, 615 P2d 314 (1980) (“[t]he statute’s coverage of an employer is derivative of its coverage of a worker”).

A subject employer must ensure that subject workers are covered by workers’ compensation insurance. ORS 656.017. Coverage is mandatory, and a violation results in a proposed order declaring noncomplying employer status. Additionally, civil penalties may be assessed. Failure to comply after the order becomes final is a ground for a permanent injunction prohibiting employment of subject workers without complying with ORS 656.017. ORS 656.052(3).

## **3. (§3.4) Farmers as Subject Employers**

Oregon was a leading state in including farming under the Workers’ Compensation Law. Since July 1, 1971, farming has not been separately classified. Agricultural workers and employers are subject to the law. *See* ORS 656.027; 1971 Or Laws ch 386.

**B. Workers**

**1. (§3.5) Worker**

Under ORS 656.005(3), a *worker* is any person,

including a minor whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, subject to the direction and control of an employer and includes salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other public corporations, but does not include any person whose services are performed as an inmate or ward of a state institution or as part of the eligibility requirements for a general or public assistance grant.

**2. (§3.6) Subject Worker**

The term *subject worker* means a worker who is subject to ORS chapter 656 as provided by ORS 656.027. ORS 656.005(28). All workers are covered except those specifically excluded as “nonsubject” workers under ORS 656.027. For a detailed discussion of the analysis to determine whether a person is a worker as opposed to an independent contractor, see §3.13.

Persons injured when applying for employment are not subject workers. *Susznik v. Alger Logging Co.*, 76 Or 189, 195–198, 147 P 922 (1915); *Dykes v. SAIF*, 47 Or App 187, 613 P2d 1106 (1980).

In *Susznik*, 76 Or 189, the plaintiff visited an office of the defendant seeking employment. The person in charge directed the plaintiff to go to the defendant’s camp near a designated town to begin work. When he reached the town, he was directed to get aboard the defendant’s logging train. He boarded the train and rode to the logging camp. Before leaving the immediate vicinity of the train, he was injured. He did no work and received no compensation before the accident. The court held that the relation between the parties was that of passenger and carrier, not employee and employer.

In *Dykes*, 47 Or App 187, the claimant applied for work as a deputy sheriff and was injured while taking an agility test. The court held that the claimant was not a subject worker.

**C. Special Classes of Workers**

**1. (§3.7) Persons Paid by a State, City, County, District, or Agency**

A person who is paid by the state or a city, county, district, or agency thereof is considered an employee of that state, city, county, district, or agency notwithstanding any other provision of law. ORS 656.043.

**2. (§3.8) Part-Time Workers**

Part-time workers are not exempt merely because they are employed on a weekend or other part-time basis. The nature of the employment relationship, not the number of hours worked per week, determines subject-worker status.

**3. (§3.9) Minors**

“A minor working at an age legally permitted under the laws of this state is” considered of full age and capacity for the purpose of ORS 656.001–656.794. ORS 656.132(1). No other person has a cause of action or right to compensation for an injury to a minor of legal working age. Control and management of any lump-sum payment are within the jurisdiction of the courts, as in the case of the minor’s other property. ORS 656.132(1); *Manke, Adm’x v. Nahalem Logging Co.*, 211 Or 211, 315 P2d 539 (1957).

If an employer in good faith employs a minor under the legal working age and the “minor sustains an injury or suffers death in such employment, the minor is conclusively presumed to have accepted” the provisions of ORS 656.001–656.794 and cannot sue outside the workers’ compensation system. ORS 656.132(2); *Clevidence v. Portland School Dist. #1*, 125 Or App 608, 866 P2d 492 (1994).

If the employer possesses, at the time of the accident, a certificate from a duly constituted state authority “authorizing the employment of the minor in the work in which the minor was then engaged,” that certificate is conclusive evidence of the employer’s good faith. ORS 656.132(2). If, however, “the employer holds no such certificate and the director finds that the employer did not employ such minor in good faith,” the minor is still entitled to compensation, but the employer is subject to a penalty of not less than \$100 and not more than \$500, payable to the Department of Consumer and Business Services. ORS 656.132(3).