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I. (§3.1) INTRODUCTION

This chapter summarizes state and federal wage and hour laws applicable in Oregon.

The Fair Labor Standards Act (FLSA), 29 USC §201 et seq., was passed in 1938 to regulate minimum wage, hours, and overtime pay of employees in private and public sectors. Its goal was to provide incentives to employers to hire additional workers at straight-time pay. Employers that required nonexempt employees to work more than 40 hours per week were required to pay those employees at a higher rate of pay for each hour worked above 40 hours per week.

The regulations defining the requirements of and the exemptions from the wage, hour, and overtime provisions of the FLSA are found in title 29 of the Code of Federal Regulations. Employers are also regulated by Oregon’s minimum wage laws (ORS 653.010–653.991) and wage collection laws (ORS 652.010–652.990). Certain sections of Oregon’s law, including the provisions for minimum wage, deductions, overtime, and child labor, are more strict than the FLSA.

Sections 3.2–3.38, infra, provide an overview of state and federal minimum wage and overtime laws. These sections include discussion of
the executive, administrative, and professional exemptions and the tests
to qualify for the exemptions. Particular attention is given to the “salary
basis” requirement in light of court cases challenging employer practices
relating to reductions in salaries of exempt employees. See §§3.11–3.16, infra.

Sections 3.22–3.31, infra, discuss overtime requirements. The
overtime rate for a nonexempt employee is one and one-half times the
employee’s regular rate of pay. 29 USC §207(a)(1); ORS 653.261.

Sections 3.32–3.35, infra, address “hours worked” for which an
employer must compensate employees. See OAR 839-020-0040 to 839-
020-0050; 29 CFR §§785.11–785.48.

Sections 3.36–3.37, infra, discuss Oregon’s rules regulating meal
and rest periods. See ORS 653.261. Oregon law requires employers to
provide rest periods and certain other working conditions that federal
law does not address. OAR 839-020-0050 to 839-020-0065.

Section 3.39, infra, describes federal and state wage and hour
recordkeeping requirements.

Sections 3.40–3.49, infra, discuss Oregon’s wage collection laws,
ORS chapter 652, which apply to all employers in Oregon. Employees
may file wage claims with the Wage and Hour Division of the Oregon
Bureau of Labor and Industries (BOLI), or they may file a civil action.

Sections 3.50–3.51, infra, discuss the federal and Oregon
garnishment statutes, 15 USC §§1671–1677 and ORS 23.186, applicable
to all employees.

Sections 3.52–3.62, infra, summarize state and federal child labor
laws. Small employers that are not regulated by the FLSA (see §3.2,
infra) are subject to the state child labor laws only; however, most
employment in Oregon is covered by both state and federal child labor
laws.

Sections 3.63–3.64, infra, describe the federal Davis-Bacon Act
(40 USC §276a) and Oregon prevailing wage rate laws. Prevailing wage
rate laws authorize the commissioner of BOLI to set minimum wages
for laborers who are employed to work under government contract for
construction or reconstruction projects. State law covers all projects
undertaken in Oregon except those that are regulated by the Davis-
Bacon Act or those having a total contract price of less than $25,000.
ORS 279.357(1)(a).
Section 3.65, infra, discusses money collected from employees for group health insurance, notification requirements when coverage is lost, and penalty provisions for violations of ORS 652.710.

Appendixes 3A and 3B provide partial lists of occupations that are exempt from minimum wage and overtime laws. Appendix 3C provides a partial list of types of employees who are exempt from overtime under federal and state laws. Appendix 3D lists prohibited occupations for minors.

To obtain current information about wage and hour regulations, contact the Bureau of Labor and Industries, Technical Assistance, 800 NE Oregon Street, #32, Suite 1070, Portland, OR 97232, (503) 731-4075.

II. MINIMUM WAGE AND OVERTIME
A. (§3.2) Coverage of State and Federal Laws

Both the FLSA and ORS chapter 653 regulate minimum wage, overtime, recordkeeping, and child labor.

The Oregon minimum hourly wage is currently $6.50 (ORS 653.025), which exceeds the federal rate of $5.15 (29 USC §206(a)(1)). Generally, all Oregon employers must pay the higher Oregon rate to nonexempt employees. State and federal exemptions are described in §§3.3–3.16, infra.

Oregon’s minimum wage laws, ORS 653.010–653.261, cover all workers except those specifically excluded by ORS 653.020. A list of employee types that are excluded from both state and federal minimum wage appears in Appendixes 3A and 3B.

The federal minimum wage applies to all employees engaged in interstate commerce who are not expressly excluded by the FLSA. Alternatively, the federal law provides an “enterprise” test to determine coverage. If an enterprise has an annual dollar volume higher than $500,000, the federal minimum wage law applies to the employment of workers in that enterprise. 29 USC §203(r)–(s); 29 CFR §§779.21–779.22.

The FLSA considers any related activities performed for a common purpose and under common ownership to be a single enterprise. 29 USC §203(r). Establishments with different owners may constitute one enterprise if they share clientele and a common location or one or more employees. For example, a group of independent doctors sharing office space and clerical employees will constitute one enterprise covered by
the FLSA if their combined annual dollar volume exceeds $500,000 annually. A medical office grossing less than $500,000 may still have individual employees covered by the FLSA if those employees engage in interstate commerce (such as putting billings into the U.S. mail).

If an enterprise does not meet the enterprise test for federal coverage, its workers are still subject to federal minimum wage laws when they work in interstate commerce. Federal minimum wage laws generally apply to individual employees in the following industries:

1. Manufacturing and wholesale distribution of goods moving in commerce;
2. Communications;
3. Transportation;
4. Real estate or finance; and
5. Agriculture, logging, and mining (or otherwise gathering or processing raw materials).

Subsection (s) of 29 USC §203 covers the following specific enterprises, provided that the enterprise employs two or more workers:

1. Private hospitals, nursing homes, and residential care facilities;
2. Local government agencies; and
3. Schools.

B. Special Coverage Issues

1. (§3.3) Baby-Sitters

Casual baby-sitters are exempt from minimum wage and overtime coverage under both federal and state law. 29 USC §213(a)(15); ORS 653.020(2). Federal law covers baby-sitters who are regularly employed to baby-sit. To constitute regular employment at baby-sitting, the employment must meet or exceed 20 hours per week. 29 CFR §552.104(b). All casual baby-sitters are excluded from state law coverage pursuant to ORS 653.020(2).

2. (§3.4) Tipped Employees

Tipped employees are covered by Oregon’s minimum wage law. Unlike federal law, ORS 653.035(3) prohibits employers from using employees’ tips to meet the state minimum wage requirement. See 29 USC §203(m).