



NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

FILED

07/27/2018 2:04 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amending labor contractor licensing rules to implement HB 4058 (2018)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/21/2018 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):

The proposed rules would make permanent temporary rules implementing the provisions of HB 4058, which modifies existing labor contractor licensing regulations pertaining to property services contractors. In addition, the proposed rules would create an exemption from the labor contractor licensing requirements for persons who supply or employ workers to perform labor as advanced fallers on active wildland fire incidents.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HB 4058, available at <https://olis.leg.state.or.us/liz/2018R1/Measures/Overview/HB4058>.

FISCAL AND ECONOMIC IMPACT:

No additional impact is expected as a consequence of the rule amendments, which conform existing administrative rules to statutory changes enacted by HB 4058.

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).

No additional impact is expected as a consequence of the rule amendments, which conform existing administrative rules to statutory changes enacted by HB 4058.

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

Small businesses were not involved in the development of these proposed rule amendments, which implement recently

enacted legislation. Small businesses are well represent on the Agency's rules mailing lists.

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

The proposed rule amendments merely conform existing administrative rules to statutory changes enacted by HB 4058. However, the Agency did consult with members of the Administrative Rule Advisory Committee that previously assisted the Agency in drafting administrative rules pertaining to property services contractors.

RULES PROPOSED:

839-015-0004, 839-015-0130, 839-015-0135, 839-015-0140, 839-015-0141, 839-015-0145, 839-015-0155, 839-015-0165, 839-015-0170, 839-015-0175, 839-015-0178, 839-015-0355, 839-015-0380, 839-015-0400, 839-015-0508, 839-015-0520

AMEND: 839-015-0004

RULE SUMMARY: Amends definitions to implement changes enacted by HB 4058 (2018).

CHANGES TO RULE:

839-015-0004

Definitions for Regulations Pertaining to ~~Construction, Farm and Forest~~ Labor Contractors ¶¶

As used in these rules, unless the context requires otherwise: ¶¶

- (1) "Aggregate bond or deposit" means a bond or deposit posted pursuant to ORS 658.415 by a licensed business entity on behalf of itself and any of its owners or employees who engage in labor contracting activities to secure payment of wages and advances due from the entity or any of its owners or employees arising from their activities as labor contractors, whether incurred on behalf of the entity or any of its owners or employees. ¶¶
- (2) "Agreed remuneration" means compensation of any kind that is agreed upon by a labor contractor and another for the services of such contractor. ¶¶
- (3) "Agricultural association" means a nonprofit or cooperative association of farmers, growers or ranchers that is incorporated under applicable state law and that acts as a farm labor contractor solely on behalf of members of the association. ¶¶
- (4) "Application of big game repellent by contract crew" means work performed by workers who are recruited, solicited, supplied or employed by a person who has contracted to supply a crew of workers to apply big game repellent. ¶¶
- (5) "Bureau" means the Bureau of Labor and Industries. ¶¶
- (6) "Commissioner" means the Commissioner of the Bureau of Labor and Industries, or designee. ¶¶
- (7) "Construction labor contractor" means any person that:
 - (a) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another in construction; ¶¶
 - (b) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers on behalf of an employer engaged in construction; or ¶¶
 - (c) Enters into a subcontract with another for any of the activities described in subparagraph (a) or (b) of this paragraph. ¶¶
- (8) "Crew leader" means the member of a group of workers who acts as a spokesperson for the group, travels with the group from another state into Oregon, performs the same work along with other members of the group and receives no extra compensation from any person by virtue of acting as a crew leader, aside from any money received from other members of the group for sharing payment of the actual expenses of the group, and provided that the employer pays the members of the group directly and individually for their labor. An immediate family acting as a single unit is not a group, within the meaning of this rule. The spokesperson for such unit is not, therefore, a crew leader. An immediate family includes the father, mother, son, daughter, brother, sister, husband,

or wife of the spokesperson for the family. A crew leader may perform the following activities without a license: ¶

(a) Transporting workers from their local place of residence to their place of employment when the crew leader does not perform this service for a profit; and ¶

(b) Making arrangements for jobs, housing, credit, or any other needs of the members of the group, provided the crew leader receives no compensation for this service; and ¶

(c) Adding members to the group in Oregon, provided the crew leader receives no compensation therefore from the added members or from any other person. ¶

(9) "Farm labor contractor" means: ¶

(a) Any person who, for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another in the production or harvesting of farm products; ¶

(b) Any person who recruits, solicits, supplies or employs workers for an employer who is engaged in the production or harvesting of farm products; ¶

(c) Any person who recruits, solicits, supplies or employs workers to gather wild forest products, as that term is defined in paragraph (23) of this section; ¶

(d) Any person who furnishes board or lodging for workers in connection with the recruiting, soliciting, supplying or employing of workers to be engaged in the production or harvesting of farm products or in the gathering of wild forest products; ¶

(e) Any person who bids or submits contract offers for the production or harvesting of farm products or the gathering of wild forest products; or ¶

(f) Any person who subcontracts with another for the production or harvesting of farm products or the gathering of wild forest products. ¶

(10) "Farmer" means the owner or lessee of land used in the production and harvesting of farm products. ¶

(11) "Farm-worker camp" has the same meaning as that defined in ORS 658.705(7). ¶

(12) "Farm-worker camp operator" has the same meaning as that defined in OAR 839-014-0035(8). ¶

(13) "Forest fire suppression by contract crew" includes work performed by forest fire fighters who are recruited, solicited, supplied or employed by a person who has contracted to supply a crew of forest fire fighters prior to the existence of the fire. (An incidental duty to assist in emergency fire suppression arising from a permit, timber sale contract, or similar agreement whose primary purpose does not relate to fire suppression does not constitute such a prior contract to supply forest fire fighters.) ¶

(14) "Forest labor contractor" means: ¶

(a) Any person who, for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another in the forestation or reforestation of lands; or ¶

(b) Any person who recruits, solicits, supplies or employs workers for an employer who is engaged in the forestation or reforestation of lands; or ¶

(c) Any person who furnishes board and lodging for workers in connection with the recruiting, soliciting, supplying or employing of workers to be engaged in the forestation or reforestation of lands; ¶

(d) Any person who bids or submits contract offers for the forestation or reforestation of lands; or ¶

(e) Any person who subcontracts with another for the forestation or reforestation of lands. ¶

(15) "Forestation or reforestation of lands" includes, but is not limited to: ¶

(a) The planting, transplanting, tubing, pre-commercial thinning, and thinning of trees and seedlings; and ¶

(b) The clearing, piling and disposal of brush and slash; and ¶

(c) Other activities related to the forestation or reforestation of lands including, but not limited to, tree shading, pinning, tagging or staking; fire trail construction and maintenance; slash burning and mop up; mulching of tree seedlings; forest fire suppression by contract crew; application of big game repellent by contract crew; herbicide or pesticide application in the forest by contract crew; gopher baiting; gopher trapping and any activity related to the growth of trees and tree seedlings and the disposal of debris from the land. ¶

(16) "Herbicide or pesticide application in the forest by contract crew" means work performed by workers who are recruited, solicited, supplied or employed by a person who has contracted to supply a crew of workers to apply herbicides or pesticides in the forest. ¶

- (17) "Individuals engaged in the solicitation or recruitment of persons for day-haul work" means individuals who solicit or recruit only persons: ¶¶
- (a) Who reside permanently in the local area; and ¶¶
 - (b) Who do not, temporarily or otherwise, reside on the farm on which they are working; and ¶¶
 - (c) Who are not employed by the individuals; and ¶¶
 - (d) Who are transported to the farm each day. ¶¶
- (18) "Janitorial Services" means work defined as "Janitorial Services" by the North American Industry Classification System (NAICS) but does not include residential housecleaning services. ¶¶
- (19) "Labor Contractor" or contractor means a construction, property services, farm or forest labor contractor. ¶¶
- (20) "License" means a labor contractor's license issued by the Bureau. ¶¶
- (21) "Perform labor" means the performance of work which is manual or physical in nature (including the use of tools), as distinguished from mental, technical, professional or managerial. Work of a mental, technical, professional or managerial nature includes, but is not limited to: ¶¶
- (a) The operation of aircraft, trucks or heavy equipment that require special permits to operate or labor performed by support crews in connection with such operation; ¶¶
 - (b) Stocking surveys; ¶¶
 - (c) Timber cruising; ¶¶
 - (d) Plantation and timber stand examination; ¶¶
 - (e) Surveying; ¶¶
 - (f) Secretarial work; ¶¶
 - (g) Supervising employees; ¶¶
 - (h) Technical or professional work which requires an occupational license (other than the license required by ORS 658.405 to 658.475); ¶¶
 - (i) Work requiring an advanced type of knowledge in a field of science, technology or learning customarily acquired over a prolonged course of specialized instruction and study; ¶¶
 - (j) Forest research and genetic improvement work (including single-tree or sample lot cone collections and the planting of parent or study trees) that services technical forestry advancement rather than direct forestation or reforestation efforts. ¶¶
- (22) "Permanent employee" means an employee of a farmer, nursery owner, processor of farm products, or owner or lessee of land intended to be used for the production of timber whose employment is intended to continue indefinitely. Employees employed on a seasonal, temporary or transient basis are not permanent employees under the section. ¶¶
- (23) "Person" means any individual, sole proprietorship, partnership, corporation, cooperative corporation, association, public or private corporation, government or governmental instrumentality or other business or legal entity. ¶¶
- (24) "Platoon leader" means a temporary supervisor employed by the farmer to supervise employees hired independently by the farmer and placed under the direction of the platoon leader, provided there is no other connection between the platoon leader and the employees. ¶¶
- (25) "Production and harvesting of farm products" includes, but is not limited to, the cultivation and tillage of the soil, the production, cultivation, growing and harvesting of any agricultural commodity, including, but not limited to, cottonwood trees for fiber production and Christmas trees, and the preparation for and delivery to market of any such commodity. ¶¶
- (26) "Property services contractor" means any person that: ¶¶
- (a) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs ¶¶ workers to perform labor for another person to provide services that include janitorial services; ¶¶
 - ~~(b) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers on behalf of an employer to provide services that include janitorial services; or ¶¶~~
 - ~~(e)~~ Enters into a subcontract with another for any of the activities described in subparagraph (a) ~~or (b)~~ of this paragraph. ¶¶

(27) "Staffing agency" means any person: ¶¶

(a) Who operates an established firm, the primary business purpose of which is to provide labor for other employers under written client agreements; ¶¶

(b) Who conducts business from a fixed business location that is separate from the business or work location of the service recipient; and, ¶¶

(c) Who simultaneously provides contracted services to two or more client employers, typically to employers representing a range of industries. ¶¶

(28) "Supplies building materials or machinery, other than manual tools or hand-operated power tools" means to make a substantial investment in a construction project. This investment may be provided by supplying heavy equipment needed to complete the project, such as bull dozers, cranes, land movers, etc. Supplying tools that may be used by hand, such as hammers, skill saws, table saws, reciprocating saws, nail guns, saw horses, compressors, bazookas (for drywall installation) and similar tools would not constitute a substantial investment in the project sufficient to create an exemption. Supplying a significant quantity of structural building materials such as drywall, lumber, concrete, etc. is a substantial investment in a construction project. Supplying incidental materials such as nails, screws, drywall mud, tape, safety goggles, gloves, etc. is not a substantial investment. ¶¶

(29) "To gather wild forest products" or "the gathering of wild forest products" means the gathering of evergreen boughs, yew bark, bear grass, salal or ferns, and nothing else, from public lands for sale or market prior to processing or manufacture. This term does not include the gathering of these products from private lands in any circumstance or from public lands when the person gathering the products, or the person's employer, does not sell the products in an unmanufactured or unprocessed state. ¶¶

(a) Example: A nursery uses its own employees to gather evergreen boughs which it uses in the manufacture of Christmas wreaths. The nursery is not engaged in farm labor contracting activity and therefore would not be required to obtain a license. ¶¶

(b) Example: A person contracts with the owner of private land to remove salal from the land for resale to florists. Because the salal is growing on private land, the person is not engaged in "gathering of wild forest products" as that term is used in these rules (although in some circumstances, the person may be harvesting a farm product). ¶¶

(30) "To induce to travel" means to cause or entice a worker to travel to a specific geographical location or area, by any promise or inducement. ¶¶

(31) "Worker" means an individual performing labor in construction, janitorial services, the forestation or reforestation of lands, in the gathering of wild forest products, or in the production and harvesting of farm products, or any person who is recruited, solicited, supplied or employed to perform such labor, notwithstanding whether or not a contract of employment is formed or the labor is actually performed. A "worker" includes, but is not limited to, employees and members of a cooperative corporation. ¶¶

(31) As used in subsections (4), (13), and (16) of this rule, the term "work performed" has the same meaning as the term "perform labor" in subsection (20) of this rule.

Statutory/Other Authority: ORS 658.407, ~~OL Ch. 676 (2017)~~

Statutes/Other Implemented: ORS 658.405 - 658.503, OL Ch. ~~676~~6008 (20178)

AMEND: 839-015-0130

RULE SUMMARY: Amends definitions of persons exempt from licensing to conform with changes enacted by HB 4058 (2018), and amends definitions of persons exempt from licensing to include persons who supply or employ workers to perform labor as advanced fallers on active wildland fire incidents.

CHANGES TO RULE:

839-015-0130

Exemptions from Licensing ¶¶

Unless indicated otherwise within this rule, the following persons are not required to obtain a labor contractor's license:¶¶

- (1) A farmer or owner or lessee of land intended to be used for the production of timber dealing with workers or worker groups only concerning employment in their own operation.¶¶
- (2) A nursery owner or operator dealing with workers or worker groups only concerning employment in their own operations.¶¶
- (3) A processor of farm products dealing with workers or worker groups only concerning employment in their own farm operations.¶¶
- (4) A permanent employee of a farmer, nursery owner, or processor of farm products, or a permanent employee of an owner or lessee of land intended to be used for the production of timber so long as the employee is engaged solely in activities which would not require the employer to be licensed if the employer were performing the activity.¶¶
- (5) A person engaged only in the solicitation or recruitment of workers for agricultural day-haul work and not engaged in arranging for board or lodging for migrant workers and not performing as an employer of the workers.¶¶
- (6) A platoon leader.¶¶
- (7) A leader, or a leader's agent, of an organization operating as a labor union, provided that the only payment received from the workers is in the form of membership dues for which the workers are accorded membership status in the conduct of the affairs of the organization.¶¶
- (8) An employee of a labor contractor except for any employee who:¶¶
 - (a) Recruits, solicits, supplies or employs workers on behalf of the labor contractor; or¶¶
 - (b) For an agreed remuneration or rate of pay recruits, solicits, supplies or employs workers to perform labor for any other person in construction, ~~janitorial services~~, forestation or reforestation of lands or the production or harvesting of farm products; or¶¶
 - (c) Recruits, solicits, supplies or employs workers to gather wild forest products; or¶¶
 - (d) Furnishes board or lodging for such workers (but cooks employed by the contractor are not required to be licensed by reason of this sole activity); or¶¶
 - (e) On his or her own behalf bids or submits prices on contracts offers for those activities or enters into a subcontract with another for any of those activities.¶¶
- (9) A crew leader provided that if the crew leader engages in any activity or receives any compensation with respect to any worker which exceed the permitted activities or compensation allowed by the definition in OAR 839-015-0004(8)(a), the crew leader is not exempt with respect to any activities or workers.¶¶
- (10) A person who is primarily a supplier of on-farm equipment (sheep shearer, potato digger, or other farm machinery) or cottonwood tree harvesting machines unless the person also supplies temporary workers other than workers engaged in driving or maintaining the equipment.¶¶
- (11) The advertising media.¶¶
- (12) Employees of the Employment Department who are acting within the scope of their employment.¶¶
- (13) A person performing work of a mental, technical, professional or managerial nature as defined in OAR 839-015-0004(20).¶¶
- (14) An individual who performs work, other than recruiting, soliciting, supplying or employing workers to perform

- labor for another, or recruiting, soliciting, supplying or employing workers to gather wild forest products, alone or with only the assistance of the individuals named in section (15) of this rule.¶¶
- (15) The spouse, son, daughter, brother, sister, mother or father of the individuals named in sections (14) and (16) of this rule.¶¶
- (16) Individuals who perform labor in connection with an agreement for the exchange of labor or services with each other, provided that the work is performed on land owned or leased by the individuals, and provided further that the labor or services involved are performed solely by said individuals, their immediate families as specified in section (15) of this rule, or their permanent employees.¶¶
- (17) An educational institution which is recognized as such by the Oregon Department of Education.¶¶
- (18) An individual who collects tree seed cones or an individual who buys tree seed cones from other individuals. This section applies to individuals only and not to persons who are otherwise defined as labor contractors.¶¶
- (19) Persons who recruit, solicit, supply or employ workers to perform labor under a contract or agreement solely for the following activities, provided that the person performs no other activities which would require licensing:¶¶
- (a) Stream or creek debris removal;¶¶
 - (b) Provision of security services;¶¶
 - (c) Any activity which does not have the primary purpose of construction, performance of janitorial services, forestation or reforestation of lands, the gathering of wild forest products or of production or harvesting of farm products.¶¶
- (20) Persons engaged in logging operations who would only otherwise be farm or forest labor contractors because they engage in reforestation activities that are incidental to contracts the primary purpose of which is the sale of timber, provided that they perform such incidental reforestation work using their own employees. If the incidental reforestation activities are carried out using a subcontractor, the subcontractor is required to be licensed.¶¶
- (21) A person who performs labor contracting activity upon real property solely in the execution of a contract for construction between the person and an owner of the real property upon which the construction work is to be performed;¶¶
- (22) A person who performs labor contracting activity solely to perform construction work related to a building permit obtained by the person;¶¶
- (23) A person who performs labor contracting activity solely with respect to a construction project for which the person has supplied building materials or machinery, other than manual tools or hand-operated power tools;¶¶
- (24) An owner of the real property upon which work is to be performed who engages in the solicitation or recruitment of persons to perform construction work on the owner's property;¶¶
- (25) A labor union;¶¶
- (26) A local joint apprenticeship committee formed under ORS 660.135;¶¶
- (27) For purposes of an exemption to the construction labor contractor requirements only, a staffing agency, if the staffing agency:¶¶
- (a) Currently provides workers' compensation coverage for all employees as required by ORS 656;¶¶
 - (b) Currently pays employment and income taxes in accordance with applicable law; and¶¶
 - (c) Has not failed in the previous 36 months to provide workers' compensation for all employees as required by ORS 656 or to pay employment or income taxes in accordance with applicable law.¶¶
- (A) A staffing agency that fails to keep required records or file required reports or files false reports under wage, tax or workers' compensation law is not regarded as being in compliance with workers' compensation and employment or income taxes.¶¶
- (B) A violation of workers' compensation or employment or income tax law that has been or is being committed by a staffing agency will count to disqualify the agency from the exemption regardless of whether an employee has complained of the violation or the staffing agency has been previously cited or fined for the violation.¶¶
- (C) Failure to pay employment taxes on wages that are owed to employees of the staffing agency is a violation of employment tax law regardless of whether the wages have been paid to the employees.¶¶
- (28) Any employee of a property services contractor who is licensed under ORS 658.405 to 658.503.¶¶
- (29) A person who supplies or employs workers to perform labor as advanced fallers to cut down hazardous trees

on active wildland fire incidents. For purposes of this rule, performing labor as an advanced faller may include, but is not limited to, cutting down fire-weakened trees, cat-faced trees, leaners, stove pipes (hollowed out), hang-ups, snags with missing, loose or compromised tops, or other mature trees, but does not include the work of sawyers or chainsaw operators on firefighting crews who operate a chainsaw to cut vegetation for fireline construction, mop up, or clearing access routes and emergency escape routes or safety zones only.

Statutory/Other Authority: ORS 658.407

Statutes/Other Implemented: ORS 658.405 - 658.503, OL Ch. 008 (2018)

RULE SUMMARY: Conforms descriptions of licensable entities with changes enacted by HB 4058 (2018).

CHANGES TO RULE:

839-015-0135

Issuance of License ¶

(1) A license may be issued only as follows: ¶

(a) To an individual proposing to operate as a sole proprietor under the individual's own name or under the individual's own name and an assumed business name registered with the Corporation Division; ¶

(b) To an individual proposing to operate as a partner in a partnership or a limited liability partnership under the individual's own name or under the individuals' own names and the assumed partnership business name registered with the Office of the Secretary of State; ¶

(c) To the majority shareholder or majority shareholders of a corporation or member(s) owning a majority of a limited liability company that is authorized to do business in Oregon by the Office of the Secretary of State and to the corporation or limited liability company. Under this form of licensing, except as provided in subsection (3), the licensed majority shareholder or majority shareholders and the licensed corporation or the majority member(s) of a limited liability company and the licensed limited liability company are jointly and severally liable for all violations of the corporation or limited liability company and its agents when acting as a labor contractor; ¶

(d) To a cooperative corporation authorized to do business in Oregon by the Office of the Secretary of State; ¶

(e) To a private nonprofit corporation authorized to do business in Oregon by the Office of the Secretary of State and designated by the Internal Revenue Service as exempt under section 501 (c)(3) of the Internal Revenue Code, provided: ¶

(A)(i) The purpose of the corporation is to provide education or training; and ¶

(ii) Workers recruited, solicited, supplied or employed by the corporation are recruited, solicited, supplied or employed only for the purpose of educating or training the workers in the forestation or reforestation of lands, in construction, or in the production or harvesting of farm products; or ¶

(B) For at least five years before the corporation files an application for a labor contractor license, the corporation has been: ¶

(i) Authorized to do business in Oregon by the Office of Secretary of State; ¶

(ii) Primarily engaged in recruiting, soliciting, supplying or employing workers; and ¶

(iii) Designated by the Internal Revenue Service as exempt under section 501 (c)(3) of the Internal Revenue Code; ¶

(f) For a farm labor contractor license only, to an agricultural association that is authorized to do business in Oregon by the Office of the Secretary of State; ¶

(g) To an employee of a labor contractor other than a property services contractor who is proposing to or is carrying out activities which would require the employee to obtain a license as a labor contractor. ¶

(2) ~~¶ Except as provided in OAR 839-015-0135(4),~~ no license may be issued to an individual proposing to do business as a partner in a partnership unless all of the proposed partners are licensed. ¶

(3) The majority shareholder or majority shareholders of a corporation or member(s) owning a majority of a limited liability company are not required to be licensed under this section if the corporation or limited liability company: ¶

(a)(A) Publicly trades its shares of stock on a stock exchange regulated by the United States Securities and Exchange Commission; or ¶

(B) Has 10 or more shareholders or members and demonstrates to the satisfaction of the commissioner that the corporation or limited liability company is adequately capitalized; and ¶

(C) No individual shareholder or member owns, or no two shareholders or members collectively own a majority of the corporation or limited liability company; and ¶

(b) Is authorized to do business in Oregon by the Office of the Secretary of State.¶

(4) For a property services contractor license only:¶

(A) To any of the business entities described in paragraphs (b) to (e) of OAR 839-015-0135(1), provided that each entity includes with the application for a license under ORS 658.415 the names and addresses of one or more individuals who are responsible, financially and otherwise, for fulfilling the entity's obligations consistent with the provisions of ORS 658.405 to 658.503.¶

(B) To a private nonprofit corporation authorized to do business in Oregon by the Office of Secretary of State and designated by the Internal Revenue Service as exempt under section 501(c)(3) of the Internal Revenue Code provided that the corporation is primarily engaged in recruiting, soliciting, supplying or employing workers.

Statutory/Other Authority: ~~ORS 164651, 1658, 651, 658~~OL Ch. 008 (2018)

Statutes/Other Implemented: ORS 658.405 - 658.503, OL Ch. 008 (2018)

AMEND: 839-015-0140

RULE SUMMARY: Clarifies requirements for persons financially interested in labor contractor license applicants.

CHANGES TO RULE:

839-015-0140

Licensing Requirements ¶

To be eligible for a license, an applicant therefore must: ¶

(1) Be of good character, competence and reliability. ¶

(2) Be a person who has not, within the preceding three years, had an Oregon labor contractor's license application denied. ¶

(3) Be a person who has not, within the preceding three years, in Oregon or in any other jurisdiction, had a labor contractor's license or indorsement denied, revoked or suspended. ¶

(4) Not have persons financially interested in any capacity in the applicant's business as a labor contractor ~~who were:~~ ¶

(a) Who were denied an Oregon labor contractor's license within the preceding three years or who had such license denied, revoked, or suspended within the preceding three years in Oregon or any other jurisdiction; or ¶

(b) Who were financially interested in any capacity in an entity which was denied an Oregon labor contractor's license within the preceding three years or whēich had such license denied, revoked, or suspended within the preceding three years in Oregon or any other jurisdiction. ¶

(c) A refusal to renew a license or grant a temporary permit because the applicant or any person financially interested in the applicant's business as a labor contractor has been denied a license or had a license revoked in Oregon or any other jurisdiction within the preceding three years is considered the same as the revocation of the license or permit on the date of its expiration. ¶

(5) Not have any unsatisfied final judgments of the court or final orders issued by any government agency which require the payment of unpaid wages to employees or the payment of any advances made to the contractor by construction property owners, owners or property managers of property where janitorial services are or were to be performed, farmers or owners or lessees of land intended to be used for the production of timber. ¶

(6) Declare any and all judgments or administrative orders of record relating to the conduct of the labor contractor's business in the last five years, including the jurisdiction or agency and current status. ¶

(7) Pay the appropriate license fee. ¶

(8) Except as provided in OAR 839-015-0141(2) or when otherwise exempt, show proof of financial ability to promptly pay the wages of employees and advances made by construction property owners, owners or property managers of property where janitorial services are or were to be performed, growers or producers of agricultural goods or owners or lessees of land intended for the production of timber in the form of a corporate surety bond or deposit with the commissioner. ¶

(9) File a completed application form. ¶

(10) Except as provided in OAR 839-015-0141(2), certify on the application that there is insurance on vehicles used to transport workers in an amount sufficient to comply with the Oregon Financial Responsibility Law (ORS 486.011 to 486.680). ¶

(11) Except as provided in OAR 839-015-0141(2), show proof that worker's compensation insurance will be provided on each individual as required in ORS 658.415(2)(b) and 658.440(1)(j). If the applicant is relying on workers' compensation insurance coverage from a jurisdiction other than Oregon, the workers' compensation insurance coverage must satisfy Oregon's coverage requirements under ORS 656. ¶

(12) In the case of a corporation, be authorized to do business in Oregon.

Statutory/Other Authority: ORS 651, ORS 658

Statutes/Other Implemented: ORS 658.405 - 658.503

AMEND: 839-015-0141

RULE SUMMARY: Replaces OL citation with relevant ORS citation and corrects rule citations.

CHANGES TO RULE:

839-015-0141

Licensing Requirements for Employees of Contractor/ Indorsements ¶¶

(1) The employee of a labor contractor who is licensed under ORS 658.405 to 658.503 may be licensed as a labor contractor subject to an employee indorsement if the employee continuously meets all of the following conditions: ¶¶

(a) The employee's employer has filed with the Commissioner of the Bureau of Labor and Industries a signed statement, in a form required by the commissioner, agreeing to sponsor the application and to notify the commissioner promptly upon termination of the employment of the employee; ¶¶

(b) The employee engages in activities that would require licensing as a labor contractor solely on behalf of the employer; ¶¶

(c) The employee does not personally employ any workers and is not responsible for paying any workers; ¶¶

(d) The employer maintains proof of financial responsibility pursuant to ORS 658.415(3); ¶¶

(e) The employer's license remains in good standing; ¶¶

(f) The employee meets all of the conditions for licensing as a labor contractor provided for in OAR 839-015-0140; and ¶¶

(g) The employee is not otherwise licensed in any manner as a labor contractor under these rules. ¶¶

(2) A labor contractor subject to an employee indorsement acting in compliance with section (1) of this rule need not comply with OAR 839-015-0140(78), (910) and (101) insofar as the employer has complied with these provisions. ¶¶

(3) The license of a labor contractor subject to the employee indorsement shall state on its face the conditions contained in this rule and shall state further that the bearer of the license is licensed to act only as conditioned by this rule. ¶¶

(4) The license of a labor contractor subject to an employee indorsement shall terminate immediately upon the termination of the employment relationship with the employer who sponsored the employee's application. The employee shall submit the license to the bureau forthwith. ¶¶

(5) A license subject to an employee indorsement may be terminated either by the employee or by the sponsoring employer by notifying the bureau in writing that either wishes to terminate the license or that the conditions specified in section (1) of this rule are no longer met. ¶¶

(6) The license subject to an employee indorsement terminates upon receipt by the bureau of notice referred to in section (5). The employer's joint and several liability for actions taken by the employee under color of the employee's license pursuant to ~~Ch. 73, Sec. 3(6), 1995 Oregon Laws~~, ORS 658.411(4) extends to any actions taken by the employee before the original license is surrendered to the bureau.

Statutory/Other Authority: ORS 651, 658.411

Statutes/Other Implemented: ORS 658.405 - 658.503

AMEND: 839-015-0145

RULE SUMMARY: Clarifies criteria used for evaluation of labor contractor applications as to character, competency and reliability of applicants.

CHANGES TO RULE:

839-015-0145

Character, Competence and Reliability ¶¶

The character, competence and reliability contemplated by ORS 658.405 to 658.475 and these rules includes, but is not limited to, consideration of: ¶¶

~~(1) A person's record of conduct in r~~ an applicant's conduct, the conduct of any person financially interested in the applicant's proposed operation as a labor contractor, or the conduct of any business in which any person financially interested in the applicant's proposed operation as a labor contractor has had a financial interest, whether as a partner, shareholder, associate, profitsharer or otherwise, with respect to the following: ¶¶

(1) Relations with workers, farmers and others with whom the person conducts business. ¶¶

~~(2) A person's r~~ Reliability in adhering to the terms and conditions of any contract or agreement between the person and those with whom the person conducts business. ¶¶

~~(3) A person's t~~ Timeliness in paying all debts owed, including advances and wages. ¶¶

~~(4) Whether a person has~~ Any unsatisfied judgments or felony convictions. ¶¶

~~(5) Whether a person has been refused a bond. ¶¶~~

~~(6) Whether a person has provided~~ The cancellation of or inability to obtain a bond. ¶¶

(6) Provision of workers' compensation coverage for each worker or paid ~~ymen~~ t of worker's compensation insurance premium payments when due. ¶¶

~~(7) Whether a person has violated~~ Violation of any provision of ORS 658.405 to 658.503 or these rules. ¶¶

~~(8) Whether a person has employed~~ Employment of an agent who has had a labor contractor license denied, suspended, revoked or not renewed or who has otherwise violated any provisions of ORS 658.405 to 658.503 or these rules. ¶¶

~~(9) Whether a person has notified~~ Providing notification to the bureau of any change in the circumstances under which a license was issued. ¶¶

~~(10) Whether a person has failed~~ Failure to comply with federal, state or local laws or ordinances relating to income taxes, social security taxes, unemployment compensation tax, or any tax, fee or assessment of any sort. ¶¶

~~(11) Whether a person has failed~~ Failure to comply with federal, state or local laws or ordinances named in OAR 839-015-0310. ¶¶

~~(12) Whether a person, when required by law, has failed~~ ed or refused ~~al~~ to seek food, water, shelter, or medical attention, or to provide any other necessary goods or services required for the safety and health of workers. ¶¶

~~(13) Whether a person has r~~ Repeatedly failed ~~ures~~ to file or furnish all forms and other information required by ORS 658.405 to 658.503 and these rules. ¶¶

~~(14) Whether a person has made a~~ Any willful misrepresentation, false statement or concealment in the application for a license. ¶¶

~~(15) Whether a person has willfully made or caused to be made to any person any false, fraudulent or misleading representation, or publish~~ Any false, fraudulent or misleading representation willfully made or caused to be made to any person, or publication or circulate ~~ion of~~ any false, fraudulent or misleading information concerning the terms, conditions, or existence of employment at any place or by any person. ¶¶

~~(16) Whether a person failed~~ Failure to maintain the bond or cash deposit as required by ORS 658.405 to 658.503.

Statutory/Other Authority: ~~658,~~ ORS 651, ~~658~~

Statutes/Other Implemented: ORS 659 ~~8.~~ 405 - 658.503

AMEND: 839-015-0155

RULE SUMMARY: Conforms rule to changes enacted by HB 4058 (2018) regarding partnership licensure requirements.

CHANGES TO RULE:

839-015-0155

Procedure for Obtaining a License ¶¶

Application for a license may be made as follows: ¶¶

(1) File a completed application on forms supplied by the Bureau. ~~Except in the case of a partnership, each partner~~ property services contractor license, each partner in any partnership business must complete and file a separate application form. ¶¶

(2) A labor contractor may apply for a license on behalf of an employee, providing that all of the requirements of OAR 839-015-0141 are met. ¶¶

(3) At the time the application is filed, pay the maximum amount of the fees set out by ORS 658.413 for the type of work to be performed. ¶¶

(a) For a construction labor license, pay a fee equal to that set out in 658.413(1)(b) for a farm labor contractor. ¶¶

(b) For a property services contractor license, pay a fee of \$250 for each year of the license term. ¶¶

(c) ~~Except in the case of a partnership, each partner~~ property services contractor license, each partner in any partnership business must pay the appropriate fee. ¶¶

(4) Except as provided by OAR 839-015-0210, file with the application proof of financial ability to pay wages and advances in the amount required by OAR 839-015-0210 on forms supplied by the bureau. Except as provided in OAR 839-015-0157, or in the case of a ~~partnership, each partner~~ property services contractor business, each partner in any partnership business must file such proof. Such proof may be a corporate surety bond, a cash deposit or a deposit the equivalent of cash. ¶¶

(5) File any assumed business name and corporate name with the Office of the Secretary of State and submit proof of such filing with the application. ¶¶

(6) If a corporation, show proof of being authorized to do business in Oregon. ¶¶

(7) All forms, documents and other required information shall be filed with Bureau of Labor and Industries, Wage and Hour Division, License Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

Statutory/Other Authority: ORS 651.060(4), ORS 658.407, ORS 658.413, OL Ch. 008 (2018)

Statutes/Other Implemented: ORS 658.413, OL Ch. 008 (2018)

AMEND: 839-015-0165

RULE SUMMARY: Conforms rule to changes enacted by HB 3279 (2017) regarding the financial responsibility exemption for property services contractors.

CHANGES TO RULE:

839-015-0165

Procedure for Issuing or Renewing License ¶¶

- (1) Each license shall be issued on the date all application requirements are met. ¶¶
- (2) (a) The expiration date of a new license will be one year from the date of issuance of a permit, on the last day of the month in which the permit was issued. ¶¶
- (b) Except as provided in section (2)(c) of this rule, the expiration date for renewal licenses will be one year from the date of issuance of the license, on the last day of the month in which the license was issued.¶¶
- (c) Pursuant to ORS 658.435(3), labor contractors who have been licensed for at least two consecutive years may apply for a renewal license valid for a term of two or four years, which will expire on the last day of the month in which the license was issued.¶¶
- (3) Applications for renewal shall be made 30 days prior to the expiration date by filing a renewal application, paying the appropriate fees, and, except where exempt, filing proof of financial ability to pay wages and certain advances. ¶¶
- (4) For a property services contractor license, each renewal application must be accompanied by a completed training certification statement described at OAR 839-015-0380 and the work locations, employee counts and demographic information described at OAR 839-015-0355. ¶¶
- (5) Each renewal application shall be accompanied by the work agreement between the contractor and the workers which is required by OAR 839-015-0360. The completed renewal application, renewal fee, and other information required in section (2) of this rule must be post-marked or received by the License Unit at least 30 days prior to the expiration date of the license. ¶¶
- (6) Applications, fees and other forms and documents must be filed with the Bureau of Labor and Industries, Wage and Hour Division, License Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

Statutory/Other Authority: ORS ~~164, 165~~, 651, 658

Statutes/Other Implemented: ORS 658.405 - 658.503

AMEND: 839-015-0170

RULE SUMMARY: Revises rule to implement changes to testing requirements enacted by HB 3279 (2017) and HB 4058 (2018).

CHANGES TO RULE:

839-015-0170

Scope of Examinations ¶

~~(1) The License Unit shall~~Commissioner of the Bureau of Labor and Industries may not issue an applicant a license to operate as a labor contractor until the applicant has successfully provide written~~assess a qualifying examination designed to test the applicant's ability, knowledge and proficiency to conduct and manage the business of a labor contractor. The examinations as the Commissioner deems necessary.¶~~

~~(2) The License Unit shall provide all materials required for the examinations except hand-held calculators that may be used by the applicant~~must also test the applicant's knowledge of an employer's responsibility to prevent sexual assault and sexual harassment. The commissioner shall prescribe by rule the requirements for and the manner of testing the competency of license applicants. The License Unit shall provide written examinations as the Commissioner deems necessary.¶

~~(2) An applicant for a property services contractor license may satisfy this requirement provided that one or more of the individuals listed on the application as responsible, financially and otherwise, for fulfilling the entity's obligations consistent with the provisions of ORS 658.405 to 658.503 successfully passes a qualifying examination.¶~~

~~(3) The License Unit shall provide all materials required for the examinations.¶~~

~~(34) All examinations shall be "closed book."¶~~

~~(45) A written examination shall not exceed three hours.~~

Statutory/Other Authority: ORS ~~164, 165, 651, 658, 962~~

Statutes/Other Implemented: ORS 658.405 - 658.503, OL Ch. 008 (2018)

AMEND: 839-015-0175

RULE SUMMARY: Revises examination requirements to conform to changes enacted by HB 4058 (2018).

CHANGES TO RULE:

839-015-0175

Examination Requirements ¶

(1) Applicants ~~shall~~may schedule an appointment with Bureau staff or designated proctors throughout the state to take an examination after receipt of a letter of authorization from the License Unit.¶

(2) ~~Once an applicant is authorized for examination, Requests for onsite examinations must be made by the applicant has within 30 days in which to schedule an appointment to take the examination. The applicant shall take the examination after issuance of a temporary permit. The qualifying examination must take place within 45 days of the date of authorization after issuance of a temporary permit.~~¶

(3) Applicants must submit a written request to reschedule or change the site of an examination after the 45-day period referred to in section (2) of this rule.¶

(4) Except for ~~hand-held calculators and Oregon-certified court~~ interpreters, no applicant may use any other aids or notes or receive help from another person during an examination, except to the extent required to reasonably accommodate a disability under state or federal law. Violation of this rule shall result in the examination being invalidated and treated as failed.¶

(5) Requests for a certified court interpreter shall be made to the License Unit in writing by the applicant no fewer than 15 calendar days in advance of the date of the scheduled examination.¶

(6) The Bureau shall arrange for an Oregon certified court interpreter to interpret the examination and the applicant's examination responses upon receiving a written request for an interpreter by the applicant.

Statutory/Other Authority: ~~ORS 164, 165, 651, 658, 962~~658, ORS 651

Statutes/Other Implemented: ORS 658.405 - 658.503, OL Ch. 008 (2018)

AMEND: 839-015-0178

RULE SUMMARY: Permits Labor Contractor Licensing Unit to provide examination results by methods other than mail alone.

CHANGES TO RULE:

839-015-0178

Grading of Examinations/Notice of Score ¶

(1) The passing score for each examination shall be 75 percent.¶

(2) The License Unit shall notify applicants ~~by mail~~ in writing of their examination scores.

Statutory/Other Authority: ORS ~~164, 165, 651, 658, 962~~

Statutes/Other Implemented: ORS 658.405 - 658.503

AMEND: 839-015-0355

RULE SUMMARY: Restores requirement to submit information required by ORS 658.427 with license application as well as renewal of license.

CHANGES TO RULE:

839-015-0355

Property Services Contractor Work Locations, Employee Counts and Demographic Information

(1) Property services contractors are required to file the following information with the Bureau together with any application for a license or renewal of a property services contractor license:¶¶

(a) The total number of workers the property services contractor employs, as defined by ORS 653.010(2), to perform janitorial services.¶¶

(b) The physical address of the work location or locations where the property services contractor employs, as defined by ORS 653.010(2), workers to perform janitorial services.¶¶

(c) A summary of any demographic data that is voluntarily provided by workers whom the property services contractor employs in janitorial services relating to race, sex, sexual orientation, national origin, marital status and age.¶¶

(2) All information must be filed with the Bureau of Labor and Industries, Wage and Hour Division, License Unit, 3865 Wolverine Street, NE, Bldg. E-1, Salem, OR 97305.

Statutory/Other Authority: ~~OL Ch. 676 (2017)~~, ORS 658, ORS 651

Statutes/Other Implemented: ~~OL Ch. 676 (2017)~~ RS 658.427

AMEND: 839-015-0380

RULE SUMMARY: Updates training requirements enacted by HB 4058 (2018).

CHANGES TO RULE:

839-015-0380

Professional Training for Managers, Supervisors and Employees of Property Services Contractors

(1) Property services contractors must provide professional training pertaining to the topics specified in section (4) of this rule to all of the contractor's managers, supervisors and workers engaged in janitorial services as follows:¶¶

(a) At least once during each year of the license period the year in which a property services contractor license is first issued to a property services contractor;¶¶

(b) For new employees, within 90 days of the employee's initial hiring date; and¶¶

(c) At least once every two years after the renewal of a license.¶¶

(2) The training provided must be:¶¶

(a) Delivered by a qualified trainer either in a live presentation which includes an end-of-training discussion to solidify the concepts and principles covered in the training; or in an interactive webinar, the content of which must be provided both in writing and verbally and which includes an assessment of the trainee's understanding of the topics covered in the training;¶¶

(b) Draw upon various training methodologies and be of an appropriate length to cover the required content at a reasonable pace; and¶¶

(c) Be provided in a language understood by the trainee, either by providing the training directly in such language or by having a certified interpreter interpret the training in a language the trainee understands.¶¶

(d) In the case of a community rehabilitation program which is qualified by the State of Oregon as a qualified rehabilitation facility and which employs workers with various mental, physical, social, emotional, and linguistic abilities, the content and delivery methods of the training required by this rule may be modified to accommodate such workers, provided that the modified training addresses the topics specified in section (4) in a manner that is reasonably expected to promote understanding of those topics.¶¶

(3) Trainees may not be required or permitted to perform their regular work duties during the time they are taking the training, and must be paid for the time they are in training.¶¶

(4) A training curriculum that includes all of the following elements will be considered to be approved by the Bureau of Labor and Industries:¶¶

(a) Definitions of sexual assault, sexual harassment and discrimination in the workplace;¶¶

(b) Strategies for prevention of sexual assault, sexual harassment and discrimination in the workplace;¶¶

(c) Cultural competency;¶¶

(d) Legal protections for employees who report violations of state or federal laws, administrative rules or regulations;¶¶

(e) A summary of protected classes under state and federal civil rights laws;¶¶

(f) A discussion of the concepts of "severe or pervasive" conduct and subjective and objective standards of unwelcome conduct;¶¶

(g) The employer's duty to protect employees from assault and harassment by managers, coworkers and non-employees in the workplace;¶¶

(h) Strategies for preventing assault and harassment, including effective policies and enforcement, reporting and monitoring, and preventing retaliation; and,¶¶

(i) The employer's specific policies regarding prohibited conduct, reporting misconduct, conducting investigations, measures to effectively correct and eliminate misconduct, the reinforcement of inclusive cultures and values relative to the environment, and the dynamics and demographics that may be unique to the organization or industry.¶¶

(5) Property service contractors must provide the following information with each license renewal application:¶¶

(a) A statement that the contractor has provided the professional training to all of the contractor's managers,

supervisors and workers as required by ~~OL Ch. 676 (2017)~~RS 658.428 and this rule; and¶

(b) Copies of the curriculum and related materials used to provide the training required by this rule.

Statutory/Other Authority: ORS 651, ~~OL Ch. 676 (2017)~~RS 658

Statutes/Other Implemented: ORS 658.428, OL Ch. ~~676~~008 (20178)

AMEND: 839-015-0400

RULE SUMMARY: Replaces Oregon Law citation regarding training requirements with ORS citation.

CHANGES TO RULE:

839-015-0400

Records Required to Be Made and Maintained by Contractor ¶¶

- (1) All labor contractors shall make and maintain for a period of three years records necessary to determine their compliance with ORS 658.405 to 658.475 and these rules. ¶¶
- (2) Records necessary to determine compliance with ORS 658.405 to 658.475 and these rules include, but are not limited to records of: ¶¶
 - (a) The name and address of each worker (address includes both the permanent and local addresses of the worker); ¶¶
 - (b) The name and address of each subcontractor; ¶¶
 - (c) The work classification of each employee; ¶¶
 - (d) The rate of monetary wages and fringe benefits, if any, paid to each employee; ¶¶
 - (e) The total compensation paid to each employee during each pay period and the date it was paid; ¶¶
 - (f) The dates of each employee's employment; ¶¶
 - (g) The daily and weekly hours worked by each employee; ¶¶
 - (h) Any deductions taken from the employee's total compensation and an explanation thereof; ¶¶
 - (i) The actual net wages paid to each employee during each pay period; ¶¶
 - (j) The agreements required to be furnished to each worker pursuant to OAR 839-015-0360; ¶¶
 - (k) The agreements between the labor contractor and any subcontractors; ¶¶
 - (l) The statement of worker's rights and remedies as required by OAR 839-015-0310; ¶¶
 - (m) The statement of earnings and the statement of prevailing wage given to each employee as required by OAR 839-015-0370; ¶¶
 - (n) The agreements between the labor contractor and farmers or construction property owners; ¶¶
 - (o) The physical address of work locations where a property services contractor employs workers in janitorial services and the number of workers it employs; ¶¶
 - (p) Demographic data that is voluntarily provided by workers the property service contractor employs in janitorial services relating to race, sex, sexual orientation, national origin, marital status and age. ¶¶
 - (q) The contracts between the contractor and the owner or lessee of land intended to be used for the production of timber; ¶¶
 - (r) Any advances and payments thereon made to the contractor by a construction property owner, owner or property manager of property where janitorial services are or were to be provided, grower or producer of agricultural goods or owner or lessee of land intended to be used for the production of timber; ¶¶
 - (s) Any payroll or other records pertaining to the contractor's business as a labor contractor and the manner in which the contractor conducts such business; ¶¶
 - (t) The type and number of any identification the worker produced as evidence of his/her legal presence and legal employability in the United States. ¶¶
 - (u) Curricula and documentation of each employee's attendance at ~~annual~~ trainings required by ~~OL Ch. 676 (2017)~~ ORS 658.428 and OAR 839-015-0380, including but not limited to the full names of the trainer, contact information of trainer and date of training.

Statutory/Other Authority: ~~ORS 164, 165~~, 651, 658.407(3)

Statutes/Other Implemented: ORS 658.405 - 658.503

AMEND: 839-015-0508

RULE SUMMARY: Replaces Oregon Law citations with ORS citations.

CHANGES TO RULE:

839-015-0508

Violations for Which a Civil Penalty May Be Imposed ¶¶

(1) Pursuant to ORS 658.453, the commissioner may impose a civil penalty for each of the following violations:¶¶

(a) Recruiting, soliciting, supplying or employing workers without a license to act as a labor contractor in violation of ORS 658.410;¶¶

(b) Failing to carry a labor contractor's license at all times while acting as a labor contractor and exhibit it upon request to any person with whom the contractor intends to deal in the capacity of a labor contractor, in violation of ORS 658.440(1)(a);¶¶

(c) Failing to post a notice in English and in any other language used to communicate with workers that the contractor has a bond or deposit and where claims can be made against the bond or deposit in violation of ORS 658.415(15);¶¶

(d) Failing to file a change of address notice with the U.S. Post Office and the bureau in violation of ORS 658.440(1)(b);¶¶

(e) Failing to pay or distribute when due any money or other valuables entrusted to the contractor in violation of ORS 658.440(1)(c);¶¶

(f) Failing to comply with contracts or agreements entered into as a contractor in violation of ORS 658.440(1)(d);¶¶

(g) Failing to furnish each worker, at the time of hiring, recruiting, soliciting or supplying, whichever occurs first, a written statement that contains the terms and conditions described in ORS 658.440(1)(f);¶¶

(h) Failing to execute a written agreement between the worker and the labor contractor containing the terms and conditions described in ORS 658.440(1)(f), at the time of hiring and prior to the worker performing any work for the labor contractor;¶¶

(i) Failing to furnish each worker with an itemized deduction statement and statement as to the rate of wage to be paid and other information in violation of ORS 658.440(1)(h);¶¶

(j) Making misrepresentations, false statements or willful concealments on the license applications in violation of ORS 658.440(3)(a);¶¶

(k) Willfully making or causing to be made any false, fraudulent or misleading information concerning the terms, conditions or existence of employment in violation of ORS 658.440(3)(b);¶¶

(l) Soliciting or inducing or causing to be solicited or induced a violation of an existing employment contract in violation of ORS 658.440(3)(c);¶¶

(m) Knowingly employing an alien not legally employable or present in the United States in violation of ORS 658.440(3)(d);¶¶

(n) Assisting an unlicensed person to act as a contractor in violation of ORS 658.440(3)(e);¶¶

(o) Inducing in any manner whatsoever an employee or subcontractor to give up any part of the employee's or subcontractor's compensation to which they are entitled under an employment contract or under federal or state wage laws in violation ORS 658.440(3)(f);¶¶

(p) Soliciting, inducing, or causing to be solicited or induced, the travel of a worker from one place to another by representing to a worker that employment for the worker is available at the destination when employment for the worker is not available within 30 days after the date work was represented as being available, is in violation of ORS 658.440(3)(g);¶¶

(q) Discharging or in any other manner discriminating against employees in violation of ORS 658.452;¶¶

(r) Failing to provide lodging and food when required by ORS 658.440(2)(c) and these rules;¶¶

(s) Failing to carry the license in violation of ORS 658.440(1)(a);¶¶

(t) Failing to exhibit the license in violation of ORS 658.440(1)(a);¶¶

(u) Failing to provide certified true copies of payroll records in violation of ORS 658.440(1)(i);¶¶

(v) Failing to provide workers' compensation insurance in violation of ORS 658.440(1)(j).¶

(2) In the case of forest labor contractors, in addition to any other penalties, a civil penalty may be imposed for failing to obtain a special indorsement from the bureau to act as a forest labor contractor in violation of ORS 658.417(1).¶

(3) The commissioner may impose a civil penalty on a person to whom workers are to be provided, when the person or the person's agent allows work to be performed on any contract or agreement with an unlicensed labor contractor without first complying with the provisions of ORS 658.437(2).¶

(4) In the case of property services contractors a civil penalty may be imposed for:¶

(a) Failing to provide professional training to managers, supervisors and workers the property services contractor employs in janitorial services required by ~~OL Ch. 676 (2017)~~ RS 658.428 and OAR 839-015-0380;¶

(b) Failing to provide information on the total number of workers the property services contractor employs in janitorial services, the work locations at which janitorial services are provided, or any demographic data that is voluntarily provided by workers as required under ~~OL Ch. 676 (2017)~~ RS 658.427, OAR 839-015-0355, and OAR 839-015-0400.

Statutory/Other Authority: ~~ORS 164, 165~~, 651, 658

Statutes/Other Implemented: ORS 658.405 - 658.503

AMEND: 839-015-0520

RULE SUMMARY: Replaces Oregon Law citation with ORS citation.

CHANGES TO RULE:

839-015-0520

Denying, Suspending, Revoking or Refusing to Renew License ¶¶

(1) The following violations are considered to be of such magnitude and seriousness that the Commissioner may propose to deny or refuse to renew a license application or to suspend or revoke a license: ¶¶

- (a) Making a misrepresentation, false statement or certification or willfully concealing information on the license application; ¶¶
- (b) Causing an existing contract of employment to be violated; ¶¶
- (c) Knowingly employing an alien not legally present or legally employable in the United States; ¶¶
- (d) Assisting an unlicensed person to act as a labor contractor; ¶¶
- (e) In any way inducing an employee or subcontractor of the contractor to give up any part of the compensation to which the employee or subcontractor is entitled under a contract or under federal or state wage laws; ¶¶
- (f) Discharging or discriminating in any way against an employee in violation of ORS 658.452; ¶¶
- (g) Intentionally altering a license or permit, or using the license or permit of another; ¶¶
- (h) Knowingly permitting another to use the licensee's license or permit; ¶¶
- (i) Acting as a labor contractor without a license; ¶¶

(2) In addition to the reasons listed in (1) of this rule, in the case of property services contractors the following violations are also considered to be of such magnitude and seriousness that the commissioner may propose to deny or refuse to renew a license application or to suspend or revoke a license: ¶¶

(a) Failing to provide information on the total number of workers the property services contractor employs in janitorial services, the work locations at which janitorial services are provided by the property services contractor, or any demographic data that is voluntarily provided by workers; or ¶¶

(b) Failing to provide professional training to managers, supervisors and workers the property services contractor employs in janitorial services as required by ~~OL Ch. 676 (2017)~~ ORS 658.428 and OAR 839-015-0380. ¶¶

(3) When the applicant for a license or a licensee demonstrates that the applicant's or licensee's character, reliability or competence makes the applicant or licensee unfit to act as a labor contractor, the Wage and Hour Division shall propose that the license application be denied or license of the licensee be suspended, revoked or not renewed. ¶¶

(4) The following actions of a labor contractor license applicant or licensee or an agent of the license applicant or licensee demonstrate that the applicant's or the licensee's character, reliability or competence make the applicant or licensee unfit to act as a labor contractor: ¶¶

- (a) Violations of any section of ORS 658.405 to 658.485; ¶¶
- (b) Conviction of a felony in connection with the applicant's or licensee's business operations as a labor contractor; ¶¶
- (c) Willful violation of the terms and conditions of any work agreement or contract; ¶¶
- (d) Failure to comply with federal, state or local laws or ordinances relating to the payment of wages, income taxes, social security taxes, unemployment compensation tax or any tax, fee or assessment of any sort; ¶¶
- (e) Knowing failure or refusal to seek food, water, shelter, or medical attention, or to provide any other necessary goods or services required by law for the safety and health of workers; ¶¶
- (f) Repeated failure to file or furnish all forms and other information required by ORS 658.405 to 658.503 or these rules; ¶¶
- (g) Failure to report any change in the circumstances under which the license was issued, including the failure to notify the Bureau of any change in the permanent or temporary address of the applicant or licensee; ¶¶
- (h) Willful misrepresentation, false statement or concealment in the application for a license; ¶¶
- (i) Willfully making or causing to be made to any person any false, fraudulent or misleading representation, or

publishing or circulating any false, fraudulent or misleading information concerning the terms, conditions or existence of employment at any place or by any person; ¶

(j) Failure to provide workers compensation coverage for each worker or to make worker's compensation insurance premium payments when due; ¶

(k) Employing or using an agent who has had a labor contractor license denied, suspended, revoked or not renewed or who has otherwise violated ORS 658.405 to 658.503; ¶

(l) Failure to maintain the bond or cash deposit as required by ORS 658.405 to 658.503 or these rules; ¶

(m) A course of misconduct in relations with workers, farmers and others with whom the person conducts business; ¶

(n) Failure to pay all debts owed, including advances and wages, in a timely manner; ¶

(o) Failure to promptly satisfy any or all judgments levied against the applicant/licensee; ¶

(p) Conduct of the applicant/licensee resulting in the inability to obtain a bond. ¶

(5) When a labor contractor's license application is denied or a license is revoked or when the commissioner refuses to renew a license, the commissioner will not issue the applicant or licensee a license for a period of three (3) years from the date of the denial, refusal to renew or revocation of the license. ¶

(6) Notwithstanding section (5) of this rule, the commissioner, for good cause shown, may issue a license to a contractor whose application has been previously denied or whose license was not renewed or was revoked before the expiration of three years, provided: ¶

(a) The contractor submits a petition explaining each and every reason why the contractor should be licensed; ¶

(b) The contractor files a completed application with the petition and pays the appropriate fees. ¶

(7) As used in section (5) of this rule, "good cause" means an excusable mistake or a circumstance beyond a person's control. ¶

(8) The commissioner shall grant or deny the petition referred to in section (5) of this rule and in so doing shall consider the following factors: ¶

(a) The magnitude and seriousness of the violation or violations which led to the denial, refusal to renew or revocation of the license; ¶

(b) The petitioner's past history in taking all necessary measures to prevent or correct violations of statutes or rules; ¶

(c) The petitioner's other prior violations of the statute or rules, if any; ¶

(d) Other matters which indicate to the commissioner whether or not the petitioner is likely to violate ORS 658.405 to 658.475 and these rules in the future. ¶

(9) Nothing in this rule shall preclude the commissioner from imposing a civil penalty in lieu of denying or refusing to renew a license application or in lieu of suspension or revocation of a license.

Statutory/Other Authority: ORS 651, ORS 658

Statutes/Other Implemented: ORS 658.405 - 658.503