INTERAGENCY AGREEMENT

This Agreement is between the Workers' Compensation Division and Oregon Occupational Safety and Health Division of the Department of Consumer and Business Services ("DCBS"), and Civil Rights Division of the Bureau of Labor and Industries ("BOLI"), both individually without distinction as "Party" and collectively as the "Parties."

SECTION 1: AUTHORITY

This Agreement is entered into pursuant to the authority granted by ORS 190.110 and 283.110, allowing state agencies to enter into agreements with other state agencies to cooperate in performing duties, exercising powers or administering policies or programs.

SECTION 2: PURPOSE

Pursuant to agreement DCBS #00A000233 between DCBS and BOLI, BOLI provides enforcement of anti-discrimination provisions contained in ORS Chapter 654 and 659A for the Workers' Compensation Division (WCD) and the Oregon Occupational Safety and Health Division (Oregon OSHA) of DCBS. This agreement supersedes DCBS #00A000233.

The purpose of this agreement is twofold:

1) For WCD to provide funding to BOLI for expenses related to enforcement of injured worker discrimination complaints under ORS 659A.040, 659A.043, 659A.046, 659A.049, 659A.052 and for information relating to the complaints that BOLI must report to the DCBS director; and

2) For Oregon OSHA to provide funding to BOLI for expenses related to the enforcement of ORS 654.062, complaints of discrimination by employer against an employee for exercising employee rights provided by the Oregon Safe Employment Act under ORS 654 and the provisions of ORS 659A, prohibiting discrimination by Oregon employers and individuals, including enforcement of claims filed against DCBS.

SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement is effective July 1, 2019 through June 30, 2021.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 DCBS' AUTHORIZED REPRESENTATIVE IS:
Enforcement of anti-discrimination provisions
IAA DCBS #00A000252
IAA BOLI #

For DCBS' Oregon Occupational Safety and Health Division:
Michael Wood
350 Winter St. NE
Salem, OR 97301
503-947-7400
michael.wood@oregon.gov

For DCBS' Workers' Compensation Division:
Lou Savage
350 Winter St. NE
Salem, OR 97301
503-947-7551
louis.d.savage@oregon.gov

4.2 BOLI's AUTHORIZED REPRESENTATIVE IS:

Duke Shepard, Deputy Commissioner
800 NE Oregon St., Suite 1045
Portland, OR 97232
971-673-0785
duke.shepard@state.or.us

4.3 A PARTY MAY DESIGNATE A NEW AUTHORIZED REPRESENTATIVE BY WRITTEN NOTICE TO THE OTHER PARTY.

SECTION 5: RESPONSIBILITIES OF EACH PARTY

Agencies will review the provisions of this interagency agreement at least biennially and update this agreement as necessary, and exchange relevant program information.

5.1 DCBS SHALL assist BOLI in carrying out its obligations under this agreement by:

5.1.1 WCD performing the services set out in attached Exhibit E, in accordance with the provisions of ORS 659A.040 – 659A.052; and

5.1.2 Oregon OSHA performing the services set out in attached Exhibit A in accordance with the provisions of ORS 654.062.

5.2 BOLI SHALL provide administrative enforcement of complaints filed under ORS 659A.040 – 659A.052 and ORS 654.062. This includes enforcement of claims filed against the Department of Consumer and Business Services (DCBS).

5.2.1 For (WCD) complaints filed under ORS 659A.040 – 659A.052, BOLI shall provide enforcement of complaints according to the enforcement steps outlined in
Enforcement of anti-discrimination provisions
IAA DCBS #00A000252
IAA BOLI #
Exhibit D.

5.2.2 For (Oregon OSHA) complaints filed under ORS 654.062, BOLI shall provide enforcement of complaints according to the enforcement steps outlined in Exhibit A.

SECTION 6: COMPENSATION AND PAYMENT TERMS

6.1 FIXED FEE FOR SPECIFIED DELIVERABLES:

Financial obligations are further explained in Exhibit F for (WCD) complaints filed and processed under ORS 659A.040 - 659A.052 and in Exhibit C for (Oregon OSHA) complaints filed and processed under ORS 654.062.

6.1.1 DCBS shall pay BOLI quarterly the amounts set forth below for the following specified deliverables:

a. $2,000.00 per case for (WCD) complaints filed and processed under ORS 659A.040 - 659A.052.

b. $2,000.00 per case for (Oregon OSHA) complaints filed and processed under ORS 654.062.

6.1.2 Mediation Training

DCBS on behalf of OR-OSHA will provide payment to BOLI in the amount of $2,200.00 per biennium for certified mediation training.

Fees may be increased each biennium by amendment.

6.1.3 Contested Case Hearings

For those cases where a determination is made that an administrative hearing is warranted and a Final Order is issued, DCBS agrees to reimburse BOLI for actual costs, including but not limited to, the following categories of costs associated with each hearing:

6.1.3.1 Case file preparation costs

6.1.3.2 Legal administrative costs

6.1.3.3 Department of Justice charges

6.1.3.4 Hearings officer's fees

6.1.3.5 Post-hearing administrative expenses including, but not limited to, actual costs for testimony transcription, settling and receiving supersedeas bonds, and holding money in trust pending appeal.
Enforcement of anti-discrimination provisions
IAA DCBS #00A000252
IAA BOLI #

6.1.5 Quarterly Billing Statements

BOLI will prepare separate detailed quarterly billing statements for WCD and Oregon OSHA of charges specifying the individual cases for which payment is sought, with a breakdown of charges. Charges may include administrative closures including, but not limited to, closures due to lack of jurisdiction, uncooperative complainant, and bankruptcy of respondent.

6.1.5.1 Oregon OSHA shall make payment within 30 days of quarterly audit of case files. Oregon OSHA will review the case files for specified deliverables. Submission of quarterly case file invoice will ensure prompt payment to BOLI.

6.1.5.2 WCD shall make payment in accordance with Exhibit F.

6.2 MAXIMUM COMPENSATION

6.2.1 Maximum reimbursement of expenses for (Oregon OSHA) complaints shall not exceed $500,000.00 per biennium.

6.2.2 Maximum reimbursement of expenses for (Oregon WCD) complaints shall not exceed $1,200,000.00 per biennium.

SECTION 7: TERMINATION

7.1 This Agreement may be terminated between DCBS WCD and BOLI at any time by mutual written agreement of the Parties. If the Agreement between DCBS WCD and BOLI is terminated, the DCBS Oregon OSHA and BOLI Agreement will remain in effect for the duration of the Agreement.

7.2 A Party may terminate this Agreement upon 30 days written notice to the other Party.

7.3 A Party may terminate this Agreement immediately upon written notice to the other Party, or at such later date as the terminating Party may specify in such notice, upon the occurrence of any of the following events:

7.3.1 The terminating party fails to receive funding, appropriations, limitations, allotments, or other expenditure authority at levels sufficient in the terminating Party's reasonable administrative discretion, to perform its duties under this Agreement;

7.3.2 Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the terminating Party's performance under this Agreement is prohibited or the terminating Party is prohibited from paying for such performance from the planned funding source;

7.3.3 The other Party materially breaches a covenant, warranty or obligation under this Agreement, or fails to perform its duties within the time specified in this
Enforcement of anti-discrimination provisions
IAA DCBS #00A000252
IAA BOLI #

Agreement or any extension of that time, or so fails to pursue its duties as to endanger that Party's performance under this Agreement in accordance with its terms, and such breach or failure is not cured within 20 days after delivery of the terminating Party's notice to the other Party of such breach or failure, or within such longer period of cure as the terminating Party may specify in such notice.

SECTION 8: AMENDMENTS

The terms of this Agreement may not be waived, altered, modified, supplemented or otherwise amended, in any manner whatsoever, except by written mutual agreement of the Parties.

SECTION 9: NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to a Party's Authorized Representative at the address, number or email address set forth in this Agreement, or to such other addresses or numbers as a Party may indicate pursuant to this Section 9.

SECTION 10: SURVIVAL

All rights and obligations shall cease upon termination of this Agreement, except for those rights and obligations that by their nature or express terms survive termination of this Agreement. Termination shall not prejudice any rights or obligations accrued to the Parties prior to termination.

SECTION 11: COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

SECTION 12: DAS REPORTING REQUIREMENT

The Parties agree that DCBS shall be the Reporting Party for purposes of ORS 190.115, Summaries of Agreements of State Agencies. DCBS shall submit a summary of this Agreement to the Oregon Department of Administrative Services through the electronic Oregon Procurement Information Network (ORPIN), within the 30-day period immediately following the Effective Date of the Agreement.
SECTION 13: RECORDS

The Parties shall create and maintain records documenting their performance under this Agreement. The Oregon Secretary of State's Office, the federal government, the other Party, and their duly authorized representatives shall have access to the books, documents, papers, and records of a Party that are directly related to this Agreement for the purposes of making audit, examination, excerpts, and transcripts for a period of six years after termination of this Agreement.

SECTION 14: COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local laws and regulations.

14.1 Oregon OSHA and BOLI agree to evaluate any pending legislation as it relates to the obligations within this agreement.

14.2 Reserved.

SECTION 15: NO THIRD PARTY BENEFICIARIES

DCBS and BOLI are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

SECTION 16: FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligation under this Agreement caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond that Party’s reasonable control.

SECTION 17: MERGER, WAIVER AND MODIFICATION

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.
Enforcement of anti-discrimination provisions
IAA DCBS #00A000252
IAA BOLI #

SECTION 18: SUBCONTRACTS AND ASSIGNMENT

18.1 Neither Party may enter into any subcontracts for the performance of any of its obligations under this Agreement, without the prior written consent of the other Party.

18.2 Neither Party may assign, delegate or transfer any of its rights or obligations under this Agreement, without the prior written consent of the other Party.

SECTION 19: ADDITIONAL PROVISIONS

19.1 Legal Services

Where BOLI requires outside legal services for enforcement of civil rights claims under ORS 654.062 against DCBS as the respondent, BOLI will incur those expenses.

19.2 Confidentiality

19.2.1 BOLI acknowledges that in the course of performing its responsibilities under this Agreement, it may be exposed to or acquire information that is confidential to DCBS. For purposes of this Agreement, except as set forth below, such confidential information includes all information that DCBS provides to BOLI in connection with the performance of this Agreement ("Confidential Information"). BOLI shall maintain the confidentiality of the Confidential Information and protect it with at least the same degree of care it uses to protect its own confidential information, but in no event less than a reasonable degree of care. BOLI shall use the Confidential Information solely in the performance of this Agreement and shall not disclose that Confidential Information to any third party without the prior written consent of DCBS except as otherwise required by law.

19.2.2 DCBS acknowledges that in the course of performing its responsibilities under this Agreement, it may be exposed to or acquire information that is confidential to BOLI. For purposes of this Agreement, except as set forth below, such confidential information includes all information that BOLI provides to DCBS in connection with the performance of this Agreement ("Confidential Information"). DCBS shall maintain the confidentiality of the Confidential Information and protect it with at least the same degree of care it uses to protect its own confidential information, but in no event less than a reasonable degree of care. DCBS shall use the Confidential Information solely in the performance of this Agreement and shall not disclose that Confidential Information to any third party without the prior written consent of BOLI except as otherwise required by law.

19.2.3 Confidential Information shall be deemed not to include information of DCBS that (1) is or becomes (other than by disclosure by BOLI) publicly known, (2) is
Enforcement of anti-discrimination provisions
IM DCBS #00A000252
IAA BOLI #

furnished by DCBS to others without restrictions similar to those imposed by
this Agreement, (3) is rightfully in BOLI's possession without the obligation of
nondisclosure prior to the time of its disclosure under this Agreement, (4) is
obtained from a source other than DCBS without the obligation of
confidentiality, (5) is disclosed with the written consent of DCBS, or (6) is
independently developed by employees or agents of BOLI who can be shown to
have had no access to the Confidential Information.

19.2.4 Confidential Information shall be deemed not to include information of BOLI that
(1) is or becomes (other than by disclosure by DCBS) publicly known, (2) is
furnished by BOLI to others without restrictions similar to those imposed by this
Agreement, (3) is rightfully in DCBS' possession without the obligation of
nondisclosure prior to the time of its disclosure under this Agreement, (4) is
obtained from a source other than BOLI without the obligation of confidentiality,
(5) is disclosed with the written consent of BOLI, (6) is disclosed pursuant to a
court or administrative order, or (7) is independently developed by employees
or agents of DCBS who can be shown to have had no access to the Confidential
Information.

19.2.5 Upon request and pursuant to the instructions of DCBS or BOLI, DCBS or BOLI
shall return or destroy all copies of Confidential Information, and Contractor
shall certify in writing the return or destruction of all Confidential Information.

This section left intentionally blank.
Enforcement of anti-discrimination provisions
IAA DCBS #00A000252
IAA BOLI #

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

State of Oregon acting by and through its Department of Consumer and Business Services

By: __________________________
(signature of Printed Name below)

Printed Name: Julie Love
Title: Deputy Administrator
Date: 3/15/19

State of Oregon acting by and through its Bureau of Labor and Industries

By: __________________________
(signature of Printed Name below)

Printed Name: Duke Shepard
Title: Deputy Commissioner
Date: 3/15/19

State of Oregon acting by and through its Department of Consumer and Business Services

By: __________________________
(signature of Printed Name below)

Printed Name: Lewis Savage
Title: Administrator
Date: 3/15/19

State of Oregon acting by and through its Bureau of Labor and Industries

By: __________________________
(signature of Printed Name below)

Printed Name: Duke Shepard
Title: Deputy Commissioner
Date: 3/15/19

Executed by:

Nancy A. Cody
Designated Procurement Officer
Date: 3/15/19
DESCRIPTION OF ENFORCEMENT SERVICES
TO BE RENDERED BY THE BUREAU OF LABOR AND INDUSTRIES

I. GENERAL DESCRIPTION OF SERVICES

The Bureau of Labor and Industries (BOLI) will provide administrative enforcement of complaints filed under ORS 654.062. This includes enforcement of claims filed against the Department of Consumer and Business Services (DCBS) itself.

II. ENFORCEMENT SERVICES

A. Filing a Complaint

1. Upon receipt of a complaint alleging a violation of ORS 654.062(5)(a),(b) and (c), BOLI Civil Rights Division (CRD) will begin processing the complaint pursuant to OAR 839-003-0031.

2. BOLI will inform the complainant of the right to concurrently file with federal OSHA and BOLI. If there is more than one potential complainant, the intake officer may inform the complainants of the right to file with the National Labor Relations Board, https://www.nlrb.gov/

B. Notice of Filing

1. Notification of the filed complaint will be sent to Respondent pursuant to ORS 659A.820(5). The notice will grant Respondent 14 days to submit a complete written response to the allegations in the complaint.

2. Notification of the filed complaint will be sent to the Complainant requiring that they cooperate with the investigator to schedule and participate in a complainant interview.

C. Charge Assessment

1. Complainants will be given an in-depth interview within 45 days from the date the complaint is filed with the Division, unless impractical. The interview will cover each specific harm suffered by the Complainant and the dates of its occurrence. For each harm suffered, the Complainant must
be able to specify relevant incidents to show specific intent or different treatment. The Complainant must be able to articulate a causal connection between the alleged harm and the protected activity. The Complainant must identify any witnesses and comparators if the Complainant was in a position to have access to such information.

2. If the Complainant articulates knowledge of relevant evidence in their possession or otherwise available to them, the Complainant will be given 21 days to provide the evidence upon request of the investigator. Failure to provide the required information may result in dismissal.

3. Dismissal cases require the investigator to write a brief memo to the case file stating the reason why the case has been dismissed. The memo must be signed by the investigator and a supervisor. A letter will be sent to the Complainant and Respondent advising them of the dismissal.

4. BOLI will email Oregon OSHA the formal complaint to provide for data input into the federal Department of Labor Whistleblower database.

D. Pre-Determination Settlement

1. BOLI encourages Complainants and Respondents to resolve complaints by mutual agreement at any time. CRD will notify both parties of this option in the notice of filing and during its initial contacts with them. CRD may facilitate settlement negotiations between Complainants and Respondents as provided in OAR 839-003-0055.

2. If, before an Administrative Determination is made, the parties agree upon settlement, CRD will draft a conciliation agreement. The agreement will state:

   a. That a “no-fault” settlement has been reached;
   b. That the Complainant and Respondent accept the terms of the agreement as a resolution of the complaint;
   c. The specific action(s) the Respondent and/or Complainant will take in settlement of the complaint and the time within which the action(s) will be taken; and
   d. That BOLI may investigate any alleged breaches of the agreement.

3. The Complainant, Respondent, CRD investigator, and the CRD administrator will sign the conciliation agreement.
4. The CRD will not be a party to any third-party settlement agreements between the Complainant and Respondent except for mediation as outlined in section J.

E. **Fact-finding Conference (FFC)**

At such times as it deems appropriate, CRD may hold a fact-finding conference consistent with OAR 839-003-0060.

F. **Investigation**

1. CRD will investigate complaints to determine objectively whether there is substantial evidence of any alleged unlawful practice(s).

2. The investigation will typically include interviews with the Complainant and a response to the complaint by Respondent. The investigation may also include interviews with witnesses, Respondent managers, and examination and analysis of documentation.

3. Any investigative witness interviews and requests for information will be conducted consistent with OAR 839-003-0065.

4. Investigative subpoenas may be issued consistent with OAR 839-003-0065(9) and OAR 839-002-0015 to 839-002-0080.

5. If the Respondent does not voluntarily cooperate with BOLI's investigation, BOLI will exercise its vested authority to obtain the necessary information.

G. **Administrative Determination/Dismissal**

1. Upon completion of the investigation, CRD will issue a Substantial Evidence Determination or Dismissal Memo based on the investigative findings.

2. If CRD finds no substantial evidence of unlawful discrimination, BOLI will dismiss the complaint and notify the Complainant and Respondent of the dismissal. The Complainant will receive a 90-day notice of right to file a civil action pursuant to ORS 659A.880, and will be informed that they may request a case file review by the Oregon OSHA Administrator within 15 days of receiving the case dismissal letter from BOLI. Upon request, a copy of a Dismissal Memo will be provided to the Complainant and Respondent.

3. If CRD finds substantial evidence of unlawful discrimination, a copy of the Substantial Evidence Determination will be provided to the Complainant and Respondent, and the case will be assigned for conciliation. However, the Commissioner may proceed directly to a contested case hearing if the interests of justice so require.
4. BOLI will email the final notice of case closure to Oregon OSHA for input into the federal Department of Labor Whistleblower data base.

5. CRD will attempt or will strive to complete all cases within 90 days.

6. The Substantial Evidence Determination or dismissal will be final pursuant to OAR 839-003-0065(13).

H. Conciliation

1. If CRD finds substantial evidence of unlawful discrimination, CRD will seek to eliminate the effects of the unlawful discriminatory act(s) by conference, conciliation, and persuasion. BOLI will not allow such negotiations to be so lengthy that they defeat the purposes of the statutes enforced by BOLI. If an agreement is reached which is satisfactory to the Complainant and Respondent, CRD will draft a conciliation agreement. The agreement will state:

a. That the Complainant and Respondent accept the terms of the agreement as a resolution of the complaint;

b. The specific action(s) the Respondent and/or Complainant will take in settlement of the complaint and the time within which the action(s) will be taken; and

c. That CRD may investigate any alleged breaches of the agreement.

2. Upon execution of the agreement (signed by both parties), CRD will close the complaint and notify the Complainant and Respondent.

I. Failed Conciliation -- Contested Case Hearing

1. When CRD is unable to obtain voluntary compliance through conference, conciliation or persuasion, CRD may refer the complaint to the Administrative Prosecution Unit to be prepared for a contested case hearing.

2. Should legal counsel outside of BOLI become necessary during any phase of a contested case hearing under this Agreement, with the exception of any case in which the DCBS is the Respondent, BOLI will use the services of the Department of Justice.
J. Mediation Program

1. The Operations Managers will consult with investigators to identify cases that might be well suited for mediation. Once identified, the agency informs the parties (complainant and respondent) that mediation is an alternative forum to resolve disputes without the time and expense of investigation, litigation, or administrative hearings.

2. In cases where mediation occurs the mediator assigned to the case is not the investigator assigned to the case. Merits of the case are generally not discussed, except to the extent relevant to the specific settlement proposal.

3. All mediation communications and documents prepared specifically for mediation are subject to confidentiality provisions of ORS 36.220 and OAR 839-051-0100.

4. Mediation Agreements signed by BOLI do not include terms requiring confidentiality of the parties or requiring/permitting a general release. Respondents may include a separate general release. BOLI is not a party to the release.

5. BOLI will insure that mediators have received appropriate training to conduct mediations which meet or exceed the Basic Mediation curriculum requirements found in the Oregon Judicial Department Court-Connect Mediator Qualifications Rules, effective August 1, 2005.

III. RECORDS CONFIDENTIALITY

A. ORS 192.501(8) conditionally exempts investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825, until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under ORS 659A.850. BOLI will therefore ensure that to the extent possible, records submitted to it meet the requirements detailed in ORS 192.502(3) "Confidential Disclosures by Citizens."

B. CRD will maintain a log of all complaints perfected relevant to discrimination against employees. This log will also record action taken in regard to these complaints and the status of these complaints.

IV. REPORTS

CRD shall provide to the Director of DCBS monthly reports containing information
A. CRD will submit federal case activity forms to Oregon OSHA each month. CRD will submit to Oregon OSHA an invoice and quarterly report for cases processed during the quarter. The invoice and report will be submitted on or before the 15th of the month following the end of each calendar quarter.

B. In the event BOLI seeks to propose an increase in billing rates, BOLI will conduct an annual review of costs incurred during the year pursuant to this agreement and shall develop proposed billing rates based on the previous year's actual costs. Detailed cost justification will be submitted to Oregon OSHA in support of the proposed rates by September 15. Oregon OSHA will review the proposed rates and supporting documentation. Oregon OSHA has the option to request reasonable additional justification before approving a rate change. Once the rates are agreed upon, they will become the basis for billing Oregon OSHA for the year. Proposed rates will be agreed upon by August 15 with the rates effective for the 12-month period beginning October 1.

V. REVIEWS

A. CRD will provide Oregon OSHA an opportunity to review any proposed regulations, rules, or standards relating to occupational safety and health prior to adoption. Such review is designed to assure that employers are not being burdened with unnecessary duplication of occupational safety and health standards, inspections or reports.

B. Upon receipt of such request for review of Oregon OSHA files, CRD will respond, within 30 days.
Oregon OSHA

EXHIBIT B

THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES OBLIGATIONS

DCBS will assist BOLI in carrying out its obligations by:

1. Oregon OSHA's prompt reporting to the CRD any complaints received as a result of discrimination in accordance with the provisions of ORS 654.062.

2. Oregon OSHA's providing to CRD, upon written request, copies of all field reports, correspondence and other pertinent investigative and administrative data pertaining to any complaint and inspection where BOLI certifies that the complaint also has been entered pursuant to ORS 654.062.

3. Oregon OSHA will compensate BOLI $2,200.00 for certified mediation training for the 2019-2021 biennium.
Detailed Quarterly Billing Statements

BOLI will prepare a detailed quarterly billing statement of charges specifying the individual cases for which payment is sought, with a breakdown of charges.

Contract Charges

BOLI will charge $2,000.00 per case for the processing of complaints from II.A. "Filing a Complaint" to II.H. "Conciliation," as described in Exhibit A. This charge includes administrative closures (due to lack of jurisdiction, uncooperative Complainant, bankruptcy of Respondent, etc.). Administrative closures run fewer than 25 percent of caseload. This practice of charging for administrative closures is consistent with current BOLI contracts with other entities.

Contested Case Hearings

For those cases where a determination is made that an administrative hearing is warranted and a Final Order is issued, Oregon OSHA agrees to reimburse BOLI for actual costs, including but not limited to the following categories of costs associated with each hearing:

a. Case file preparation costs.

b. Legal administrative costs.

c. Department of Justice charges.

d. Hearings officer’s fees.

e. Post-hearing administrative expenses including, but not limited to, actual costs for testimony transcription, settling and receiving supersedeas bonds, and holding money in trust pending appeal.

BOLI projects to process two cases per year through administrative hearings.

Mediation Training Expenses

Oregon OSHA will compensate BOLI with $2,200.00 to provide training for mediators. The mediation training must include curriculum which meets or exceeds the Basic Mediation curriculum requirements found in the Oregon Judicial Department Court Connect Mediator Qualifications Rules, effective August 1, 2005.
OREGON WORKERS' COMPENSATION DIVISION
EXHIBIT D

DESCRIPTION OF ENFORCEMENT SERVICES
TO BE RENDERED BY THE BUREAU OF LABOR AND INDUSTRIES

I. GENERAL DESCRIPTION OF SERVICES

The Bureau of Labor and Industries (BOLI) will provide administrative enforcement of complaints filed under ORS 659A.040, 659A.043, 659A.046, 659A.049, and 659A.052. This includes enforcement of claims filed against the Department of Consumer and Business Services (DCBS) itself.

II. ENFORCEMENT SERVICES

A. Filing a Complaint

Upon receipt of a complaint alleging a violation of ORS 659A.040 – 659A.052, BOLI Civil Rights Division (CRD) will begin processing the complaint pursuant to OAR 839-003-0025.

B. Notice of Filing

1. Notification of the filed complaint will be sent to Respondent pursuant to ORS 659A.820(5). The notice will grant Respondent 14 days to submit a complete written response to the allegations in the complaint.

2. Notification of the filed complaint will be sent to the Complainant requiring that they cooperate with the investigator to schedule and participate in a complainant interview.

C. Charge Assessment

1. Complainants will be given an in-depth interview within forty-five (45) days from the date the complaint is filed with BOLI, unless impractical. The interview will cover each specific harm suffered by the Complainant and the dates of occurrence. The Complainant must be able to articulate a causal connection between the alleged harm and the protected class. The Complainant must identify any witnesses and comparators if the Complainant was in a position to have access to such information. The interview shall be clearly documented in the investigation file providing a written summary of the interview including
the date and time that the interview took place. In the event that an interview is not conducted, the file shall clearly document the reasons for not conducting the interview.

2. If the Complainant articulates knowledge of relevant evidence in their possession or otherwise available to them, the Complainant will be given 21 days to provide the evidence upon request of the investigator. Failure to provide the required information may result in dismissal.

3. Investigators will utilize the CRD's screening criteria to separate cases into A, B, or C categories:

   a. "A" Cases are those that more likely than not will result in a Substantial Evidence Determination. Full investigation will be conducted until the investigator is able to write a Substantial Evidence Determination or a dismissal memo.

   b. "B" Cases are those that need more information in order to determine whether it is an "A" or "C" case. The investigator may utilize the investigative tools, specific interrogatory, or witness/respondent interviews as appropriate.

   c. "C" Cases are those likely to be dismissed because the evidence gathered would not be sufficient to result in a finding of substantial evidence.

   Some examples of cases that can be resolved under the "C" category dismissal are as follows: non-jurisdictional, charges unsupported by any direct or circumstantial evidence of discrimination and the Complainant was in a position to have access to such evidence, and the Complainant is not credible.

"B" classification is the default for most cases. Documentation shall be present in the investigation file clearly indicating the rationale for "C" case classification.

4. Dismissal cases require the investigator to write a brief memo to the case file stating the reason why the case has been dismissed. The memo must be signed by supervisor. A letter will be sent to the Complainant and Respondent advising them of the dismissal.

D. Investigation

Each step of the investigation indicated below shall be clearly documented in the investigation file.

1. CRD will investigate complaints to determine objectively whether there is substantial evidence of any alleged unlawful practice(s).

2. The investigation will typically include interviews with the Complainant and a
response to the complaint by Respondent. The investigation may also include interviews with witnesses, Respondent managers, and examination and analysis of documentation.

3. Any investigative witness interviews and requests for information will be conducted consistent with OAR 839-003-0065.

4. Investigative subpoenas may be issued consistent with OAR 839-003-0065(9) and OAR 839-002-0015 to 839-002-0080.

5. If the Respondent does not voluntarily cooperate with BOLI's investigation, BOLI will exercise its vested authority to obtain the necessary information.

E. Administrative Determination/Dismissal

1. Upon completion of the investigation, CRD will issue a Substantial Evidence Determination or Dismissal Memo based on the investigative findings.

2. If CRD finds no substantial evidence of unlawful discrimination, BOLI will dismiss the complaint and notify the Complainant and Respondent of the dismissal. The Complainant will receive a 90-day notice of right to file a civil action pursuant to ORS 659A.880. Upon request, a copy of a Dismissal Memo will be provided to the Complainant and Respondent.

3. If CRD finds substantial evidence of unlawful discrimination, a copy of the Substantial Evidence Determination will be provided to the Complainant and Respondent, and the case will be assigned for conciliation. However, the Commissioner may proceed directly to a contested case hearing if the interests of justice so require.

4. CRD will attempt or will strive to complete 90% of cases within 180 days.

5. The Substantial Evidence Determination or dismissal will be final pursuant to OAR 839-003-0065(13).

F. Settlement

1. Settlement Agreements Prior to Completion of the Investigation

   a. BOLI encourages Complainants and Respondents to resolve complaints by mutual agreement at any time. CRD will notify both parties of this option in the notice of filing and during the initial contacts with them. CRD will facilitate settlement negotiations between Complainants and Respondents as provided in OAR 839-003-0055.
b. If, before an Administrative Determination is made, the parties agree upon a settlement, CRD will draft a conciliation agreement. The agreement will state:

i. That a “no-fault” settlement has been reached;

ii. That the Complainant and Respondent accept the terms of the agreement as a resolution of the complaint;

iii. The specific action(s) the Respondent and/or Complainant will take in settlement of the complaint and the time within which the action(s) will be taken; and

iv. That BOLI may investigate any alleged breaches of the agreement.

c. The Complainant, Respondent, CRD investigator, and the CRD administrator will sign the conciliation agreement. Upon execution of the conciliation agreement, CRD will close the complaint and notify the Complainant and Respondent.

d. BOLI will not be a party to any third-party settlement agreements between the Complainant and Respondent.

2. Settlement Agreements After Substantial Evidence Determination

a. If CRD finds substantial evidence of unlawful discrimination, in lieu of referring the complaint to the Administrative Prosecution Unit for preparation for a contested case hearing, BOLI may opt to eliminate the effects of the unlawful discriminatory act(s) by settlement. BOLI will not allow settlement negotiations to be so lengthy that they defeat the purposes of the statutes enforced by BOLI. If an agreement is reached which is satisfactory to the Complainant and Respondent, BOLI will draft a conciliation agreement. The agreement will state:

i. That the Complainant and Respondent accept the terms of the agreement as a resolution of the complaint.

ii. The specific action(s) the Respondent and/or Complainant will take in settlement of the complaint and the time within which the action(s) will be taken.

iii. That CRD may investigate any alleged breaches of the agreement.

b. Upon execution of the agreement (signed by both parties), CRD will close the complaint and notify the Complainant and Respondent.

G. Contested Case Hearing
1. After issuing a Substantial Evidence Determination, CRD may refer the complaint to the Administrative Prosecution Unit to be reviewed for a contested case hearing under OAR chapter 839, Division 50.

2. Should legal counsel outside of BOLI become necessary during any phase of a contested case hearing under this Agreement, with the exception of any case in which the DCBS is the Respondent, BOLI will utilize the services of the Department of Justice.

III. RECORDS CONFIDENTIALITY

A. ORS 192.501(8) conditionally exempts investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825, until such time as the complaint is resolved under ORS 659A.835, or a final administrative determination is made under ORS 659A.850. BOLI will therefore ensure that to the extent possible, records submitted to it meet the requirements detailed in ORS 192.502(3) “Confidential Disclosures by Citizens.”

B. BOLI will maintain a log of all complaints perfected relevant to discrimination prohibited by ORS 659A.040 – 659A.052. This log will also record action taken in regard to these complaints and the status of these complaints.

IV. REPORTS

A. BOLI shall provide to DCBS’ Workers’ Compensation Division (WCD) monthly and quarterly reports identifying the number of complaints received, number of complaints currently worked and their respective status (including whether the complaint is an “A”, “B”, or “C” Case), and the number of complaints closed (including detailed disposition information including, but not limited to, whether or not the case was closed through settlement, whether an administrative determination was issued prior to closure, and whether a case was resolved through a contested case hearing).

B. BOLI will submit to WCD an invoice and quarterly report for cases processed during the quarter. The invoice and report will be submitted on or before the 15th of the month following the end of each calendar quarter.

C. In the event BOLI seeks to propose an increase in billing rates, BOLI will conduct an annual review of costs incurred during the year(s) pursuant to this agreement and shall develop proposed billing rates based on the previous year’s actual costs. Detailed cost justification will be submitted to WCD in support of the proposed rates by September 15. WCD will review the proposed rates and supporting documentation. WCD has the option to request reasonable additional justification before approving a rate change. Once the rates are
agreed upon, they will become the basis for billing WCD for the year. Proposed rates will be agreed upon by August 15 with the rates effective for the 12-month period beginning October 1.

V. REVIEWS

Upon receipt of a request from WCD to view investigative files related to the BOLI's enforcement of ORS 659A.040 – 659A.052, BOLI will respond within 30 days.

VI. REFERRALS

A. BOLI will submit filed complaints to the Workers' Compensation Division monthly. In cases where there is a possibility of inducement not to file or direction of care (as prohibited by ORS 656.745 and ORS 656.260, respectively) the investigative case file must include documentation of a referral to the Workers' Compensation Division. The “inducement not to file” activity prohibited by ORS 656.745 includes, for example, intentional or repeated employer inducement of potential workers' compensation claimants to fail to report accidental injuries, to collect claims as off-the-job claims, and to accept less compensation than due. The “direction of care” activity prohibited by ORS 656.260 includes limiting medical referrals and/or disallowing medical providers, requiring preauthorization, or attempting to otherwise regulate medical treatment, unless such actions are taken by a certified MCO (Managed Care Organization).

B. If during an investigation, BOLI identifies a possibility of inducement not to file or direction of care, then BOLI will email a copy of the complaint and a summary of the facts supporting the referral to the designated WCD staff Sally Coen and Mary Peel (Sally.C.Coen@oregon.gov and Mary.K.Peel@oregon.gov).

VII. TRAINING

The lead investigators of the investigative staff will take two hours of training per year specific to the Oregon workers' compensation system. DCBS will assist in determining appropriate training topics and inform BOLI when relevant training is available.
DCBS will assist BOLI in carrying out its obligations by the following:

WCD providing to CRD, upon written request, copies of all field reports, correspondence and other pertinent investigative and administrative data pertaining to any complaint and inspection where BOLI certifies that the complaint also has been entered pursuant to ORS 659A.040 – 659A.052.
Detailed Quarterly Billing Statements

For complaints filed under ORS 659A.040 - 659A.052, BOLI will provide WCD with detailed quarterly statements of charges specifying the individual cases for which payment is sought, including a breakdown of charges, within the timeframes established in Section IV(B) of Exhibit D of this Agreement.

Contract Charges

BOLI will charge $2,000.00 per case for the processing of complaints from II.A. “Filing a Complaint” to II.F “Settlement” as described in Exhibit D. This charge includes administrative closures (due to lack of jurisdiction, uncooperative Complainant, bankruptcy of Respondent, etc.).

Quarterly billing statements will be submitted on or before the 15th of the month following the end of each calendar quarter.

WCD shall make payment after an audit of case files results in acceptance of deliverables, and a satisfactory invoice has been received.

Contested Case Hearings

For those cases where a determination is made that an administrative hearing is warranted and a Final Order is issued, WCD agrees to reimburse BOLI for actual costs, including but not limited to the following categories of costs associated with each hearing:

a. Case file preparation costs.
b. Legal administrative costs.
c. Department of Justice charges.
d. Hearings officer’s fees.
e. Post-hearing administrative expenses including, but not limited to, actual costs for testimony transcription, settling and receiving supersedeas bonds, and holding money in trust pending appeal.

BOLI projects to process two cases per year through administrative hearings.
WCD’s Review of BOLI Quarterly Billing Statements

At its discretion, WCD may audit some or all of the investigative files associated with cases listed on BOLI’s Quarterly Billing Statements. BOLI agrees to make available all investigative files WCD chooses to audit within 30 days of receiving notice from WCD.

Liability and Insurance

BOLI and WCD agree that any tort liability claim, suit, or loss resulting from or arising out of the Parties’ performance of, or activities under, this Agreement shall be allocated, as between the Parties, in accordance with law by Risk Management of the Department of Administrative Services for purposes of the Parties’ respective loss experiences and subsequent allocation of self-insurance assessments under ORS 278.435. Each Party to the Agreement agrees to notify Risk Management and the other Party in the event it receives notice or knowledge of any claims arising out of the Parties’ performance of, or activities under, this Agreement.