

INTERAGENCY AGREEMENT

PO-44000-00039129

This Agreement is between the Department of Consumer and Business Services, Occupational Safety and Health Division (“OSHA”), the Workers’ Compensation Division (“WCD”), collectively known as “DCBS” and the Bureau of Labor and Industries, Civil Rights Division (“CRD”), collectively known as “BOLI”, both individually without distinction as “Party” and collectively as the “Parties.”

SECTION 1: AUTHORITY

This Agreement is entered into under 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

The purpose of this Agreement is to:

- 2.1** Describe the scope by which BOLI will use in the investigation of certain complaints of discrimination under ORS Chapters 654 and 659A;
- 2.2** Define how OSHA will provide funding to BOLI for expenses related to the enforcement of ORS 654.062, complaints of discrimination by an employer against an employee for exercising rights provided by the Oregon Safe Employment Act and ORS 659A; and
- 2.3** Define how WCD will provide funding to BOLI for expenses related to enforcement of ORS 659A.040, 659A.043, 659A.046, 659A.049, 659A.052, investigation of complaints of discrimination against injured workers, and information that BOLI must report to DCBS.

This Agreement supersedes the previous Agreement #00A000252.

SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement begins on October 1, 2024 (“Effective Date”), and expires on September 30, 2026, unless terminated earlier in accordance with Section 7. Parties may extend this Agreement by Written Amendment.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 DCBS’s Authorized Representative Is:

Oregon Occupational Safety and Health Division

Renée Stapleton, Administrator
350 Winter Street NE

Salem, OR 97301
971-719-6708
Renee.m.stapleton@dcbs.oregon.gov

Workers' Compensation Division

Matt West, Interim Administrator
350 Winter Street NE
Salem, OR 97301
503-507-4997
Matt.d.west@dcbs.oregon.gov

4.2 BOLI's Authorized Representative Is:

Jessica Giannettino, Deputy Commissioner
1800 SW 1st Ave # 500
Portland, OR 97201
(971) 269-4433
jessica.giannettino@boli.oregon.gov

4.3 A Party may designate a new Authorized Representative by written notice to the other Party.

SECTION 5: RESPONSIBILITIES OF EACH PARTY

The Parties agree to review the provisions of this Agreement and update information as necessary at least biennially.

5.1 **DCBS SHALL** assist BOLI in carrying out its obligations under this Agreement as follows:

5.1.1 OSHA shall promptly report to CRD any complaints received under ORS 654.062. See Exhibit A for additional details.

5.1.2 OSHA shall provide 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 has been filed pursuant to 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 complaints filed against the Department of Consumer and Business Services.

5.2.1 OSHA: BOLI shall provide enforcement of complaints filed under ORS 654.062 according to the steps outlined in Exhibit A.

5.2.2 WCD: BOLI shall provide administrative enforcement of complaints filed under ORS 659A.040 – 659A.052 according to the enforcement steps outlined in Exhibit B.

5.3 **BOLI SHALL** provide mediation training to OSHA mediators once per biennium. The mediation training must include curriculum that meets or exceeds the Basic Mediation

Curriculum requirements found in UTCR (Uniform Trial Court Rule) 12.100 (eff. 8/1/2024). BOLI will communicate with OSHA to determine which program OSHA would prefer for the mediation training and the associated costs.

SECTION 6: COMPENSATION AND PAYMENT TERMS

DCBS agrees to pay BOLI via balance transfer (BT) as follows:

6.1 Maximum Compensation

- 6.1.1** OSHA: Maximum compensation for complaints filed under ORS 654.062 shall not exceed \$800,000.00 per biennium.
- 6.1.2** WCD: Maximum compensation for complaints filed under ORS 659A.040 – 659A.052 shall not exceed \$1,200,000.00 per biennium.

6.2 Fixed Fee for Specific Services

DCBS shall pay BOLI the following amounts quarterly for specific Services:

- 6.2.1** OSHA cases processed under ORS 654.062:
 - 6.2.1.1 \$2,000.00 per case for perfected complaints signed on or before June 30, 2024.
 - 6.2.1.2 \$3,165.00 per case for perfected complaints filed and processed under ORS 654.062 signed on or after July 1, 2024
- 6.2.2** WCD cases processed under ORS 659A.040-659A.052:
 - 6.2.2.1 \$2,000.00 per case for complaints filed and processed on or before June 30, 2024.
 - 6.2.2.2 \$3,165.00 per case for complaints filed and processed under OAR 839-003-0025 on or after July 1, 2024; and includes administrative closures due to lack of jurisdiction, uncooperative complainant, and bankruptcy of respondent.

6.3 Mediation Training

DCBS agrees to compensate BOLI for mediation training up to \$2,200.00 per biennium when provided. Cost to be determined as per Section 5.3.

6.4 Contested Case Hearings

For 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 cost associated with each hearing:

- 6.4.1** Case file preparation costs
- 6.4.2** Legal administrative costs
- 6.4.3** Department of Justice charges
- 6.4.4** Hearings officer fees
- 6.4.5** Post-hearing administrative expenses including but not limited to, actual costs for testimony, transcription, settling a receiving supersedeas nods, and holding money in trust pending appeal.

6.5 Proposed Rate Increase

Parties agree that the billing rates included in Section 6 will remain firm for the first two-year Agreement term.

In the event BOLI seeks to propose an increase in the billing rate, BOLI will conduct an annual review of costs incurred during the year(s) pursuant to this Agreement and shall develop a proposed billing rate based on the previous year's actual costs. Detailed cost justification will be submitted to DCBS in support of the proposed rate no later than the beginning of July prior to the Agreement expiration date.

WCD and OSHA will review the proposed rate and supporting documentation. WCD and OSHA have the option to request reasonable additional justification before approving a rate change.

DCBS will agree upon the proposed rate no later than 45 days after receipt of all documented justification. Agreed upon new rates will become effective for complaints filed on or after October 1 of the amended Agreement term.

Parties agree that any and all rate adjustments must be documented by Written Amendment to this Agreement.

6.6 Quarterly Billing Statements

BOLI will prepare and provide a separate detailed quarterly billing statement for OSHA, using the OSHA Form 88, and for WCD. Statements should be inclusive of all fees and reimbursements for the quarter and specify the individual cases for which payment is sought.

Billing statements must be submitted on or before the 15th of the month following the end of each calendar quarter.

- 6.6.1** OSHA will make payment to BOLI within 30 days of receiving BOLI casefile audit materials.
- 6.6.2** WCD will make payment to BOLI for cases closed during the quarter.
- 6.6.3** If WCD chooses to review any investigative case files for the quarter as provided in

Exhibit B, Section IV., WCD will make payment on those cases after the review.

SECTION 7: TERMINATION

- 7.1** This Agreement may be terminated at any time by mutual written agreement of all Parties, or by mutual agreement to terminate this Agreement in part, either between BOLI and OSHA or BOLI and WCD. If this Agreement is terminated in part, the remaining DCBS Party 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 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 calendar 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 will 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 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 will not prejudice any rights or obligations accrued to the Parties prior to termination.

SECTION 11: SEVERABILITY

If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

SECTION 12: COUNTERPARTS

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

SECTION 13: LIABILITY AND INSURANCE

- 13.1** The Parties understand that each is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS Chapter 278, and subject to the Oregon Tort Claims Act (ORS 30.260 to 30.300). Each Party accepts that coverage as adequate insurance of the other Party with respect to personal injury and property damage.
- 13.2** Any tort liability claim, suit, or loss resulting from or arising out of the Parties' performance of, or activities under, this Agreement will be allocated, as between the Parties, in accordance with law, by the Department of Administrative Services, Risk Management, for purposes of the Parties' respective loss experiences and subsequent allocation of self-insurance assessments under ORS 278.435. Each Party shall notify Risk Management and the other Party in the event a Party receives notice or knowledge of any claims arising out of the Parties' performance of, or activities under, this Agreement.

SECTION 14: DAS REPORTING REQUIREMENT

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 [OregonBuys](#) within the 30-day period immediately following the Effective Date of the Agreement.

SECTION 15: 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 16: 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. Parties agree to evaluate any pending legislation as it relates to the obligations within this Agreement.

SECTION 17: 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 will 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 18: FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligation under this Agreement due to any event or cause which is beyond that Party's reasonable control.

SECTION 19: 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 will bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given.

SECTION 20: SUBCONTRACTS AND ASSIGNMENT

- 20.1** 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.
- 20.2** 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 21: ADDITIONAL PROVISIONS

21.1 Legal Services

Should BOLI require outside legal services for enforcement of civil rights claims under ORS 654.062 against DCBS as the respondent, BOLI will be solely responsible for those expenses.

21.2 Confidentiality

- 21.2.1** 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.
- 21.2.2** 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.
- 21.2.3** 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 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.
- 21.2.4** 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.
- 21.2.5** Upon request and pursuant to the instructions of DCBS or BOLI, DCBS or BOLI shall return or destroy all copies of Confidential Information, and BOLI shall certify in writing the return or destruction of all Confidential Information.

SECTION 22: SIGNATURES

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

State of Oregon, Bureau of Labor and Industries, Civil Rights Division

Signature: Jessica Giannettino
Name: Jessica Giannettino
Title: Deputy Commissioner
Date: 09/24/2024

Signature: _____
Name: _____
Title: _____
Date: _____

State of Oregon, Department of Consumer and Business Services

Occupational Safety and Health Division
Reviewed by:

Workers' Compensation Division
Reviewed by:

Signature: Renée Stapleton
Name: Renée Stapleton
Title: Administrator
Date: 9/25/24

Signature: Matt West
Matt West (Sep 25, 2024 13:38 PDT)
Name: Matt West
Title: Interim Administrator
Date: 09/25/2024

Executed by:

Signature: Miriha Aglietti
Name: Miriha Aglietti
Title: Designated procurement Officer
Date: 09/25/2024

State of Oregon Approvals:

Approved Pursuant to ORS 279A.140
Department of Administrative Services

Approved Pursuant to ORS 291.047
Department of Justice

Signature: Not Required per OAR 125-246-0365(4)
Name: _____
Title: _____
Date: _____

Signature: Not Required per ORS 190.430
Name: _____
Title: _____
Date: _____

EXHIBIT A

OCCUPATIONAL SAFETY AND HEALTH DIVISION

Enforcement Services, Reports and Referrals Provided by the Bureau of Labor and Industries

I. GENERAL INFORMATION

BOLI will provide administrative enforcement of complaints filed under ORS 654.62. This includes enforcement of claims filed against DCBS itself.

II. ENFORCEMENT SERVICES

BOLI CRD will investigate complaints using CRD's Investigator Manual 2024, Oregon [OSHA's PD-288](#) (Whistleblower Investigation Manual), applicable rules and statutes, and according to the terms of this Agreement.

Upon written request, OSHA shall provide to CRD 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.

III. REVIEWS

CRD will notify and provide OSHA an opportunity to review any proposed regulations, rules, or standards relating to occupational safety and health, including whistleblower investigations filed under ORS 654.062 prior to adoption by BOLI. Such review is designed to help ensure regulatory alignment.

In addition to the quarterly case file review, BOLI CRD will make its ORS 654.062 casefiles available to Oregon OSHA upon request.

EXHIBIT B

WORKERS' COMPENSATION DIVISION

Enforcement Services, Reports and Referrals Provided by the Bureau of Labor and Industries

I. GENERAL INFORMATION

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 DCBS itself.

II. ENFORCEMENT SERVICES

BOLI investigators will determine if a complaint alleges violations related to injured worker protections under ORS 659A.040-052. "Invoke" as used in ORS 659A.040 is defined under OAR chapter 839, division 006.

CRD will investigate complaints using CRD's Investigator Manual 2024, applicable rules and statutes, and according to the terms of this Agreement.

CRD will strive to complete all cases within 180 days; including when a complaint alleges a violation of the Unlawful Discrimination Against Injured Workers statutes pursuant to ORS 659A.040, 659A.043, 659A.046, 659A.049, or 659A.052, and a violation of a statute not covered under this Agreement that allows for a later completion date.

III. INVESTIGATION MANUAL

- (A) BOLI shall provide WCD the current version of the CRD Investigation Manual annually on July 1st.
- (B) BOLI will notify WCD of any revisions to CRD's Investigator Manual when they occur and provide a revised manual that includes the updates.

IV. REPORTS

BOLI shall provide WCD weekly, monthly, and quarterly reports.

- (A) A weekly report of "charges processed." These are the "perfected" charges (complaints) drafted by BOLI and sent to the complainant for review and signature. It is only when the signed perfected charge is received and processed by BOLI that a complaint is considered filed.
- (B) A monthly activity report for cases involving workers' compensation retaliation and failure to reinstate. This report will:
 - a. Include case identification information (complainant name, respondent name, case number);

- b. Identify the number of complaints received (Filings), date filed, and status;
 - c. Include the number of complaints currently being worked (Cause) and cause date; and,
 - d. Include the number of cases closed (Closures) and closure date, and provide details as to whether or not the case was closed through settlement, an administrative determination was issued prior to closure, or whether a case was resolved through a contested case hearing.
- (C) The quarterly report should be submitted with the quarterly billing statement described in Agreement Section 6.6.

At its discretion, WCD may review some or all of the investigative case files included in the quarterly report. BOLI agrees to make available all investigative files WCD chooses to review within 30 days of receiving a written request from WCD. Each investigative case file will include a ledger card that provides the status, and a general timeline of the action items undertaken throughout the investigation and its findings.

V. REFERRALS

- (A) BOLI will submit filed complaints to WCD 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 WCD.
- (B) 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:
- a. Fail to report accidental injuries,
 - b. Collect Claims as off-the-job claims, or
 - c. Accept less compensation than due.
- (C) The “direction of care” activity prohibited by ORS 656.260 includes:
- a. Limiting medical referrals or disallowing medical providers,
 - b. Requiring preauthorization, or
 - c. Attempting to otherwise regulate medical treatment unless such actions are taken by a certified Managed Care Organization (MCO).

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