

Issuance of Dishonored Check

839-001-0300

Liability of Employer for Issuance of Dishonored Check in Payment of Wages

(1) As used in this rule:

(a) “Check” means a check, draft or order for the payment of money.

(b) “Drawee” means a person ordered in a draft to make payment pursuant to ORS 73.0103(1)(b).

(2) Pursuant to ORS 30.701, an employer that issues a dishonored check to an employee for payment of wages due is liable to the employee for damages in an amount equal to \$100 or triple the amount for which the check is drawn, whichever is greater, in addition to the amount for which the check was drawn. The amount of damages may not exceed the amount for which the check was drawn by more than \$500.

(3) Pursuant to the provisions of House Bill 2039 (2011), the Commissioner of the Bureau of Labor and Industries may assess a civil penalty payable to the employee in an amount equal to the statutory damages provided by ORS 30.701 against an employer that issues a dishonored check to an employee for payment of wages due. Such civil penalties will be assessed pursuant to the provisions of the Administrative Procedure Act (ORS 183.413 to 183.470) and the bureau’s Contested Case Hearing Rules.

(4) The commissioner may not assess a civil penalty as provided in this rule if:

(a) after the employee or the employee’s assignee has made written demand of the employer not less than 30 days before commencing the action, the employer pays the employee before the commencement of the action an amount of money not less than the amount for which the check was drawn and all interest that has accrued on the check under ORS 82.010 as of the date of demand; or,

(b) the employee has commenced an action under ORS 30.701 against the employer for the same dishonored check.

(5) If the commissioner determines that the failure of the employer to satisfy the dishonored check at the time demand was made under subsection (4)(a) of this rule was due to economic hardship, the commissioner may waive all or part of the statutory damages provided for in section (2) of this rule.

(6) The provisions of this rule apply only to a check that has been dishonored because of a lack of funds or credit to pay the check, because the employer has no account with the drawee, or because the employer has stopped payment on the check without good cause. An employee is entitled to the remedies provided in this rule without regard to the reasons given by the employer for dishonoring the check.

(7) An employee may not bring an action under ORS 30.701 against an employer for the same dishonored check if the commissioner has assessed or proposed to assess a civil penalty under this rule.