

FARM/FOREST LABOR CONTRACTOR (F/FLC)

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1.0 AUTHORITY OF THE COMMISSIONER (see also Ch. I, sec. 2.1)

2.0 DEFINITIONS

2.1 --- Character

□ As it pertains to farm/forest labor contractors, character means reputation, especially when good, and a composite of good moral qualities typically of moral excellence and firmness blended with resolution, self-discipline, high ethics, force, and judgment. ---- *In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 147 (2007).*

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Respondents' willful misrepresentation on their license renewal application that that they would comply with all laws and rules as a farm/forest labor contractor showed they lacked the moral strength and ethics required to demonstrate good character. ---- *In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 151 (2007).*

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

2.2 --- Competence

□ As it pertains to farm/forest labor contractors, competence means the quality or state of being

functionally adequate or of having sufficient knowledge, judgment, skill, or strength (as for a particular duty or in a particular respect). ---- *In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 147 (2007).*

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Respondents' willful misrepresentation on their license renewal application that that they would comply with all laws and rules as a farm/forest labor contractor showed they lacked the necessary judgment to carry on business as a competent farm/forest labor contractor. --- *In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 151 (2007).*

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

2.3 --- Crew Leader

2.4 --- False

2.5 --- False Statement

2.6 --- Farm Labor Contractor

2.7 --- Financially Interested

2.8 --- Forest Labor Contractor

2.9 --- Forestation or Reforestation Activity

2.10 --- Fraudulent

2.11 --- Misconduct

□ For the purpose of OAR 839-015-0520(3)(m), any violation of applicable Oregon laws or the BOLI commissioner's rules by a contractor acting in the capacity of farm/forest labor contractor is *per se* misconduct. ---- *In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 151 (2007).*

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ By repeatedly disregarding their commitments to the Oregon Department of Forestry and BOLI and by their ongoing efforts to cover up the deficiencies in their training and recordkeeping, respondents engaged in a course of misconduct that demonstrated their lack of the moral strength and ethics required to demonstrate good character and the reliability required to show they can be counted on or trusted to do what is expected of a farm/forest labor contractor. ---- *In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 151 (2007).*

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

2.12 --- Misleading

2.13 --- Misrepresentation

□ Misrepresentation is defined as "an assertion made by a license applicant [that] is not in accord with the facts, where the applicant knew or should have known the truth of the matter asserted, and where the assertion is of a substantive fact which is influential in the commissioner's decision to grant or deny a license." ----

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In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 150 (2007).

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Because the corporate respondent's president knew or should have known that his son was an underage and untrained firefighter before and after he signed an oath stating he would comply with applicable Oregon laws and the commissioner's rules, the forum inferred that the corporate president knew the falsity of his assertion on his license application and of each similar assertion made thereafter on subsequent license applications. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 149-50 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Respondents' willful misrepresentation on their license renewal application that that they would comply with all laws and rules as a farm/forest labor contractor showed they lacked 1) the moral strength and ethics required to demonstrate good character, 2) the integrity and judgment required to demonstrate trustworthiness and reliability, and 3) the necessary judgment to carry on business as a competent farm/forest labor contractor. --- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 151 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

2.14 --- Recruit (see also 2.18)

2.15 --- Reliability

□ As it pertains to farm/forest labor contractors, reliability means the quality or state of being reliable, i.e., dependable, trustworthy, trusty, tried. Reliable describes what can be counted on or trusted in to do as expected or to be truthful. Dependable is a close synonym for reliable and may indicate a steady predictability or trustworthiness or reliability worthy of fullest confidence. Trustworthy indicates meriting confidence for proved soundness, integrity, veracity, judgment, or ability. Trusty implies that the person or thing described has been tested and found dependable and tried likewise stresses proved dependability. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 147 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Respondents' willful misrepresentation on their license renewal application that that they would comply with all laws and rules as a farm/forest labor contractor showed they lacked the integrity and judgment required to demonstrate trustworthiness and reliability. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 151 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

2.16 --- Repeat

2.17 --- Sham or Subterfuge

2.18 --- Solicit (see also 2.14)

2.19 --- Willful Concealment

2.20 --- Willful, Willfully

□ For the purposes of OAR 839-015-0520(3)(h), knowingly or willfully means action undertaken with actual knowledge of a thing to be done or omitted or action undertaken by a person who should have known the thing to be done or omitted. A person should have known the thing to be done or omitted if the person has knowledge of facts or circumstances which, with reasonable diligent inquiry, would place the person on notice of the thing to be done or omitted to be done. A person acts knowingly or willfully if the person has the means to inform himself or herself but elects not to do so. For purposes of this rule, the farm labor contractor is presumed to know the affairs of their business operations relating to farm or forest labor contracting.

---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 149-50 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Because the corporate respondent's president knew or should have known that his son was an underage and untrained firefighter before and after he signed an oath stating he would comply with applicable Oregon laws and the commissioner's rules, the forum inferred that the corporate president knew the falsity of his assertion on his license application and of each similar assertion made thereafter on subsequent license applications. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 149-50 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

2.21 --- Work/Employment Agreement

□ The term "work agreement" is not ambiguous and is synonymous with "employment agreement." ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 149 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ When the agency alleged respondents willfully violated terms and conditions of work agreements or contracts under OAR 839-015-0520(3)(c), the forum found that neither the Oregon Department of Forestry agreements nor BOLI license applications constitute an employment agreement or contract and that the rule, on its face and when read in context with the other related rules, refers to employment contracts and that the rule was not applicable to the facts in the case. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 149 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ The forum determined that had the agency intended OAR 839-015-0520(3)(c) to mean any agreement or

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contract, it would have so stated or refrained from using the term "work" which is synonymous with "employment."

---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 149 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

2.22 --- Worker

3.0 LICENSE

3.1 --- In General

3.2 --- Licensees (see also 6.0)

3.3 --- Application (see also 3.6)

3.4 --- Temporary Permit

3.5 --- Exemptions

3.6 --- Denial (see also 3.3)

□ When a license applicant demonstrates that the applicant's character, competence, and reliability make that applicant unfit to act as a farm/forest labor contractor, the agency shall propose that the license application be denied pursuant to OAR 839-015-020(2).

---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 147 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

3.7 --- Refusal to Renew

□ Before issuing a license, the commissioner shall investigate each applicant's character, competence and reliability and any other matter relating to the manner and method by which the applicant proposes to conduct and has conducted operations as a farm labor contractor. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 147 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ The commissioner shall investigate each applicant's character, competence and reliability and any other matter relating to the manner and method by which the applicant proposes to conduct and has conducted operations as a farm labor contractor. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 147 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ When a license applicant demonstrates that the applicant's character, competence, and reliability make that applicant unfit to act as a farm/forest labor contractor, the agency shall propose that the license application be denied pursuant to OAR 839-015-020(2). ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 147 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

3.8 --- Suspension

3.9 --- Revocation

3.10 --- Character, Competence, Reliability

□ The commissioner shall investigate each applicant's character, competence and reliability and any other matter relating to the manner and method by which the applicant proposes to conduct and has conducted operations as a farm labor contractor. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 147 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ When a license applicant demonstrates that the applicant's character, competence, and reliability make that applicant unfit to act as a farm/forest labor contractor, the agency shall propose that the license application be denied pursuant to OAR 839-015-020(2). ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 147 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ The commissioner will not issue a farm/forest labor contractor license unless satisfied as to the applicant's character, competence, and reliability. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 147 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ For the purposes of ORS 658.420, the forum adopts the pertinent definitions set forth in Webster's Third New International Dictionary for "character," "competence," and "reliability." ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 147 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ By their multiple violations of ORS 658.440(1)(d), respondents demonstrated that they were not reliable because they could not be trusted to do what is expected to hold a farm/forest labor contractor's license. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 149 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ By their multiple violations of ORS 658.440(1)(d), respondents showed they lacked the requisite blend of self-discipline, ethics and judgment that compels contractors to honor their contracts, pursuant to ORS 658.440. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 149 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Respondents' deficiencies confirmed they lacked sufficient knowledge, judgment or skill to perform the multiple responsibilities of farm/forest labor contracting. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 149 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v.*

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Bureau of Labor and Industries, 229 Or App 504, 213 P3d 590 (2009).

□ Based on respondents' multiple violations of Oregon's farm/forest labor contracting laws, the forum concluded respondents lacked the reliability, character, and competence, as defined in the final order, to act as a farm/forest labor contractor. ---- *In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 149 (2007).*

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries, 229 Or App 504, 213 P3d 590 (2009).*

□ By repeatedly disregarding their commitments to the Oregon Department of Forestry and BOLI, and by their ongoing efforts to cover up the deficiencies in their training and recordkeeping, respondents engaged in a course of misconduct that demonstrated their lack of the moral strength and ethics required to demonstrate good character and the reliability required to show they can be counted on or trusted to do what is expected of a farm/forest labor contractor. ---- *In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 152 (2007).*

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries, 229 Or App 504, 213 P3d 590 (2009).*

4.0 PROHIBITED ACTIVITIES (ORGANIZED BY STATUTE NUMBER) (see also 5.2)

- 4.1 --- Acting as a Contractor Without a License (ORS 658.410(1) and 658.415(1))
- 4.2 --- Failure to Disclose the Applicant's Name and Addresses on the License (ORS 658.415(1)(a))
- 4.3 --- Failure to Disclose Information on All Motor Vehicles (ORS 658.415(1)(b))
- 4.4 --- Failure to Disclose Previous License Denials (ORS 658.415(1)(c))
- 4.5 --- Failure to Disclose the Names and Addresses of All Financially Interested Persons (ORS 658.415(1)(d))
- 4.6 --- Failure to Furnish Bond, Post Notice of Bond (ORS 658.415(3) and (15))
- 4.7 --- Failure to Obtain Special Indorsement for Forest Labor Contractor (ORS 658.417(1))
- 4.8 --- Failure to Provide BOLI with Certified Payroll Records (ORS 658.417(3))
- 4.9 --- Failure to Provide Workers' Compensation Insurance (ORS 658.417(4))
- 4.10 --- Using a Contractor Without Examining and Retaining Copy of License (ORS 658.437(2))

- 4.11 --- Failure to Carry and Exhibit License (ORS 658.440(1)(a))
- 4.12 --- Failure to Notify BOLI and Post Office of Address Change (ORS 658.440(1)(b))
- 4.13 --- Failure to Pay Promptly (ORS 658.440(1)(c))
- 4.14 --- Failure to Comply with Agreement/Contracts (ORS 658.440(1)(d))

□ In order to maintain a farm/forest labor contractor's license in Oregon, contractors are required to abide by any lawful contracts or agreements entered into in their capacity as farm/forest labor contractors. ---- *In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 124 (2007).*

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries, 229 Or App 504, 213 P3d 590 (2009).*

□ To establish a violation of ORS 658.440(1)(d), the agency must prove that respondents 1) acting jointly as a farm/forest labor contractor, 2) entered into legal and valid agreements with the Oregon Department of Forestry and BOLI, 3) entered into the contracts or agreements in their capacity as a farm/forest labor contractor, and 4) violated provisions of those contracts or agreements. ---- *In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 124-25 (2007).*

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries, 229 Or App 504, 213 P3d 590 (2009).*

□ Each time respondents entered into a valid and legal agreement with the Oregon Department of Forestry to supply firefighters who met the minimum training, fitness, and age requirements specified in each agreement, they agreed to comply with the terms and conditions of those agreements. ---- *In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 148 (2007).*

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries, 229 Or App 504, 213 P3d 590 (2009).*

□ Each time respondents applied for a renewal of their farm/forest labor contracting license, they entered into an agreement with BOLI to comply with the provisions of ORS 658.405 to 658.485. ---- *In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 148 (2007).*

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries, 229 Or App 504, 213 P3d 590 (2009).*

□ By engaging at least two underage firefighters and at least four firefighters with insufficient or no training to perform firefighting activities on wildfires, respondents violated their agreement with the Oregon Department of Forestry to provide properly trained firefighters who met the minimum age and training requirements. ---- *In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 148 (2007).*

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries, 229 Or App 504, 213*

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P3d 590 (2009).

□ By employing two firefighters who did not meet the state's minimum age requirement, respondents violated their agreements with both Oregon Department of Forestry and BOLI. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 148 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ By employing at least two minors under 16 years old to engage in firefighting activities, respondents violated their agreements with the Oregon Department of Forestry and BOLI to abide by Oregon child labor laws that prohibit employers from employing minors under 16 years old to engage in a hazardous occupation which under the rules includes firefighting activities. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 139 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ As an employer and pursuant to their agreement with Oregon Department of Forestry and BOLI, respondents were obliged to abide by Oregon child labor laws, including those requiring employment certificates. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 137 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ By employing numerous minors from 2000 through 2004 without first obtaining annual validated employment certificates required under Oregon child labor laws, respondents violated their agreements with Oregon Department of Forestry and BOLI to abide by applicable state laws and rules. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 148-49 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ By failing to give the requisite advance notice to the Oregon Department of Forestry prior to administering pack tests on at least 16 occasions, respondents violated their agreement with Oregon Department of Forestry. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 149 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

4.15 --- Failure to File Information with BOLI (ORS 658.440(1)(e))

4.16 --- Failure to Furnish Workers with Statement of Rights, Failure to Execute Written Agreement (ORS 658.440(1)(f) and (g))

4.17 --- Failure to Furnish Workers with Statement of Earnings (ORS 658.440(1)(h))

4.18 --- Failure to Supply Worker Lodging and Food (ORS 658.440(2)(c))

4.19 --- Make Misrepresentations on License Application (ORS 658.440(3)(a))

□ Misrepresentation is defined as "an assertion made by a license applicant [that] is not in accord with the facts, where the applicant knew or should have known the truth of the matter asserted, and where the assertion is of a substantive fact which is influential in the commissioner's decision to grant or deny a license." ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 150 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ To establish a willful misrepresentation, the agency was not required to prove intent to deceive or mislead. -- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 150 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ To establish that respondents, through its corporate president, made a misrepresentation, the agency was required to prove that the corporate president 1) made an assertion on at least one license renewal application that was not in accord with the facts; 2) respondents knew or should have known the falsity of the assertion; and 3) the assertion was of a substantive fact influential in the commissioner's decision to grant or deny a license. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 150 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Because the corporate respondent's president knew or should have known that his son was an underage and untrained firefighter before and after he signed an oath stating he would comply with applicable Oregon laws and the commissioner's rules, the forum inferred that the corporate president knew the falsity of his assertion on his license application and of each similar assertion made thereafter on subsequent license applications. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 150-51 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Because the corporate respondent, in its capacity as a farm/forest labor contractor, knew it was employing minors under 17 years old and knew or should have known of the requirement to obtain an employment certificate each year that it employed minors, the forum concluded the corporate respondent's president knew, contrary to his representation on the license renewal application, that respondents were not complying with all applicable state laws and the commissioner's rules and presumably knew respondents were not going to comply at anytime thereafter. ---- ***In the Matter of Mountain***

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Forestry, Inc., 29 BOLI 11, 149-50 (2007).

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Respondents' willful misrepresentation on their license renewal application that that they would comply with all laws and rules as a farm/forest labor contractor showed they lacked 1) the moral strength and ethics required to demonstrate good character, 2) the integrity and judgment required to demonstrate trustworthiness and reliability, and 3) the necessary judgment to carry on business as a competent farm/forest labor contractor. --- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 151 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

4.10 --- Make Willful Misrepresentations Concerning Terms or Conditions of Employment (ORS 658.440(3)(b))

□ To establish a willful misrepresentation, the agency was not required to prove intent to deceive or mislead. --- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 150 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Absent any evidence showing how false, fraudulent, or misleading representations made by Respondents related to the "terms, condition or existence of employment" under ORS 658.440(3)(b), the forum concluded the agency failed to prove a violation. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 140 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Despite the agency's failure to establish how respondents violated ORS 658.440(1)(b), the forum found that respondents made false and misleading statements to the Oregon Department of Forestry and BOLI that could be considered as aggravating circumstances when assessing civil penalties or determining respondents' character, competence, or reliability. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 140 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Each time respondents presented a manifest to the Oregon Department of Forestry that they knew contained false social security numbers or pack test scores, or provided a fabricated firefighter file during an inspection, respondents were willfully making a false, fraudulent, or misleading representation that constitutes an aggravating circumstance. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 142 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

4.21 --- Solicit/Induce the Violation of a Contract of Employment (ORS 658.440(3)(c))

4.22 --- Knowingly Employ Illegal Alien (ORS 658.440(3)(d))

4.23 --- Assist an Unlicensed Contractor (ORS 658.440(3)(e))

4.24 --- Force Worker or Subcontractor to Give Up Compensation (ORS 658.440(3)(f))

4.25 --- Induce Worker to Travel for Work Not Available For 30 Days (ORS 658.440(3)(g))

4.26 --- Discriminate Against Employee (ORS 658.452)

5.0 CIVIL PENALTIES

5.1 --- Generally

□ The Commissioner may consider aggravating and mitigating circumstances when determining the amount of civil penalty to impose that may include, but are not limited to, the history of the contractor or other person in taking all measures to prevent or correct violations of statutes and rules, prior violations, if any, of statutes and rules, the magnitude and seriousness of the violation, and whether the contractor or other person knew or should have known of the violation. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 140-41 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Respondents are required to provide the commissioner with any mitigating circumstances. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 140 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

5.2 --- Amount (see also 5.3, 5.4, 5.5)

□ The forum assessed \$43,500 in civil penalties based on respondents' 87 violations of their agreements with the Oregon Department of Forestry, including employing firefighters who did not meet the minimum age or training requirements (68 violations), failing to abide by notification requirements before administering required pack tests (16 violations), and sending 2 firefighters to 3 wildfires without the required pack testing (3 violations). ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 141 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ The forum assessed \$8,000 in civil penalties based on respondents' 6 violations of their agreements with BOLI, including employing minors without first obtaining the required employment certificates (4 violations) and employing minors in a hazardous occupation (2 violations). ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 141 (2007).***

FARM/FOREST LABOR CONTRACTOR (F/FLC)

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ When the agency, whether due to mathematical error or oversight, sought the maximum penalty for four violations, but alleged and proved additional violations, the forum imposed a lesser amount for four violations in order to impose a civil penalty for the additional violations properly alleged and proved. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 141 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

5.3 --- Separate Violations

5.4 --- Aggravating Circumstances

□ Respondents' failure to comply with the terms of their agreements with the Oregon Department of Forestry was aggravated by their knowledge of the violations and their falsification of training documents and task books to cover up training deficiencies and the ages of minor firefighters. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 140 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Each time respondents applied for license renewal, they assured BOLI that they would conduct their business as a farm/forest labor contractor according to all applicable laws and, thus, had a duty to know and comply with those laws. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 143 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Respondents' admission that they regularly hired 16 year old firefighters and that hiring minors was a prevalent practice in the industry, demonstrated they knew or should have known they were obliged to comply with child labor laws, including obtaining an employment certificate each year they hired minors as firefighters, which constitutes an aggravating circumstance. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 143 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Respondents knew or should have known they were violating child labor laws when they knowingly and purposely employed at least two underage firefighters in violation of OAR 839-021-0102(p). ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 143 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Respondents' failure to comply with child labor laws by not obtaining annual employment certificates was serious because it hinders the commissioner's ability to monitor and protect minors in the workplace, particularly a hazardous workplace. ---- ***In the Matter of Mountain***

Forestry, Inc., 29 BOLI 11, 143 (2007).

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ When respondents knowingly breached their agreement with BOLI to comply with all applicable laws, they not only demonstrated a cavalier attitude about the import of the license application's provisions and conditions, but also undermined the commissioner's ability to enforce the child labor laws, which constitutes an aggravating circumstance. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 143 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Despite the agency's failure to establish how respondents violated ORS 658.440(1)(b), the forum found that respondents made false and misleading statements to the Oregon Department of Forestry and BOLI that could be considered as aggravating circumstances when assessing civil penalties or determining respondents' character, competence, or reliability. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 140 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Respondents' multiple misrepresentations to the Oregon Department of Forestry and BOLI by knowingly, intentionally, and voluntarily publishing and circulating false documentation, aggravated the seriousness and increased the magnitude of their multiple violations of ORS 658.140(3)(b). ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 142 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ Each time respondents presented a manifest to the Oregon Department of Forestry that they knew contained false social security numbers or pack test scores, or provided a fabricated firefighter file during an inspection, respondents were willfully making a false, fraudulent, or misleading representation that constitutes an aggravating circumstance. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 142 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v. Bureau of Labor and Industries*, 229 Or App 504, 213 P3d 590 (2009).

□ The agency established an additional aggravating circumstance when it pled and proved that respondents had several prior violations of Oregon farm labor contracting law that resulted in a written consent order, demonstrating their knowledge of their joint obligations as a farm/forest labor contractor, and there was no evidence respondents took any actions to ensure their compliance with the Oregon Department of Forestry agreements or the laws governing their farm/forest labor contracting activities. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 142 (2007).***

Affirmed without opinion, *Mountain Forestry, Inc. v.*

FARM/FOREST LABOR CONTRACTOR (F/FLC)

Bureau of Labor and Industries, 229 Or App 504, 213 P3d 590 (2009).

5.5 --- Mitigating Circumstances

□ The fact that other contractors in the same industry have similar performance problems does not mitigate the failure to comply with contract terms. By bidding on and accepting a contract award, respondents represented that they were able to perform under the contract. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 50 (2007).***

Affirmed without opinion, Mountain Forestry, Inc. v. Bureau of Labor and Industries, 229 Or App 504, 213 P3d 590 (2009).

□ Ignorance of the law, inexperience, and press of business are not mitigating circumstances. ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 140 (2007).***

Affirmed without opinion, Mountain Forestry, Inc. v. Bureau of Labor and Industries, 229 Or App 504, 213 P3d 590 (2009).

5.6 --- Effect of Bankruptcy

6.0 LIABILITY (see also 3.2)

7.0 AFFIRMATIVE DEFENSES

8.0 FINAL ORDER ON INFORMAL DISPOSITION

9.0 ADMINISTRATIVE RULE INTERPRETATION

□ The forum determined that had the agency intended OAR 839-015-0520(3)(c) to mean any agreement or contract, it would have so stated or refrained from using the term "work" which is synonymous with "employment." ---- ***In the Matter of Mountain Forestry, Inc., 29 BOLI 11, 149 (2007).***

Affirmed without opinion, Mountain Forestry, Inc. v. Bureau of Labor and Industries, 229 Or App 504, 213 P3d 590 (2009).

10.0 CONSTITUTIONALITY