

**137-055-4210****Withholder Penalties**

(1) Notwithstanding the provisions of ORS 25.424, the provisions of this rule apply to a party's request to bring an action to recover amounts pursuant to ORS 25.424, when a withholder has failed to properly withhold or pay.

(2) A party's request may be verbal, but prior to commencing legal action, the party must provide the administrator with documentation of the withholder's failure, which must include at least:

(a) A check stub or other pay document showing the amount not properly withheld or not paid, if the act alleged is improper withholding; or

(b) An affidavit or other sworn or affirmed statement describing the action taken by or omission of the withholder.

(3) Upon receipt of the document required by section (2) of this rule, the administrator may initiate legal action to recover amounts not withheld or paid under ORS 25.424, and, if appropriate, penalties.

(4) The administrator acts only as a facilitator to bring the action, and does not represent the party for whom the action is initiated.

(5) Nothing in this rule precludes a party from seeking damages, penalties and attorney fees as provided in ORS 25.424.

Stat. Auth: ORS 180.345

Stats Implemented: ORS 25.424

Effective: January 4, 2010