



OREGON
EMPLOYMENT
DEPARTMENT
WORKSOURCE OREGON

Bill: **SB 1588**
Committee: House Committee on
Business and Labor
Date: February 22, 2012
Name: Rob Edwards
Title: Deputy Director Unemploy
Insurance Division - Tax
Contact: (503) 947-1696

MEASURE: SB 1588
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SUBMITTED BY: Rob Edwards

Subject: Senate Bill 1588:

SB 1588 amends ORS chapter 657 to create an exclusion from Unemployment Insurance (UI) tax for services performed while operating a taxicab or non-emergency medical transport by a person who has an ownership or leasehold interest in the vehicle, if such service is performed for an entity that is operated by a board of owner-operators elected by the members of the entity.

Introduction:

Under ORS chapter 657 all payments to individuals for services are subject to UI tax, unless the service is specifically excluded in the chapter. SB 1588 creates such an exclusion.

Discussion:

SB 1588 defines the exclusion narrowly and applies only to services performed operating a taxicab or non-emergency medical transport by a person who has an ownership or leasehold interest in the vehicle. In addition, the exclusion only applies if these services are performed for an entity that is operated by a board of owner-operators elected by the members of the entity.

Payments for services under the exclusion would not be subject to UI tax and any such payments could not be used in a UI benefit claim.

The bill, as currently drafted, appears to meet U.S. Department of Labor conformity standards. Section 3304(a)(6)(A), of the Federal Unemployment Tax Act (FUTA), which requires that all services performed by employees of state and local governmental entities, certain nonprofit organizations, and federally recognized Indian tribes must be covered by state UI law unless specifically exempted by Federal law. In order to meet Federal conformity standards, any exclusion from state UI tax must not include services performed by employees of state government, political sub-divisions of the state, 501(c)(3) non-profit organizations and Indian tribes. The concept contains this conforming language in section 2(3). Federal conformity is a general standard that all states must meet in order to receive funding for UI benefits and administrative costs.

Apart from general federal conformity, the exclusion would be considered an "impermissible exclusion." That is, an exclusion from state UI coverage that is not found in FUTA. Impermissible exclusions do not affect federal conformity. However, employers utilizing this exclusion would be subject to full FUTA tax on wages covered by the exclusion, unless the wages met another FUTA exclusion, such as federal independent contractor. Such employers would lose the state credit of 5.4% against their FUTA tax. For 2012 the full FUTA tax is 6.0% of the first \$7,000 of wages per individual per year.

Summary:

SB 1588 creates a limited exclusion from UI tax and benefits for certain narrowly defined services.