

A-Engrossed
House Bill 2535

Ordered by the House April 23
Including House Amendments dated April 23

Sponsored by Representative HOLVEY (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Requires workers' compensation premium rates for clients of temporary service provider to be based on client's experience rating. Establishes criteria for workers' compensation coverage provided by temporary service provider. Requires temporary service provider to provide workers' compensation coverage for employees provided to clients. Creates exception.]

[Instructs insurers to provide separate statistical experience of each client of temporary service provider insured by insurer to licensed workers' compensation rating organization.]

Prohibits client of temporary service provider from paying employee provided by temporary service provider directly if employee is being paid by temporary service provider.

Subjects certain client employers to noncomplying employer status. Requires temporary service provider and employer client to execute written agreement that includes certain specified conditions. Requires temporary service provider to inform employee of prohibition and employee to acknowledge in writing having been so informed.

Instructs Director of Department of Consumer and Business Services to report certain information to Department of Revenue and Employment Department.

A BILL FOR AN ACT

1
2 Relating to employees provided by temporary service provider; creating new provisions; and
3 amending ORS 656.850.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS chapter 656.**

6 **SECTION 2. (1) Except as provided in subsection (3)(c) of this section, an employer client**
7 **of a temporary service provider may not pay an employee through the temporary service**
8 **provider and pay the employee directly for work performed in the same pay period.**

9 **(2) An employer client of a temporary service provider that pays an employee through**
10 **the temporary service provider and pays the employee directly for work performed in the**
11 **same pay period is subject to ORS 656.052 and 656.054 and to civil penalties assessed pursuant**
12 **to ORS 656.735.**

13 **(3) A temporary service provider and each employer client of the temporary service**
14 **provider shall execute a written agreement specifying that:**

15 **(a) The temporary service provider is providing an employee to the employer client;**

16 **(b) The temporary service provider will maintain a copy of the records of the hours**
17 **worked by each employee provided by the temporary service provider for the employer client**
18 **for one year;**

19 **(c) The employer client may not pay the employee for any work performed in any pay**
20 **period in which the employee is assigned to the employer client through the temporary ser-**
21 **vice provider unless the employee transitions to employment with the employer client and**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 receives no further pay from the temporary service provider for work performed by the
2 employee while employed by the employer client; and

3 (d) The signing of the agreement by the parties acknowledges that the parties are aware
4 of the provisions of this section.

5 (4) A copy of the agreement required under subsection (3) of this section and of the ac-
6 knowledgment required under subsection (5) of this section must be retained by the tempo-
7 rary service provider and the employer client in accordance with rules adopted by the
8 Director of the Department of Consumer and Business Services.

9 (5) The temporary service provider shall inform the employee at the time of hire of the
10 prohibition described in subsection (3)(c) of this section, and the employee shall acknowledge
11 in writing that the employee has been informed by the temporary service provider.

12 (6) If the Director of the Department of Consumer and Business Services issues a final
13 order declaring the employer client of a temporary service provider to be a noncomplying
14 employer as provided in this section, the director shall notify the Department of Revenue
15 and the Employment Department. The notification shall be given in such manner as the di-
16 rector may prescribe and must include information relevant to any payments made by the
17 employer client directly to the employee of the temporary service provider.

18 **SECTION 3.** ORS 656.850 is amended to read:

19 656.850. (1) As used in this section and ORS 656.018, 656.403, 656.855 and 737.270 **and section**
20 **2 of this 2013 Act:**

21 (a) "Worker leasing company" means a person who provides workers, by contract and for a fee,
22 to work for a client but does not include a person who provides workers to a client on a temporary
23 basis.

24 (b) "Temporary basis" means providing workers to a client for special situations such as to
25 cover employee absences, employee leaves, professional skill shortages, seasonal workloads and
26 special assignments and projects with the expectation that the position or positions will be termi-
27 nated upon completion of the special situation. Workers also are provided on a temporary basis if
28 they are provided as probationary new hires with a reasonable expectation of transitioning to per-
29 manent employment with the client and the client uses a preestablished probationary period in its
30 overall employment selection program.

31 (c) "Temporary service provider" means a person who provides workers, by contract and for a
32 fee, to a client on a temporary basis.

33 (2) No person shall perform services as a worker leasing company in this state without first
34 having obtained a license therefor from the Director of the Department of Consumer and Business
35 Services. No person required by this section to obtain a license shall fail to comply with this section
36 or ORS 656.855, or any rule adopted pursuant thereto.

37 (3) When a worker leasing company provides workers to a client, the worker leasing company
38 shall satisfy the requirements of ORS 656.017 and 656.407 and provide workers' compensation cov-
39 erage for those workers and any subject workers employed by the client unless during the term of
40 the lease arrangement the client has proof of coverage on file with the director that extends cov-
41 erage to subject workers employed by the client and any workers leased by the client. If the client
42 allows the coverage to expire and continues to employ subject workers or has leased workers, the
43 client shall be considered a noncomplying employer unless the worker leasing company has complied
44 with subsection (5) of this section.

45 (4) When a worker leasing company provides workers for a client, the worker leasing company

1 shall assure that the client provides adequate training, supervision and instruction for those workers
2 to meet the requirements of ORS chapter 654.

3 (5) When a worker leasing company provides subject workers to work for a client and also
4 provides workers' compensation coverage for those workers, the worker leasing company shall notify
5 the director in writing. The notification shall be given in such manner as the director may prescribe.
6 A worker leasing company may terminate its obligation to provide workers' compensation coverage
7 for workers provided to a client by giving to the client and the director written notice of the ter-
8 mination. A notice of termination shall state the effective date and hour of the termination, but the
9 termination shall be effective not less than 30 days after the notice is received by the director.
10 Notice to the client under this section shall be given by mail, addressed to the client at the client's
11 last-known address. If the client is a partnership, notice may be given to any of the partners. If the
12 client is a corporation, notice may be given to any agent or officer of the corporation upon whom
13 legal process may be served.

14