

House Bill 2313

Sponsored by Representative REARDON (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 **as introduced**.

Requires employers who are authorized to pay subminimum wages to individuals with disabilities to pay certain wage rates until June 30, 2023. Requires employers to pay individuals with disabilities at minimum wage rate by July 1, 2023.

Lowers percentage of work hours of direct labor required for nonprofit organization to meet definition of "qualified nonprofit agency for individuals with disabilities."

Requires Oregon Department of Administrative Services to promote public agency compliance with requirements and objectives of provisions regarding qualified nonprofit agencies for individuals with disabilities.

Creates income tax credit for certain employers to defray costs of increasing wages paid to employees with disabilities.

Applies to tax years beginning on or after January 1, 2019, and before January 1, 2024, and to wages paid before July 1, 2023.

Makes conforming changes.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to employees with disabilities; creating new provisions; amending ORS 279.835, 279.840,
3 279.845, 314.752 and 318.031; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 653.010 to**
6 **653.261.**

7 **SECTION 2. (1) An employer who is authorized to employ individuals with disabilities at**
8 **subminimum wage pursuant to a special certificate issued under 29 U.S.C. 214(c) or in ac-**
9 **cordance with rules under ORS 653.030 or of the Department of Human Services may not**
10 **employ or agree to employ individuals with disabilities at an hourly rate lower than:**

11 (a) **From July 1, 2020, to June 30, 2021, \$9.25.**

12 (b) **From July 1, 2021, to June 30, 2022, \$10.75.**

13 (c) **From July 1, 2022, to June 30, 2023, \$12.50.**

14 (2) **After June 30, 2023, an employer who is authorized to employ individuals with disa-**
15 **bilities at subminimum wage pursuant to a special certificate issued under 29 U.S.C. 214(c)**
16 **or in accordance with rules under ORS 653.030 or of the Department of Human Services may**
17 **not employ or agree to employ individuals with disabilities at a rate lower than the hourly**
18 **rate required under ORS 653.025.**

19 **SECTION 3. ORS 279.835 is amended to read:**

20 279.835. As used in ORS 279.835 to 279.855:

21 (1) "Department" means the Oregon Department of Administrative Services.

22 (2) "Direct labor" includes *[all work required for preparation, processing and packing]* **all hours**
23 **directly related to the performance of a service or manufacture of a product**, but not super-
24 vision, administration, inspection and shipping.

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 **(3) “Disability” means a physical or mental impairment that substantially limits one or**
 2 **more major life activities.**

3 [(3)] **(4) “Individual with a disability” means an individual who, because of the nature of disa-**
 4 **bilities, [is not able to participate fully in competitive employment, and for whom specialized employ-**
 5 **ment opportunities must be provided] relies upon specialized employment services to find, secure**
 6 **and maintain employment.**

7 [(4)] **(5) “Public agency” or “public contracting agency” means any agency of the State of**
 8 **Oregon or any political subdivision thereof authorized by law to enter into public contracts and any**
 9 **public body created by intergovernmental agreement.**

10 [(5)] **(6) “Qualified nonprofit agency for individuals with disabilities” means a nonprofit [activity**
 11 **center or rehabilitation facility] organization:**

12 (a) Organized under the laws of the United States or of this state and operated [*in the interest*
 13 *of*] **to provide training or employment for** individuals with disabilities **in this state**, and the net
 14 income of which does not inure in whole or in part to the benefit of any shareholder or other indi-
 15 vidual;

16 (b) That complies with any applicable occupational health and safety standard required by the
 17 laws of the United States [*or*] **and** of this state; and

18 (c) That in the manufacture of products and in the provision of services, whether or not the
 19 products or services are procured under ORS 279.835 to 279.855, during the fiscal year employs in-
 20 dividuals with disabilities for not less than [75] **51** percent of the work hours of direct labor required
 21 for the manufacture or provision of the products or services.

22 **SECTION 4.** ORS 279.840 is amended to read:

23 279.840. The purpose of ORS 279.835 to 279.855, 279A.025 (4) and 279C.335 is to further the pol-
 24 icy of this state to encourage and assist individuals with disabilities to achieve maximum personal
 25 independence **within their communities** through [*useful and*] productive gainful employment by
 26 assuring an expanded and constant market for [*sheltered workshop and activity center*] products and
 27 services **produced by qualified nonprofit agencies for individuals with disabilities**, thereby en-
 28 hancing their dignity and capacity for self-support [*and minimizing their dependence on welfare and*
 29 *need for costly institutionalization*].

30 **SECTION 5.** ORS 279.845 is amended to read:

31 279.845. (1) It is the duty of the Oregon Department of Administrative Services to:

32 (a) Determine the price of all products manufactured and services offered for sale to the various
 33 public agencies by any qualified nonprofit agency for individuals with disabilities. The price shall
 34 recover [*for the workshops*] the cost of raw materials, labor, overhead, delivery costs and a margin
 35 held in reserve for inventory and equipment replacement;

36 (b) To revise such prices from time to time in accordance with changing cost factors; [*and*]

37 (c) To make such rules regarding specifications, time of delivery and other relevant matters of
 38 procedure as shall be necessary to carry out the purposes of ORS 279.835 to 279.855, 279A.025 (4)
 39 and 279C.335[.]; **and**

40 **(d) To promote the requirements under ORS 279.835 to 279.855.**

41 (2) The department shall establish and publish a list of sources or potential sources of products
 42 produced by any qualified nonprofit agency for individuals with disabilities and the services provided
 43 by any such agency[, *which*] **that** the department determines are suitable for procurement by public
 44 agencies pursuant to ORS 279.835 to 279.855, 279A.025 (4) and 279C.335. This procurement list and
 45 revisions thereof shall be distributed to all public purchasing officers.

1 (3) The department may not delegate any duty imposed under this section to any person or
 2 public agency outside of the department.

3 **SECTION 6.** Section 7 of this 2019 Act is added to and made a part of ORS chapter 315.

4 **SECTION 7.** (1) A credit against all taxes that are otherwise due under ORS chapter 316,
 5 or if the taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to a taxpayer
 6 who pays wages in accordance with section 2 of this 2019 Act. The amount of the credit in
 7 any one tax year is computed by multiplying the total hours worked per year by employees
 8 of an employer described under section 2 of this 2019 Act by \$2.

9 (2) A taxpayer may qualify for the credit allowed under this section if the taxpayer pays
 10 the taxpayer's employees in accordance with all applicable federal, state and local laws and
 11 section 2 of this 2019 Act.

12 (3) The credit allowed under this section may not exceed the tax liability of the taxpayer
 13 for the tax year.

14 (4) Any tax credit otherwise allowable under this section that is not used by the taxpayer
 15 in a particular tax year may be carried forward and offset against the taxpayer's tax liability
 16 for the next succeeding tax year. Any credit remaining unused in the next succeeding tax
 17 year may be carried forward and used in the second succeeding tax year, and likewise any
 18 credit not used in that second succeeding tax year may be carried forward and used in the
 19 third succeeding tax year but may not be carried forward for any tax year thereafter.

20 (5) A nonresident taxpayer shall be allowed the credit under this section. The credit shall
 21 be computed in the same manner and be subject to the same limitations as the credit
 22 granted to a resident taxpayer.

23 (6) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,
 24 or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit
 25 allowed by this section shall be prorated or computed in a manner consistent with ORS
 26 314.085.

27 (7) If a change in the status of a taxpayer from resident to nonresident or from nonres-
 28 ident to resident occurs, the credit allowed by this section shall be determined in a manner
 29 consistent with ORS 316.117.

30 **SECTION 8.** ORS 314.752, as amended by section 7, chapter 108, Oregon Laws 2018, is amended
 31 to read:

32 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
 33 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
 34 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
 35 allowable to the shareholders of the S corporation.

36 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on
 37 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
 38 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
 39 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
 40 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
 41 manner prescribed under section 1377(a) of the Internal Revenue Code.

42 (3) The character of any item included in a shareholder's pro rata share under subsection (2)
 43 of this section shall be determined as if such item were realized directly from the source from which
 44 realized by the corporation, or incurred in the same manner as incurred by the corporation.

45 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax

1 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
 2 316.117, then that provision shall apply to the nonresident shareholder.

3 (5) As used in this section, “business tax credit” means the following credits: ORS 315.104
 4 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
 5 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture
 6 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS
 7 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee
 8 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution
 9 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy
 10 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-
 11 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-
 12 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),
 13 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS
 14 315.521 (university venture development funds), ORS 315.523 (employee training programs), ORS
 15 315.533 (low income community jobs initiative), ORS 315.675 (Trust for Cultural Development Ac-
 16 count contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise
 17 zone facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified re-
 18 search expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter
 19 774, Oregon Laws 2013 (alternative fuel vehicle contributions), and section 2, chapter 108, Oregon
 20 Laws 2018 (Opportunity Grant Fund contributions), **and section 7 of this 2019 Act (elimination**
 21 **of subminimum wage for employees with disabilities).**

22 **SECTION 9.** ORS 318.031, as amended by section 8, chapter 108, Oregon Laws 2018, is amended
 23 to read:

24 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
 25 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
 26 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
 27 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,
 28 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523 and 315.533 and section
 29 2, chapter 108, Oregon Laws 2018, (all only to the extent applicable to a corporation) **and section**
 30 **7 of this 2019 Act** and ORS chapter 317.

31 **SECTION 10.** **Section 7 of this 2019 Act and the amendments to ORS 314.752 and 318.031**
 32 **by section 8 and 9 of this 2019 Act apply to tax years beginning on or after January 1, 2019,**
 33 **and before January 1, 2024, and to wages paid before July 1, 2023.**

34 **SECTION 11.** **This 2019 Act takes effect on the 91st day after the date on which the 2019**
 35 **regular session of the Eightieth Legislative Assembly adjourns sine die.**