

HB 2818 A -A3, -A4 STAFF MEASURE SUMMARY

Senate Committee On Labor and Business

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Meeting Dates: 4/15, 4/29

WHAT THE MEASURE DOES:

Directs Commissioner of the Bureau of Labor and Industries to access the Wage Security Fund to pay up to \$10,000 of wages owed to a claimant when the Commissioner obtains a judgment or issues a final order.

House vote: Ayes, 54: Excused, 5--Evans, Leif, Rayfield, Reardon, Zika

Minimal fiscal impact; minimal revenue impact

ISSUES DISCUSSED:

- Intent to repair "gap" in wage claim process
- History and performance of the Wage Security Fund

EFFECT OF AMENDMENT:

-A3 Clarifies for purposes of wage laws that "work time" does not include meal periods. Establishes that employer who violates meal period requirements established by Labor Commissioner is liable to employee for amount determined by the Commissioner in rule. Declares that amount owed to employee is a penalty and is not considered wages or compensation. Establishes that meal period shortened by five minutes or less does not constitute a violation of the minimum meal period requirements if the employer provided and encouraged an uninterrupted minimum meal period and the meal period was not shortened at the direction of the employer. Declares emergency, effective on passage.

-A4 Clarifies that monetary or nonmonetary incentives provided by employers to employees who have been immunized against infectious diseases during a public health emergency are not "compensation" for the purposes of Oregon's pay equity laws. Applies to complaints filed with the Bureau of Labor and Industries on or after April 29, 2021. Becomes operative January 1, 2021. Declares emergency, effective on passage.

BACKGROUND:

The Oregon Legislative Assembly established the Wage Security Fund in 1985 to protect workers when their employer closes the business and does not have resources to pay wages owed to workers. Employees of a company that closes, and the employer does not have sufficient funds to pay their final wages, are eligible to file a wage claim with the Bureau of Labor and Industries. Workers can qualify for payments of the amount they earned during the 60 days preceding the closure date of the company or the amount of unpaid wages earned within 60 days of the last day of employment. A maximum of \$10,000 may be paid to an individual worker. Money in the Wage Security Fund comes from a diversion of 0.03 of one percent of the state's unemployment insurance taxes that occurs in one calendar quarter each biennium.

House Bill 2818-A directs the Commissioner to access the Wage Security Fund to pay up to \$10,000 of the wages due to a claimant when the Commissioner obtains a judgment or issues a final order.

Oregon law requires employers to provide an hourly worker with a continuous 30 minute meal period for each shift of at least 6 hours. OAR 839-020-0050(2). If the employee is not relieved of all duties for the continuous 30 minutes, the employer must pay the employee for the entire meal period. In a 2019 decision regarding a class-action wage claim, the Oregon Court of Appeals found that the 30-minute meal period is mandatory and, if not taken, the employer must pay the employee's wages for the full meal period. *Maza v. Waterford Operations*,

This summary has not been adopted or officially endorsed by action of the committee.

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300 Or.App. 471 (2019). The -A3 amendments to House Bill 2818 make employers who violate meal time provisions liable to the harmed employee for a penalty determined by the commissioner by rule and state this liability is not compensation for the purposes of Oregon's wage laws. The amendments also allow for meal periods to be shortened by up to five minutes without a violation as long as the employer provided and encouraged an uninterrupted meal period and the meal period was not shortened at the direction of the employer.

Oregon's pay equity law makes it an unlawful employment practice for an employer to pay wages or other compensation to any employee at a rate greater than other employees of a protected class for work of a comparable character. Employers may not reduce compensation to comply, and are liable for unpaid wages if they violate the pay equity law. The -A4 amendments to House Bill 2818 clarify that incentives provided by employers to employees who have been immunized against infectious diseases during a public health emergency are not compensation for the purposes of Oregon's pay equity laws.