

# House Bill 3409

Sponsored by Representatives PRUSAK, NOSSE, VALDERRAMA; Representatives ALONSO LEON, CAMPOS, DEXTER, GRAYBER, HOLVEY, HUDSON, KROPP, NATHANSON, NERON, POWER, RAYFIELD, REYNOLDS, RUIZ, SALINAS, SCHOUTEN, WILLIAMS, ZIKA, Senators KNOPP, PATTERSON, TAYLOR

## 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 Department of Consumer and Business Services to develop and implement programs to make one-time payments directly to certain workers as incentive payments to return to work or as worker retention payments for workers who were frontline essential workers during first year of COVID-19 pandemic.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to payments for workers affected by COVID-19; and declaring an emergency.

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

### **SECTION 1. As used in sections 1 to 3 of this 2021 Act:**

4  
5 (1) **“Covered employer” means an employer that employs one or more workers in Oregon**  
6 **to perform services in any of the following categories of public or private endeavor:**

7 (a) **Health care and public health;**

8 (b) **Law enforcement, public safety and other first responders;**

9 (c) **Education;**

10 (d) **Food and agriculture;**

11 (e) **Energy;**

12 (f) **Water and wastewater;**

13 (g) **Transportation and logistics;**

14 (h) **Public works and infrastructure support services;**

15 (i) **Communications and information technology;**

16 (j) **Other community-based or government-based operations and essential functions;**

17 (k) **Hazardous materials;**

18 (l) **Financial services;**

19 (m) **Chemical;**

20 (n) **Defense industrial base;**

21 (o) **Commercial facilities;**

22 (p) **Residential and shelter facilities, housing and real estate, and related services; and**

23 (q) **Hygiene products and services.**

24 (2) **“Eligible period” means the period beginning on March 8, 2020, and ending on March**  
25 **8, 2021.**

26 (3) **“Eligible worker” means a worker who, during the eligible period:**

27 (a) **Was employed by a covered employer to perform services that required:**

28 (A) **Regular physical contact with an individual, other than a member of the worker’s**

**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 household, within a distance of less than six feet; or

2 (B) Cleaning or sanitation of premises that are open to the public or used by individuals  
3 who are known to have tested positive for, or suspected to be infected with, COVID-19;

4 (b) Was required to perform the services described in paragraph (a) of this subsection in  
5 person and not remotely or in a setting or location that reduced the risk of exposure to  
6 COVID-19; and

7 (c) Earned a base pay rate that was equal to or less than 150 percent of the state average  
8 wage for the year 2019.

9 (4) "Employ" means to engage, suffer or permit an individual to provide services for the  
10 benefit of the employer.

11 (5) "Employer" means any person that employs a worker.

12 **SECTION 2.** (1) The Department of Consumer and Business Services shall develop and  
13 implement a program under which the department shall make return-to-work incentive  
14 payments, in accordance with this section, to workers newly hired by covered employers.

15 (2)(a) The department shall prescribe by rule the forms and processes by which covered  
16 employers may apply for payments on behalf of workers under this section.

17 (b) The application period shall remain open until all available moneys have been paid to  
18 covered employers.

19 (c) Applications shall be made available in the five languages most commonly spoken in  
20 Oregon.

21 (d) A worker is eligible to receive a return-to-work incentive payment if the worker:

22 (A) As of June 30, 2021, was unemployed within the meaning of ORS 657.100;

23 (B) For at least one week between March 8, 2020, and the effective date of this 2021 Act,  
24 received unemployment insurance benefits under state or federal law;

25 (C) Successfully completes at least four consecutive weeks of continuous employment for  
26 a covered employer beginning on or after the effective date of this 2021 Act and before Oc-  
27 tober 15, 2021; and

28 (D) Has not received a payment under the program.

29 (e) A worker's immigration status may not be considered when determining eligibility  
30 under the program.

31 (f) Applications shall be submitted under penalties for false swearing under ORS 162.075.

32 (g) Applications shall be approved on a first-come, first-served basis.

33 (h) Information included in applications submitted under this section is confidential and  
34 exempt from disclosure under ORS 192.311 to 192.478.

35 (i) The department shall promote awareness of the return-to-work incentive payment  
36 program among covered employers.

37 (3) As soon as practicable after receipt of a complete application under this section, the  
38 department shall:

39 (a) Determine whether the workers included in the application are eligible for payments  
40 under subsection (2) of this section;

41 (b) Approve or reject the application, with respect to each worker included in the appli-  
42 cation, on the basis of whether the worker is eligible for payments under subsection (2) of  
43 this section; and

44 (c) Notify the applicant and the workers included in the application of the department's  
45 decision.

1 (4) Within 30 days following approval of each worker included in an application under  
 2 subsection (3) of this section, the department shall make a return-to-work incentive payment  
 3 directly to each worker in a one-time lump sum payment of \$1,200.

4 (5) To the extent permissible under federal law, any return-to-work incentive payments  
 5 made to a worker under this section shall not affect the worker's eligibility for public as-  
 6 sistance, supplemental nutrition assistance, medical assistance or any other public assist-  
 7 ance program.

8 (6) A covered employer may not:

9 (a) Require a worker who receives a return-to-work incentive payment under this section  
 10 to pay an administrative fee or any other charge with respect to the payment; or

11 (b) As a result of a return-to-work incentive payment made to a worker, reduce, or  
 12 otherwise recoup any amount from, any compensation paid or owed to the worker.

13 **SECTION 3.** (1)(a) The Department of Consumer and Business Services shall develop and  
 14 implement a program under which the department shall make worker retention payments,  
 15 in accordance with this section, to certain eligible workers employed by covered employers.

16 (b) The moneys appropriated for purposes of this section under section 5 (2)(b) of this  
 17 2021 Act shall be reserved in equal proportion for worker retention payments made for ap-  
 18 plications submitted by covered employers and for worker retention payments made for ap-  
 19 plications submitted by eligible workers.

20 (2)(a) The department shall prescribe by rule the forms and processes by which eligible  
 21 workers, and covered employers acting on behalf of eligible workers, may apply for payments  
 22 under this section.

23 (b)(A) The application period for covered employers shall be eight consecutive weeks.

24 (B) On the date that immediately follows the date on which the application period for  
 25 covered employers closes, the application period for eligible workers shall open and shall be  
 26 10 consecutive weeks.

27 (c) Applications shall be made available in the five languages most commonly spoken in  
 28 Oregon.

29 (d) An eligible worker is eligible to receive a worker retention payment if:

30 (A) During the eligible period, the eligible worker performed services for at least 520  
 31 hours, including any hours for which the worker elected to take paid leave pursuant to the  
 32 provisions of the Families First Coronavirus Response Act (P.L. 116-127) because the worker  
 33 experienced symptoms of COVID-19 or was quarantined; and

34 (B) The eligible worker has not received a payment under the program.

35 (e) An eligible worker's immigration status may not be considered when determining el-  
 36 igibility under the program.

37 (f) Applications shall be submitted under penalties for false swearing under ORS 162.075.

38 (g) When evaluating applications, the department shall give priority to eligible workers  
 39 described in subsection (3)(e)(A) of this section, with additional preference, as the depart-  
 40 ment considers appropriate, for any of the following:

41 (A) A higher risk of exposure to COVID-19 based on the industry, as defined by the Oc-  
 42 cupational Safety and Health Administration, in which the eligible worker included in an  
 43 application performed services;

44 (B) A lower average hourly wage paid by the covered employer to the eligible worker; and

45 (C) The proximity of the eligible worker's work site to a higher prevalence of COVID-19

1 during the eligible period.

2 (h) Information included in applications submitted under this section is confidential and  
 3 exempt from disclosure under ORS 192.311 to 192.478.

4 (i) The department shall promote awareness of the worker retention payment program  
 5 among covered employers and eligible workers.

6 (3) As soon as practicable after the close of each of the application periods established  
 7 under subsection (2)(b) of this section, the department shall:

8 (a) Consider all timely and complete applications;

9 (b) Determine whether the eligible workers included in an application are eligible for  
 10 payments under subsection (2) of this section;

11 (c) Approve or reject the application, with respect to each eligible worker included in the  
 12 application, on the basis of whether the eligible worker is eligible for payments under sub-  
 13 section (2) of this section; and

14 (d) Notify the applicant and the eligible workers included in the application of the  
 15 department's decision.

16 (4) Within 30 days following approval of an eligible worker included in an application un-  
 17 der subsection (3) of this section, the department shall make a worker retention payment  
 18 directly to the eligible worker as follows:

19 (a) \$2,000 to each eligible worker whose base pay rate was equal to or less than the state  
 20 average wage for the year 2019.

21 (b) \$1,000 to each eligible worker whose base pay rate was greater than the state average  
 22 wage for the year 2019 but less than 150 percent of the state average wage for the year 2019.

23 (5) Notwithstanding subsection (1)(b) of this section, any moneys that remain unexpended  
 24 and unobligated after both application periods have closed and all worker retention payments  
 25 have been made shall be used to make worker retention payments, in accordance with this  
 26 section, for applications submitted by covered employers or eligible workers, depending on  
 27 which group's applications resulted in a greater number of worker retention payments.

28 (6) To the extent permissible under federal law, any worker retention payments made to  
 29 an eligible worker under this section shall not affect the eligible worker's eligibility for public  
 30 assistance, supplemental nutrition assistance, medical assistance or any other public assist-  
 31 ance program.

32 (7)(a) An eligible worker who submits an application under this section without knowl-  
 33 edge that a covered employer has submitted an application on the eligible worker's behalf is  
 34 not liable for any penalty other than repayment without interest of any amount of worker  
 35 retention payment that the eligible worker receives in excess of the maximum allowed under  
 36 subsection (4) of this section.

37 (b) An eligible worker who submits an application under this section knowing that a  
 38 covered employer has submitted an application on the eligible worker's behalf is liable for  
 39 repayment, with interest, of any amount of worker retention payment that the eligible  
 40 worker receives in excess of the applicable maximum allowed under subsection (4) of this  
 41 section. In addition, the department may impose a monetary penalty, not in excess of 10  
 42 percent of the applicable maximum allowed under subsection (4) of this section, that the  
 43 department considers appropriate in the circumstances.

44 (8) A covered employer may not:

45 (a) Require an eligible worker who receives a worker retention payment under this sec-

1 tion to pay an administrative fee or any other charge with respect to the payment; or

2 (b) As a result of a worker retention payment made to an eligible worker, reduce, or  
3 otherwise recoup any amount from, any compensation paid or owed to the eligible worker.

4 **SECTION 4.** On or before January 15, 2023, the Department of Consumer and Business  
5 Services shall submit a report, in the manner provided in ORS 192.245, to the interim com-  
6 mittees of the Legislative Assembly related to employment, concerning the implementation  
7 of sections 1 to 3 of this 2021 Act, that contains:

8 (1) A description of the processes adopted by the department to implement the programs  
9 developed under sections 1 to 3 of this 2021 Act;

10 (2) The means by which the department promoted the programs and the results of the  
11 promotion; and

12 (3) An analysis of the utilization and performance of the programs.

13 **SECTION 5.** There is appropriated to the Department of Consumer and Business Ser-  
14 vices, for the biennium beginning July 1, 2021, from one-time funds the State of Oregon re-  
15 ceives under the American Rescue Plan Act of 2021 (P.L. 117-2), the amount of \$450,000,000,  
16 to be used as follows:

17 (1) To reimburse the department for the actual costs incurred by the department in de-  
18 veloping and implementing the payment programs pursuant to sections 1 to 3 of this 2021  
19 Act; and

20 (2) After payment of the costs described in subsection (1) of this section, of the remain-  
21 ing balance:

22 (a) One-third to make payments to workers under section 2 of this 2021 Act; and

23 (b) Two-thirds to make payments to eligible workers under section 3 of this 2021 Act.

24 **SECTION 6.** Sections 1 to 3 of this 2021 Act are repealed on January 2, 2023.

25 **SECTION 7.** This 2021 Act being necessary for the immediate preservation of the public  
26 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect  
27 on its passage.