House Bill 3409

Sponsored by Representatives PRUSAK, NOSSE, VALDERRAMA; Representatives ALONSO LEON, CAMPOS, DEXTER, GRAYBER, HOLVEY, HUDSON, KROPF, 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
Relating to payments for workers affected by COVID-19; and declaring an emergency.

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

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

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

(a) Health care and public health;
(b) Law enforcement, public safety and other first responders;
(c) Education;
(d) Food and agriculture;
(e) Energy;
(f) Water and wastewater;
(g) Transportation and logistics;
(h) Public works and infrastructure support services;
(i) Communications and information technology;
(j) Other community-based or government-based operations and essential functions;
(k) Hazardous materials;
(L) Financial services;
(m) Chemical;
(n) Defense industrial base;
(o) Commercial facilities;
(p) Residential and shelter facilities, housing and real estate, and related services; and
(q) Hygiene products and services.

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

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

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

(A) Regular physical contact with an individual, other than a member of the worker's...
household, within a distance of less than six feet; or

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

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

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

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

(5) “Employer” means any person that employs a worker.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Notify the applicant and the workers included in the application of the department’s decision.
Within 30 days following approval of each worker included in an application under subsection (3) of this section, the department shall make a return-to-work incentive payment directly to each worker in a one-time lump sum payment of $1,200.

To the extent permissible under federal law, any return-to-work incentive payments made to a worker under this section shall not affect the worker's eligibility for public assistance, supplemental nutrition assistance, medical assistance or any other public assistance program.

A covered employer may not:

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

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

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

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

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

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

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

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

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

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

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

(e) An eligible worker’s immigration status may not be considered when determining eligibility under the program.

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

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

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

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

(C) The proximity of the eligible worker’s work site to a higher prevalence of COVID-19
during the eligible period.

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

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

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

(a) Consider all timely and complete applications;

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

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

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

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

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

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

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

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

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

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

(8) A covered employer may not:

(a) Require an eligible worker who receives a worker retention payment under this sec-
tion to pay an administrative fee or any other charge with respect to the payment; or
(b) As a result of a worker retention payment made to an eligible worker, reduce, or
otherwise recoup any amount from, any compensation paid or owed to the eligible worker.

SECTION 4. On or before January 15, 2023, the Department of Consumer and Business
Services shall submit a report, in the manner provided in ORS 192.245, to the interim com-
mittees of the Legislative Assembly related to employment, concerning the implementation
of sections 1 to 3 of this 2021 Act, that contains:
(1) A description of the processes adopted by the department to implement the programs
developed under sections 1 to 3 of this 2021 Act;
(2) The means by which the department promoted the programs and the results of the
promotion; and
(3) An analysis of the utilization and performance of the programs.

SECTION 5. There is appropriated to the Department of Consumer and Business Ser-
vices, for the biennium beginning July 1, 2021, from one-time funds the State of Oregon re-
ceives under the American Rescue Plan Act of 2021 (P.L. 117-2), the amount of $450,000,000,
to be used as follows:
(1) To reimburse the department for the actual costs incurred by the department in de-
veloping and implementing the payment programs pursuant to sections 1 to 3 of this 2021
Act; and
(2) After payment of the costs described in subsection (1) of this section, of the remain-
ing balance:
(a) One-third to make payments to workers under section 2 of this 2021 Act; and
(b) Two-thirds to make payments to eligible workers under section 3 of this 2021 Act.

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

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