

HB 2556 A -A8 STAFF MEASURE SUMMARY

Senate Committee On Labor and Business

Prepared By: Whitney Perez, LPRO Analyst

Meeting Dates: 5/4

WHAT THE MEASURE DOES:

Permits employer to make deductions from employee's wages for erroneous overpayment of wages when certain conditions are met, provided employee is not subject to collective bargaining agreement: employee voluntarily signs agreement authorizing deductions; deductions are made within six months from date when employee signed agreement; employer waives claims to recover overpayments in which six months have passed since date employee signed agreement; employee has 14 days to consider agreement authorizing deductions; and, employer provides employee a written statement itemizing overpayment amount, purpose of each deduction, and written statement that in no event may total amount of deduction be more than ten percent of gross pay each pay period. State of Oregon is subject to requirements of measure. Statute of limitation for action alleging violations for erroneous overpayment requirements is tolled until employer provides employee required itemized payroll statement. Act applies to collective bargaining agreements entered into, renewed, or extended on or after effective date of this Act.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-A8 Modifies requirement that employer waives claims to recover overpayments by excluding overpayments resulting from fraud or willful misrepresentation by the employee.

BACKGROUND:

ORS 652.610 does not specifically address whether deductions from paychecks to recover overpayments of wages is permitted. A 1997 federal court ruling, *Duncan v. Office Depot*, 973 F. Supp. 1171 (D. Or. 1997), determined that an employer making deductions from paychecks for the purpose of recovering overpayments of wages did constitute an unlawful deduction. Based on this court ruling, the Bureau of Labor and Industries (BOLI) recognizes that such a deduction would be unlawful. However, if a collective bargaining agreement (CBA) allows for deductions from paychecks for an overpayment of wages, then it would not be considered an unlawful deduction.

Although a deduction from a paycheck for overpayment of wages is considered unlawful, an employer would still be able to pursue reimbursement of the overpayment through private action. Currently, statute does not limit the time period for how long an employer has to identify the overpayment and pursue reimbursement.

House Bill 2556 A allows an employer to make deductions from an employee's wages for erroneous overpayment of wages when certain conditions are met, provided an employee is not subject to a collective bargaining agreement. The conditions include an employee voluntarily signing an agreement authorizing the deductions; deductions must be made within six months from the date when employee signed the agreement; employer waives claims to recover any overpayments in which six months have passed since date employee signed the agreement; employee has 14 days to consider agreement authorizing deductions; and employer provides employee a written statement itemizing the overpayment amount, purpose of each deduction, and written statement that in no event may total deduction be more than ten percent of gross pay each pay period.