

HB 4005-2
(LC 232)
2/2/24 (ASD/JAS/ps)

Requested by HOUSE COMMITTEE ON BUSINESS AND LABOR (at the request of Representative Paul Holvey)

**PROPOSED AMENDMENTS TO
HOUSE BILL 4005**

1 On page 1 of the printed bill, line 3, delete “657.020, 657B.010 and
2 657B.175” and insert “656.018 and 656.850”.

3 Delete lines 5 through 27 and delete pages 2 through 5 and insert:

4 **“SECTION 1. Sections 2 and 3 of this 2024 Act are added to and
5 made a part of ORS chapter 656.**

6 **“SECTION 2. (1) As used in this section and section 3 of this 2024
7 Act:**

8 **“(a) ‘Client employer’ means a subject employer that contracts to
9 pay a fee for specified administrative services provided by a profes-
10 sional employer organization, including, but not limited to, workers’
11 compensation coverage.**

12 **“(b)(A) ‘Professional employer organization’ means a person that
13 enters into a contract with a subject employer to provide specified
14 administrative services on behalf of the subject employer, including,
15 but not limited to, workers’ compensation coverage.**

16 **“(B) ‘Professional employer organization’ does not mean a worker
17 leasing company.**

18 **“(2) A professional employer organization may not provide workers’
19 compensation coverage in this state without first obtaining a license
20 from the Director of the Department of Consumer and Business Ser-
21 vices. A professional employer organization providing workers’ com-**

1 pensation coverage shall comply with section 3 of this 2024 Act and
2 rules adopted pursuant to this section and section 3 of this 2024 Act.

3 “(3)(a) A professional employer organization that contracts to pro-
4 vide workers’ compensation coverage for a client employer must sat-
5 isfy the requirements of ORS 656.017 and 656.407 on the client
6 employer’s behalf.

7 “(b) Paragraph (a) of this subsection does not apply if the client
8 employer has proof of coverage on file with the director during the
9 term of the professional employer organization’s contract with the
10 client employer.

11 “(c) If the client employer allows the coverage to expire and con-
12 tinues to employ subject workers, the client employer shall be con-
13 sidered a noncomplying employer unless the professional employer
14 organization has complied with subsection (4) of this section.

15 “(4) When a professional employer organization contracts with a
16 client employer to provide workers’ compensation coverage, the pro-
17 fessional employer organization shall notify the director in writing in
18 such manner and at such time as the director may prescribe.

19 “(5) A contract to provide workers’ compensation coverage to a
20 client employer must provide that the professional employer organ-
21 ization shall continue to provide the coverage, without qualification
22 or condition, until the earliest of the date on which:

23 “(a) The professional employer organization terminates the contract
24 in accordance with subsection (6) of this section;

25 “(b) The contract expires;

26 “(c) The client employer terminates the contract;

27 “(d) The client employer obtains other coverage from an insurer;

28 “(e) The client employer has workers’ compensation coverage pro-
29 vided for it by another professional employer organization or a worker
30 leasing company; or

1 “(f) The client employer becomes a self-insured employer.

2 “(6)(a) A professional employer organization may terminate its
3 contractual obligation to provide workers’ compensation coverage by
4 giving to the client employer and the director written notice of the
5 termination.

6 “(b) A notice of termination shall state the effective date and hour
7 of the termination, which may not be less than 30 days following the
8 date on which the notice is received by the director.

9 “(c) The notice to the client employer required under this sub-
10 section shall be given by mail, addressed to the client employer at the
11 client employer’s last-known address. If the client employer is a part-
12 nership, notice may be given to any of the partners. If the client em-
13 ployer is a corporation, notice may be given to any agent or officer
14 of the corporation upon whom legal process may be served.

15 “(7) When a professional employer organization contracts to provide
16 workers’ compensation coverage to a client employer, the professional
17 employer organization must ensure that the client employer provides
18 adequate training, supervision and instruction for the client
19 employer’s workers to meet the requirements of ORS chapter 654.

20 “(8) An entity that is a professional employer organization is not
21 subject to ORS 656.850 except to the extent that the entity meets the
22 definition of ‘worker leasing company’ under ORS 656.850 (1)(a)(A).

23 “SECTION 3. (1) In accordance with any applicable provision of ORS
24 chapter 183, the Director of the Department of Consumer and Business
25 Services shall establish by rule a licensing system for professional
26 employer organizations. Such system shall include, but not be limited
27 to:

28 “(a) Prescribing the form and content of and the times and proce-
29 dures for submitting applications for license issuance or renewal.

30 “(b) Prescribing the term of the license and the fee for original is-

1 suance and renewal of the license. The fees shall be set in an amount
2 necessary to support the administration of this section and section 2
3 of this 2024 Act.

4 “(c) Prescribing those violations of this section or section 2 of this
5 2024 Act for which the director may refuse to issue or renew or may
6 suspend or revoke a license.

7 “(d) Prescribing the form and contents of records a licensee is re-
8 quired to maintain and specifying the times, places and manner of
9 audit by the director of those records.

10 “(2) All moneys received by the director pursuant to this section
11 shall be credited to the Consumer and Business Services Fund and are
12 appropriated continuously to the director to carry out the provisions
13 of this section and section 2 of this 2024 Act.

14 “**SECTION 4.** ORS 656.850 is amended to read:

15 “656.850. (1) As used in this section and ORS 656.018, 656.403, 656.855 and
16 737.270:

17 “(a)(A) ‘Worker leasing company’ means a person who provides workers,
18 by contract and for a fee, to work for a client but does not include a person
19 who provides workers to a client on a temporary basis.

20 “(B) ‘Worker leasing company’ does not mean a professional em-
21 ployer organization as defined in section 2 of this 2024 Act.

22 “(b) ‘Temporary basis’ means providing workers to a client for special
23 situations such as to cover employee absences, employee leaves, professional
24 skill shortages, seasonal workloads and special assignments and projects
25 with the expectation that the position or positions will be terminated upon
26 completion of the special situation. Workers also are provided on a tempo-
27 rary basis if they are provided as probationary new hires with a reasonable
28 expectation of transitioning to permanent employment with the client and
29 the client uses a preestablished probationary period in its overall employ-
30 ment selection program.

1 “(c) ‘Temporary service provider’ means a person who provides workers,
2 by contract and for a fee, to a client on a temporary basis.

3 “(2) No person shall perform services as a worker leasing company in this
4 state without first having obtained a license therefor from the Director of
5 the Department of Consumer and Business Services. No person required by
6 this section to obtain a license shall fail to comply with this section or ORS
7 656.855, or any rule adopted pursuant thereto.

8 “(3) When a worker leasing company provides workers to a client, the
9 worker leasing company shall satisfy the requirements of ORS 656.017 and
10 656.407 and provide workers’ compensation coverage for those workers and
11 any subject workers employed by the client unless during the term of the
12 lease arrangement the client has proof of coverage on file with the director
13 that extends coverage to subject workers employed by the client and any
14 workers leased by the client. If the client allows the coverage to expire and
15 continues to employ subject workers or has leased workers, the client shall
16 be considered a noncomplying employer unless the worker leasing company
17 has complied with subsection (5) of this section.

18 “(4) When a worker leasing company provides workers for a client, the
19 worker leasing company shall assure that the client provides adequate
20 training, supervision and instruction for those workers to meet the require-
21 ments of ORS chapter 654.

22 “(5) When a worker leasing company provides subject workers to work for
23 a client and also provides workers’ compensation coverage for those workers,
24 the worker leasing company shall notify the director in writing. The notifi-
25 cation shall be given in such manner as the director may prescribe. A worker
26 leasing company may terminate its obligation to provide workers’ compen-
27 sation coverage for workers provided to a client by giving to the client and
28 the director written notice of the termination. A notice of termination shall
29 state the effective date and hour of the termination, but the termination
30 shall be effective not less than 30 days after the notice is received by the

1 director. Notice to the client under this section shall be given by mail, ad-
2 dressed to the client at the client's last-known address. If the client is a
3 partnership, notice may be given to any of the partners. If the client is a
4 corporation, notice may be given to any agent or officer of the corporation
5 upon whom legal process may be served.

6 **SECTION 5.** ORS 656.018 is amended to read:

7 "656.018. (1)(a) The liability of every employer who satisfies the duty re-
8 quired by ORS 656.017 (1) is exclusive and in place of all other liability
9 arising out of injuries, diseases, symptom complexes or similar conditions
10 arising out of and in the course of employment that are sustained by subject
11 workers, the workers' beneficiaries and anyone otherwise entitled to recover
12 damages from the employer on account of such conditions or claims resulting
13 therefrom, specifically including claims for contribution or indemnity as-
14 serted by third persons from whom damages are sought on account of such
15 conditions, except as specifically provided otherwise in this chapter.

16 "(b) This subsection shall not apply to claims for indemnity or contribu-
17 tion asserted by a railroad, as defined in ORS 824.020, or by a corporation,
18 individual or association of individuals which is subject to regulation pur-
19 suant to ORS chapter 757 or 759.

20 "(c) Except as provided in paragraph (b) of this subsection, all agreements
21 or warranties contrary to the provisions of paragraph (a) of this subsection
22 entered into after July 19, 1977, are void.

23 "(2) The rights given to a subject worker and the beneficiaries of the
24 subject worker under this chapter for injuries, diseases, symptom complexes
25 or similar conditions arising out of and in the course of employment are in
26 lieu of any remedies they might otherwise have for such injuries, diseases,
27 symptom complexes or similar conditions against the worker's employer un-
28 der ORS 654.305 to 654.336 or other laws, common law or statute, except to
29 the extent the worker is expressly given the right under this chapter to bring
30 suit against the employer of the worker for an injury, disease, symptom

1 complex or similar condition.

2 “(3) The exemption from liability given an employer under this section is
3 also extended to the employer’s insurer, the self-insured employer’s claims
4 administrator, the Department of Consumer and Business Services, and to
5 the contracted agents, employees, partners, limited liability company mem-
6 bers, general partners, limited liability partners, limited partners, officers
7 and directors of the employer, the employer’s insurer, the self-insured
8 employer’s claims administrator and the department, except that the ex-
9 emption from liability shall not apply:

10 “(a) If the willful and unprovoked aggression by a person otherwise ex-
11 empt under this subsection is a substantial factor in causing the injury,
12 disease, symptom complex or similar condition;

13 “(b) If the worker and the person otherwise exempt under this subsection
14 are not engaged in the furtherance of a common enterprise or the accom-
15 plishment of the same or related objectives;

16 “(c) If the failure of the employer to comply with a notice posted pursuant
17 to ORS 654.082 is a substantial factor in causing the injury, disease, symptom
18 complex or similar condition; or

19 “(d) If the negligence of a person otherwise exempt under this subsection
20 is a substantial factor in causing the injury, disease, symptom complex or
21 similar condition and the negligence occurs outside of the capacity that
22 qualifies the person for exemption under this section.

23 “(4) The exemption from liability given an employer under this section
24 applies to:

25 “(a) A worker leasing company and the client to whom workers are pro-
26 vided when the worker leasing company and the client comply with ORS
27 656.850 (3).

28 “(b) **A professional employer organization, as defined in section 2**
29 **of this 2024 Act, and the client employer, as defined in section 2 of this**
30 **2024 Act, for whom the professional employer organization has con-**

1 **tracted to provide workers' compensation coverage when the profes-**
2 **sional employer organization and the client employer comply with**
3 **section 2 (3) of this 2024 Act.**

4 “(5)(a) The exemption from liability given an employer under this section
5 applies to a temporary service provider, as that term is used in ORS 656.850,
6 and also extends to the client to whom workers are provided when the tem-
7 porary service provider complies with ORS 656.017.

8 “(b) The exemption from liability given a client under paragraph (a) of
9 this subsection is also extended to the client's insurer, the self-insured
10 client's claims administrator, the department, and the contracted agents,
11 employees, officers and directors of the client, the client's insurer, the self-
12 insured client's claims administrator and the department, except that the
13 exemption from liability shall not apply:

14 “(A) If the willful and unprovoked aggression by a person otherwise ex-
15 empt under this subsection is a substantial factor in causing the injury,
16 disease, symptom complex or similar condition;

17 “(B) If the worker and the person otherwise exempt under this subsection
18 are not engaged in the furtherance of a common enterprise or the accom-
19 plishment of the same or related objectives;

20 “(C) If the failure of the client to comply with a notice posted pursuant
21 to ORS 654.082 is a substantial factor in causing the injury, disease, symptom
22 complex or similar condition; or

23 “(D) If the negligence of a person otherwise exempt under this subsection
24 is a substantial factor in causing the injury, disease, symptom complex or
25 similar condition and the negligence occurs outside of the capacity that
26 qualifies the person for exemption under this subsection.

27 “(6) Nothing in this chapter shall prohibit payment, voluntarily or oth-
28 erwise, to injured workers or their beneficiaries in excess of the compen-
29 sation required to be paid under this chapter.

30 “(7) The exclusive remedy provisions and limitation on liability provisions

1 of this chapter apply to all injuries and to diseases, symptom complexes or
2 similar conditions of subject workers arising out of and in the course of
3 employment whether or not they are determined to be compensable under
4 this chapter.

5 **“SECTION 6. Section 7 of this 2024 Act is added to and made a part**
6 **of ORS 737.235 to 737.340.**

7 **“SECTION 7. (1) When a professional employer organization re-**
8 **quired to be licensed under section 2 of this 2024 Act contracts to**
9 **provide workers’ compensation coverage for a client employer, the**
10 **insurance premium for the client employer’s exposure shall be based**
11 **on the client employer’s own experience rating.**

12 **“(2) An insurer that provides workers’ compensation to a profes-**
13 **sional employer organization on behalf of a client employer shall**
14 **maintain and report to the licensed workers’ compensation rating or-**
15 **ganization of which the insurer is a member separate statistical expe-**
16 **rience for each client employer of the professional employer**
17 **organization according to the uniform statistical plan prescribed by**
18 **the Director of the Department of Consumer and Business Services**
19 **under ORS 737.225 (4).**

20 **“(3) To reimburse expenses incurred by the insurer in segregating**
21 **client employer experience, the insurer shall be permitted to charge**
22 **the professional employer organization a reasonable fee as determined**
23 **by the director.**

24 **“(4)(a) The professional employer organization shall earn a separate**
25 **experience rating for any employees who perform services for the**
26 **professional employer organization under the professional employer**
27 **organization’s direction and control.**

28 **“(b) For any hour of work, an employee may not be considered to**
29 **be employed by both a professional employer organization and the**
30 **client employer for whom the professional employer organization has**

1 **contracted to provide workers' compensation coverage.**

2 **“SECTION 8. Section 9 of this 2024 Act is added to and made a part**
3 **of the Insurance Code.**

4 **“SECTION 9. A professional employer organization as defined in**
5 **section 2 of this 2024 Act may offer group health insurance to the**
6 **employees of any client employer as defined in section 2 of this 2024**
7 **Act.**

8 **“SECTION 10. (1) Sections 2, 3, 7 and 9 of this 2024 Act and the**
9 **amendments to ORS 656.018 and 656.850 by sections 4 and 5 of this 2024**
10 **Act become operative on January 1, 2025.**

11 **“(2) The Director of the Department of Consumer and Business**
12 **Services may take any action before the operative date specified in**
13 **subsection (1) of this section that is necessary to enable the director**
14 **to implement, on and after the operative date specified in subsection**
15 **(1) of this section, the provisions of sections 2, 3, 7 and 9 of this 2024**
16 **Act and the amendments to ORS 656.018 and 656.850 by sections 4 and**
17 **5 of this 2024 Act.**

18 **“SECTION 11. This 2024 Act takes effect on the 91st day after the**
19 **date on which the 2024 regular session of the Eighty-second Legislative**
20 **Assembly adjourns sine die.”**

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