

SB 968 -1, -3 STAFF MEASURE SUMMARY

Senate Committee On Labor and Business

Prepared By: Whitney Perez, LPRO Analyst

Meeting Dates: 3/13, 4/3

WHAT THE MEASURE DOES:

The measure provides a process for employers to not be prohibited from making deductions from employees not subject to a collective bargaining agreement for an erroneous overpayment of wages in an amount greater than the employee's entitlement. The measure specifies that employers are not prohibited from making deductions for an erroneous overpayment of wages for employees subject to a collective bargaining agreement when the deductions are made pursuant to the terms of an applicable collective bargaining agreement concerning employer deductions for erroneous overpayments. Makes conforming amendment. Applies to collective bargaining agreements entered into, renewed, or extended on or after effective date of the measure.

FISCAL: May have fiscal impact, but no statement yet issued

REVENUE: May have revenue impact, but no statement yet issued

ISSUES DISCUSSED:

- Issues associated with implementation of state payroll system, Workday
- Impact of payroll errors on employees
- Impact of measure on public versus private employers
- Appropriate length for look back period
- Existing law for deduction of overpayment of wages for state employees

EFFECT OF AMENDMENT:

-1 The amendment provides a process for employers to not be prohibited from making deductions for an erroneous overpayment of wages in an amount greater than the employee's entitlement, regardless of whether the employee is subject to a collective bargaining agreement. The amendment specifies that this process for deduction for erroneous overpayment of wages does not require reopening or renegotiation of a collective bargaining agreement entered into before the effective date of this measure.

FISCAL: May have fiscal impact, but no statement yet issued

REVENUE: No revenue impact

-3 Replaces the measure. The amendment specifies that when a public employee receives an erroneous overpayment of wages in an amount greater than the employee's entitlement, the public employer may deduct the overpayment from the public employee's wages if the deduction is for an overpayment that occurred in the 90 days immediately before the date the public employer provides a written statement containing specified information. The amendment requires the public employer to provide this written statement at least ten calendar days before making the deduction. Makes conforming amendment by repealing ORS 292.063.

Fiscal impact: May have fiscal impact, but no statement yet issued

Revenue impact: No revenue impact

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

SB 968 -1, -3 STAFF MEASURE SUMMARY

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.

Senate Bill 968 provides a process for employers to not be prohibited from making deductions from employees not subject to a collective bargaining agreement for an erroneous overpayment of wages in an amount greater than the employee's entitlement. SB 968 also specifies that employers are not prohibited from making deductions for an erroneous overpayment of wages for employees subject to a collective bargaining agreement when the deductions are made pursuant to the terms of an applicable collective bargaining agreement concerning employer deductions for erroneous overpayments.