

## HB 4005 -5 STAFF MEASURE SUMMARY

### House Committee On Business and Labor

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**Meeting Dates:** 2/12, 2/14

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#### **WHAT THE MEASURE DOES:**

This measure helps make clear who the employer is for workers with regard to Paid Leave Oregon and Unemployment Insurance.

Detailed Summary: Clarifies, for purposes of Unemployment Insurance (UI) and Paid Leave Oregon, that for any hour of work, individual is only considered to be employed solely by employing unit for which individual performs services and that has right to direct and control individual's performance of services. Further, individual may not be employed by more than one employing unit. Requires Director of Employment Department to issue refund to paying entity that paid employer contribution amounts on behalf of employer with respect to employees for hours of work in which employees did not perform services for paying entity. Takes effect on 91st day following adjournment sine.

#### **ISSUES DISCUSSED:**

#### **EFFECT OF AMENDMENT:**

-5 Clarifies that measure becomes operative January 1, 2025. Removes requirement that Director of the Employment Department issue refund to paying entity who previously paid Paid Leave Oregon employer contribution on behalf of employer. Clarifies application of Oregon's laws on worker leasing companies to professional employer organizations (PEOs). Defines 'PEO' as a person licensed to provide workers' compensation coverage on behalf of a client. Requires PEO that enters into a contract with client-employer to provide coverage to a client-employer, unless the client-employer has proof of coverage. PEO would be responsible for providing coverage until the contract expired, the PEO filed a termination notice, or the client terminated the contract or obtained alternate coverage. Requires contracts to include specific coverage terms. Excludes PEO from definition of Worker Leasing Company. Clarifies that, for tax purposes, the measure applies only to tax years beginning January 1, 2025, and later. Changes reference to "group health insurance" to "group workers' compensation."

#### **BACKGROUND:**

A professional employer organization (PEO) is a human resources company that is contracted by small companies to manage certain administrative functions, such as payroll, recruitment and pre-employment screening, tax compliance and filings, and employee benefits. The PEO business model, effectively, establishes a co-employment relationship with the client-employers (CE) and the CEs' employees. As a co-employer, the PEO becomes the legal and tax-related employer for the employees of all the CEs whom the PEO contracts. This permits the PEO to negotiate retirement, healthcare benefits, and workers' compensation rates for CEs. As well as establish an aggregate unemployment insurance rate applied to all CEs when the PEO files unemployment insurance (UI) taxes for all CEs under PEOs Business Identification Number (BIN).

In 2023, the Legislative Assembly considered Senate Bill 881 to allow CEs of PEOs to be recognized as small businesses for purposes of Paid Leave Oregon. For the purposes of Paid Leave Oregon, employers with fewer than 25 employees are recognized as small businesses and not required to pay the 0.40 percent payroll tax and are eligible to apply for small employer training and replacement worker grants. As part of their business model, PEOs aggregate employees, and file a single Form OQ Oregon Quarterly Tax Report (OQ Tax Report) on behalf of all CEs using the PEOs BIN. The OQ Tax Report includes tax withholdings, UI Tax, and Paid Leave Oregon contributions.

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The PEO does not file OQ Tax Reports for each CE individually under the CE BIN. By filing an aggregate report, a CE with fewer than 25 employees is not recognized as a small employer for purposes of Paid Leave Oregon. However, filing an aggregate payroll report allows the PEO to utilize a single, aggregate UI Tax Rate for all CEs, in lieu of the UI Tax Rate based on each CE UI experience rating.

House Bill 4005 clarifies, for purposes of UI and Paid Leave Oregon, that for any hour of work, an individual is only considered to be employed solely by the employing unit for which the individual performs services and that has the right to direct and control the individual's performance of the services. Further, an individual may not be employed by more than one employing unit.

The effect of this change is that employees of CE that contracts with a PEO cannot be co-employed by a PEO. As a result, a PEO cannot aggregate employees, and file a single Form OQ Oregon Quarterly Tax Report (OQ Tax Report) on behalf of all CEs using the PEOs BIN because the employee does not perform services for the PEO and the PEO does not have right to direct and control the individual's performance of the services. The OQ Tax Report must be filed under the BIN of the CE, which can result in the CE being recognized as small employer for purposes of Paid Leave Oregon, but also requires the CE to utilize the UI Tax Rate of that CE, not an aggregate UI Tax Rate.