

Oregon EMPLOYMENT DEPARTMENT

Advisory Council Teleconference Minutes February 20, 2003

Members:

Gary Barnes

Northwest Food Employers, Inc.
Business

Vacant

Labor

Sam Brooks

S. Brooks & Associates
Business

B.G. Cain

Gilliam County Community Development
Public

Gwyn Harvey

Integrated Measurement Systems
Public

Paul Johnson

Victim Offender Reconciliation Program
Business

Pat Maberry, Chair

Public

Tim Nesbitt

Oregon AFL-CIO
Labor

Linda Rasmussen

Communications Workers of America
Labor

Bob Shiprack

Oregon State Building and Construction Trades Council
Labor

Lisa Trussell

Associated Oregon Industries
Business

Sandra Morgen

University of Oregon
Public

Present

Gary Barnes, Sam Brooks, Gwyn Harvey,
Pat Maberry, Tim Nesbitt, Bob Shiprack,
Lisa Trussell

Absent

B.G. Cain, Paul Johnson, Sandra Morgen

Employment Department Staff

Tamara Brickman, Renee Bryant, Carla Corbin

The meeting began at 9:00 am.

As an extension of the February 5, 2003 meeting, today's teleconference was called to obtain the Council's position on SB 40 and HB 2649.

SB 40

Renee Bryant explained that last week the department met with the proponents of SB 40 to iron out the issues that would cause conformity issues with federal law.

SB 40 was written to mirror the Internal Revenue (IRS) test for independent contractors. The common law test is a twenty point test while the current Oregon law is an eight point test. Administering the provisions of SB 40 would be difficult and would likely increase contested cases causing an approximate increased cost of \$500,000 to the department.

As a legislator during the 1989 Legislative Session, Bob gave an overview of his efforts to develop an Oregon test to determine whether an individual is an independent contractor. Since the employment and worker's compensation laws were inconsistent, employers were having problems with individuals having one status under employment laws and a different status under worker's compensation laws. During the process, Bob worked with the IRS staff in Portland to ensure a better test for Oregon than the IRS guidelines. Bob will testify as the Council's representative.

In response to Sam's question - who wanted these changes and why. Renee noted that the Oregon State Bar's Executive Committee proposed the bill. Tim noted, however, that the Employment Section of the Oregon State Bar was not among the proponents of SB 40. Lisa stated that AOI had not had heard from employers having issues with the current eight point test. When Gary asked if this bill improves anything, Lisa affirmed that it did not.

While in a conversation with one of the proponents, Pat asked if many employers had objected to the department's decisions regarding independent contractors. The proponent's response was "not that many." Renee noted that the department had not lost a court case since the 1989 Legislature developed the Oregon guidelines. Tamara stated that the court had found some substantive issues in 2-3 cases, i.e., section one and two should be read together.

Action: The Council voted on whether to support SB 40. The vote was:

Pat	No	Sam	No
Lisa	No	Gwyn	No
Bob	No	Tim	No
Gary	No		

HB 2649

This bill amends section 8 of the Oregon independent contractor statute and would increase the number of individuals considered independent contractors. The proposed changes impact the requirements for advertising services and assuming risk when considered an independently established business. HB 2649 was requested by a specific employer found to employ individuals rather than independent contractors.

Action: The council voted on whether to support HB 2649. The vote was:

Pat	No	Sam	No
Lisa	No	Gwyn	No
Bob	No	Tim	No
Gary	No		

Other Independent Contractor Issues

Tamara notified the Council that she may need to contact them for input regarding a further independent contractor issue that has just arisen. An individual providing care to the elderly approached Senator Hannon to propose legislation exempting elderly care givers from unemployment insurance tax.

The meeting adjourned at 9:35 am.