

HB 2923-3

SUBJECT: Extends workers' compensation exclusive remedy protections for employers to specified business organization members

SPONSOR: Representative Hanna

Existing Law:

- Workers' compensation law provides that workers who are injured at work cannot sue their employers, and people in specified business relationships with employers, for those injuries if the employers provide workers' compensation insurance coverage for their employees.
- Provides that an employer can be sued if their willful and unprovoked aggression, or failure to comply with safety notices, proximately causes a worker's injury

This bill:

- Adds partners, limited liability company members, general partners, limited liability partners, and limited partners, to the list of those employers protected by the exclusive remedy provisions
- The -3 amendment changes the standard of proof required to nullify the statutory immunity where the employer's willful aggression or ignoring safety notices causes the injury. Under this bill, the worker need only prove the employer's action was a substantial factor in causing the injury.
- The -3 amendment also specifies that a person who is otherwise immune under this statute loses that immunity if their negligence is a substantial factor in causing a worker's injury
- Applies to claims or causes of action that arise on or after the effective date of the bill.
- Declares an emergency; takes effect on passage

Analysis:

1. Current law provides that a worker who is injured through their job cannot sue their employer in a civil action for job-related injuries if the employer provided workers' compensation insurance. This protection for employers is called the "exclusive remedy" protection because the workers' compensation system provides the exclusive remedy for an injured worker as long as their employer provided workers' compensation insurance.
2. In *Cortez v. Nacco Materials*, 248 Or App 435 (2011), the Court of Appeals of Oregon found the exclusive remedy protection for employers did not apply to a member of a limited liability corporation (LLC) that employed the injured worker. The court reached this conclusion because it found the statute did not expressly list LLC members as coming within

its protections. This decision is now under review by the Oregon Supreme Court which will hear oral arguments on April 30, 2013.

3. This bill extends exclusive remedy protection to employers in the listed business organizations by expressly adding specified business organization members to the list of protected employers in ORS 656.018. This means that the new entities included under the exclusive remedy protection would not be subject to being sued by their employees for work-related injuries. Workers employed by these entities would lose the right to sue their employers for work-related injuries.
4. The -3 amendment addresses the standard of proof when an employer's aggression or failure to comply with safety notices is alleged to have caused a worker's injury. The statute currently states immunity is voided if the employer "proximately causes" the injury. The -3 amendment modifies this language to negate immunity if the employer's action is a "substantial factor" in injuring the worker. This lowers the standard of proof for the worker, as they need not prove the employer's actions were the sole or primary cause of the injury, and could make it easier for the worker to recover in a civil action against the employer.
5. The -3 amendment also adds a provision voiding immunity when an otherwise immune person loses that immunity if their negligence is a substantial factor in causing a worker's injury. This is a new exemption from the immunity provisions and adds a new basis on which injured workers can sue previously exempt individuals.
6. The original bill applied to claims that existed when, or arose on or after, the bill took effect. The -3 amendment changes this. The bill now applies only to claims that arise on or after the bill takes effect. This amendment resolves an issue the original bill raised, which was that parties involved in a legal action falling under this statute would be unsure whether the statute's immunity provisions applied until the bill passed. Under this amendment, it is clear the bill's changes to the immunity provisions only apply to actions that arise on or after the bill's passage.

Questions and/or suggested amendments: None

Fiscal Impact to DCBS: This does not change the regulatory requirements for DCBS, so no fiscal impact is expected.

Other Economic Impact: Unknown

Support: Associated Oregon Industries, National Federation of Independent Business, Associated General Contractors, Oregon Self Insurers Association, Oregon Home Builders Association, Oregon Farm Bureau, Oregon Restaurant and Lodging Association, Oregon Trial Lawyers Association.

Opposition: Unknown.

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