

Date: February 1, 2013

## **HB 2068**

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

**SPONSOR:** House Interim Committee on Business and Labor at the request of Associated Oregon Industries

**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.

**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.
- 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 bill applies to claims that exist on or arise after the bill's effective date. This creates some uncertainty for the employers who will gain exclusive remedy protection under this

bill. Any employers that are newly given protection under this bill, and who have had legal claims filed against them by injured employees, will not know whether they are liable until this bill passes or fails. Any such claims filed while this bill is pending will likely be deferred by the courts until it is known whether or not this bill will be signed into law. If passed, the bill would apply to claims where the worker was injured before the bill was enacted but who had made a claim as of the date the bill passes. This does effect a change in the rights of workers whose claims fall into these time periods.

**Questions and/or suggested amendments:** None

**Fiscal Impact to DCBS:** This bill does not change the regulatory efforts of the department, 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.

**Opposition:** Oregon Trial Lawyers Association

Prepared by: Meyer Goldstein, WCD Legal Issues Coordinator, 503-947-7723