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HB 2800-3

Brief summary

Updates and clarifies existing law on worker leasing companies.

Analysis

What the law currently does

Current ORS 656.850 defines a worker leasing company as a person that provides workers to a client by contract and for a fee. This definition excludes temporary service providers, defined as persons who provide workers to clients on a temporary basis.

When a worker leasing company provides workers to a client, ORS 656.850 requires it to provide workers' compensation coverage to both the leased workers and the client's regular workforce, unless the client chooses to take on that responsibility by obtaining its own coverage. When a worker leasing company provides coverage to client workers, it must notify the division. It must also notify both the division and its client in order to terminate its obligation to provide coverage.

Under current rule, worker leasing companies provide required coverage notices to the division using forms called worker leasing notices and termination notices, which are manually entered into an employer data system by division staff. Worker leasing clients are the only carrier-insured employers whose coverage data is reported using a form-based process. Coverage for most other Oregon employers is reported electronically by their insurers using electronic data interchange (EDI).

Worker leasing companies must be licensed by the division. The division's current practice is to license and regulate professional employer organizations, also known as PEOs, as worker leasing companies. A PEO is an entity that provides services such as payroll, benefits, and workers' compensation insurance to client employers under contract.

What will change if the bill is enacted

The bill would replace the term “worker leasing company” with the term “professional employer organization” or PEO. With the -3 amendments, the bill would define a PEO as a person that enters into an PEO relationship with a client. The bill would define “PEO relationship” to mean “an agreement between a PEO and a client employer under which certain employer responsibilities for some or all of the client employer’s workers are allocated.”

The bill would enlarge the definition of “temporary service provider” to specify that a temporary service provider provides its own workers to clients, customarily attempts to reassign its workers to other clients when the workers finish each assignment, and retains all employment responsibilities for its workers except to the extent necessary to allow the client a right to worksite direction and control.

Under the bill, a PEO that enters into a PEO relationship with a client would be subject to the same coverage requirements as a worker leasing company that provides workers to a client. However, rather than providing notice to the division when it incurs a coverage obligation, a carrier-insured PEO would be required to provide notice to its insurer. Self-insured PEOs would continue to provide notice to the division.

The bill would provide that a PEO’s obligation to provide coverage to a client is terminated 30 days after its insurer receives a notice of termination, or automatically on the date the client obtains other coverage, whichever comes first. With the -3 amendments, the bill would require a PEO to provide notice of termination to the division as well as its insurer and client. It would also provide a method for a PEO to give this notice to a client that is an LLC.

When the division receives a proof-of-coverage filing indicating that a PEO’s client has obtained other coverage, the bill would allow the division to share this information with the PEO’s insurer. The bill would require the insurer to use this information for validation purposes and not to share it with any other parties.

The bill would require PEOs to provide client lists to the director at regular intervals.

The bill would have an operative date of 7/1/27 but would allow the director to adopt any necessary rules in advance. The bill would authorize the director to adopt rules on subjects including, but not limited to, electronic filing of client coverage data and requiring insurers to provide coverage to PEOs on a multiple coordinated policy or other basis.

Finally, the bill would make multiple conforming changes in ORS chapter 656 and other chapters to ensure that PEOs have the same rights and responsibilities after 7/1/27 as worker leasing companies have under current law.

Likely impacts, results, or consequences if the bill is enacted

The division anticipates that the vast majority of worker leasing companies will be redefined as PEOs under the bill. Because PEOs have the same obligations towards client employers and their workers under the bill as worker leasing companies have under current law, the division anticipates no impact to client employers or their workers.

The expanded definition of temporary service providers will clarify the status of certain providers that do not clearly qualify as either worker leasing companies or temporary service providers under current law, such as health staffing agencies. The division anticipates that this change will reduce confusion and make disputes over licensing requirements less likely.

The changes to notice requirements a PEO must meet when it incurs a coverage obligation will allow the division to mostly discontinue the existing, paper-based system and instead receive client coverage data from the PEO's insurer via EDI. Fully implementing this change will require rulemaking and technical changes on the division's part, but when the changes are completed it will significantly lessen the administrative burden on PEOs and allow division staff to shift focus from data entry to outreach and compliance.

The division anticipates that the provisions allowing the division to share limited proof of coverage data with insurers will reduce the frequency of coverage disputes and allow for smoother claims processing. Under the current state, insurers are not always aware that an insured PEO's obligation to provide coverage to a client has ended, with the result that client claims are sometimes accepted by the wrong insurer.

The division intends to use the rulemaking authority granted by the bill to adopt rules either allowing or requiring insurers to provide coverage to PEOs using a multiple coordinated policy or MCP model. Under an MCP model, each client of a PEO is issued its own policy, and the policies are linked to each other by means of coordinating endorsements. Adopting this model would make it easier for the division to track and share coverage data for clients.

Questions/relevant information for the bill sponsor or primary proponent

The division is the primary proponent.

Legislative history

Has this bill been introduced in a prior session?

☐ No ☒ Yes

A version of this bill was introduced in 2023 as SB 213. Some stakeholders raised concerns, and at the division's request, the bill was tabled to allow time for further discussions.

HB 4005 (2024) addressed some of the same issues as this bill but took a different approach to defining a PEO's relationship with client workers. It remained in committee at adjournment.

Does this bill amend current state or federal law or programs?

☐ No ☒ Yes Specify

The bill makes substantive changes to ORS 656.850 and 656.702 and conforming changes to ORS 656.018, 656.403, 656.855, and ORS chapters 737, 743, 653, 671, 701, and 227.

Is this bill related to a legal decision?

☒ No ☐ Yes Case citation, AG opinion, date, etc.

Should another DCBS division review this measure?

☒ No ☐ Yes Divisions

Other impacts

Does this bill have a fiscal impact to DCBS?

☐ No ☒ Yes ☐ Unknown

The bill will have a minimal fiscal impact to DCBS due to the costs of rulemaking and technical changes. The division expects to absorb these costs using existing resources.

Does this bill have an economic impact to stakeholders?

☐ No ☐ Yes ☒ Unknown Explain

WCD doesn't anticipate any immediate costs to insurers or PEOs. The primary operational changes required by the bill are to reporting requirements. Worker leasing companies are already required by rule to provide notice to their insurers when they provide coverage to a client, and insurers are already required to electronically report proof of coverage data on employers they insure.

However, if the proposal goes into effect, WCD intends to adopt rules either allowing or requiring insurers to provide coverage to worker leasing company clients using an MCP model. Making this change could create costs for insurers. The division will ask insurers about potential costs as part of its rulemaking process and take that feedback into account when drafting final rules.

Sponsors

DCBS.

Possible interested stakeholders

PEOs, insurers.

Public policy topics

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| <input type="checkbox"/> Agency operations | <input type="checkbox"/> Other lines of insurance |
| <input type="checkbox"/> Building codes | <input type="checkbox"/> Prescription drugs |
| <input type="checkbox"/> Financial institutions and lending | <input type="checkbox"/> Property and casualty insurance |
| <input type="checkbox"/> Health insurance | <input type="checkbox"/> Public records/public meetings law |
| <input type="checkbox"/> Involvement with other agencies | <input type="checkbox"/> Rulemaking |
| <input checked="" type="checkbox"/> Licensure | <input type="checkbox"/> Securities |
| <input type="checkbox"/> Manufactured structures | <input type="checkbox"/> Task force/reports |
| <input checked="" type="checkbox"/> MLAC legislative review | <input type="checkbox"/> Worker safety |
| <input type="checkbox"/> New program | <input checked="" type="checkbox"/> Workers' compensation system |
| <input type="checkbox"/> Nondepository programs | <input type="checkbox"/> Other |