



Employer, Employee & Wages

Definitions as they pertain to Oregon Employment Department Law.

Employer

An employer is subject to unemployment insurance taxes when the employer pays wages of \$1,000 or more in a calendar quarter, or employs one or more individuals in any part of 18 separate weeks during any calendar year.

The above does not apply to agricultural and domestic employers. For more details, please refer to the Employment Department informational flyers - Agricultural Employers (UI PUB 210) and Domestic Employers (UI PUB 207).

Employee

An employee is any individual, including an alien or a minor, who is employed for any compensation or under any contract of hire by an employer. This includes contract, casual, temporary labor and cottage industry homeworkers. Corporate officers are considered employees of the corporation, even if they “own” the corporation.

Wages

Wages are payments made to an individual for personal services and the cash value of all compensation to that individual in any medium other than cash. Unless specifically excluded in ORS Chapter 657, wages include, but are not limited to, the following: salaries, hourly pay, piece rate, payments by the job, vacation, sick, holiday, disability, guaranteed wage payments, commissions, dividends, distributions, bonuses, gifts, fees, prizes, and tips.

Examples of payments that should be reported as wages:*

- Dismissal and Separation allowances – regardless of whether the allowance is paid in a lump sum or in installments
- Corporate Officer and Shareholder pay - draws dividends, and distributions are wages to the extent that they are reasonable compensation for services provided to the corporation
- Sickness and accident disability payments
- Compensation other than cash - value or the prevailing value in the community of meals

and lodging (including utilities) provided by the employer

- Fringe Benefits provided or paid for by the employer on behalf of employees and their dependents such as:
 - » Company vehicles used by the employee to commute to and from work or for personal use
 - » Company paid parking
 - » Sick pay by third party payers (e.g., insurance companies)
 - » Dependent care assistance
- Commissions including:
 - » Property Management
 - » Mobile home sales where land is not included, such as in a mobile home park

Excluded by Statute

Individuals who meet the statutory definition of employee but who perform certain types of services are designated as not performing covered employment. The result is their wages are not subject and therefore not taxable.

Examples of wages that should not be reported:*

- Commissions paid on the following specific services:
 - » Newspaper advertising salesperson
 - » Real estate broker or principal real estate broker
 - » Insurance solicitor or producer
 - » Securities agent or salesperson
 - » Individuals soliciting contracts for home improvements
 - » Door-to-door sales of consumer goods in the home
- Individuals who provide services related to ski activities on a volunteer basis, and receive no other remuneration than a ski pass worth \$50 or less

There also are certain types of payments that are not subject and therefore not taxable.

Examples of payments that should not be reported:*

- Sickness and accident disability payments made under workers' compensation law, those paid from employee funded plans, or those

paid after six months from the date the employee last worked for the employer

- Dependent care assistance program which meets the requirements of the Internal Revenue Code sections 129(b) and 129(d)
- Fees paid to directors of a corporation for serving on the Board of Directors

Service By Family Members

Based on the type of employing entity and family relationship listed below, some family members' wages are not subject and therefore their wages are not taxable.

Sole Proprietorship - The owner's parents, spouse, and children under the age of 18 wages are not subject.

Partnership - The partners' wages are not subject. All other employees' wages are subject.

Limited Liability Company - The LLC members' wages are not subject. All other employees' wages are subject.

Corporation (C and S) - Individuals who perform services for a corporation, including corporate officers and their family members, are employees of the corporation and their wages are subject.

Closely Held Family Corporations

Corporations may elect to not pay unemployment taxes on corporate officers who are directors, have a substantial ownership interest, and are members of the same family.

Those eligible for the exclusion must represent two or more members of the same family and who each bear one of the following relationships to one of the others: parents, step-parents, grandparents, spouses, registered domestic partners, sons-in-law, daughters-in-law, brothers, sisters, children, step-children, adopted children or grandchildren.

The election request must be in writing and, if approved, will be effective the first day of the current calendar quarter or of the calendar quarter preceding the calendar quarter in which the request was submitted. Notification in writing will be sent to the employer whether the election is approved or denied.

The Family Corporate Officer Exclusion Request can be found at the Oregon Employment Department Website on the Unemployment Tax home page.

Note: Excluded family corporate officers are still subject to the Federal Unemployment Tax Act (FUTA) and higher FUTA tax rates may be required on those individuals. All other employees remain subject.

For more details, please refer to the Employment Department informational flyer on Corporations and Limited Liability Companies (UI PUB 208).

When To Report Wages

For Oregon unemployment tax purposes, wages, including draws, are reported in the quarter paid, or in the quarter the individual received any remuneration other than cash. The hours worked are reported in the quarter that they are actually worked.

Employer Payroll Records

The Employment Department requires that every employing unit shall maintain payroll records of individuals performing service for it for a minimum of three calendar years. The records must include the total payroll by calendar quarter and by individual, the name, social security number, the number of hours worked, and the pay for each pay period. Records must be available to the Employment Department upon request.

*Examples are not all inclusive. See ORS 657 for additional information.

Questions

If you have questions or need additional information, please contact the Employment Department tax representative in your area or call 503-947-1488. To find your tax representative, view the web page at www.oregon.gov/EMPLOY/TAX/TaxOffices.shtml. TDD/Nonvoice Users 711 or by email at taxinfo@emp.state.or.us. You may also visit our web site at www.oregon.gov/EMPLOY/TAX/.

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