Appendix A

Computing the Allowable Hourly Credit for Fringe Benefit Contributions

Oregon’s PWR law and the federal Davis-Bacon Act are similar regarding fringe benefits. To qualify for any credit, the fringe benefit plan must meet all of the following requirements:
- Contributions must be made regularly and at least on a quarterly basis.
- Contributions made for prevailing wage work may not be used to fund the plan or program for periods of non-prevailing wage work.
- Contributions must not be required by law (such as taxes, workers’ compensation, etc.)
- Contributions must be irrevocable and for the employee’s benefit.

Hourly Contributions
If a contractor or subcontractor makes contributions on a per hour basis for all hours worked, including both PWR and non-PWR hours, credit may be taken for the amount contributed to the plan each hour for each employee. For example, a contractor paying $2.78 per employee hour into a qualifying health plan may credit $2.78 per hour towards the hourly fringe benefit requirements.

Weekly, Monthly or Quarterly Contributions
If a contractor or subcontractor makes a flat weekly, monthly or quarterly contribution to a qualifying plan for an employee, the allowable hourly credit is calculated by dividing the contribution amount by the total number of hours, both PWR and non-PWR hours, the employee worked during the contribution period. For example, if the employer contribution one month was $250, and if the employee worked 170 hours that month, the credit would be $1.47 per hour ($250 per month / 170 hours worked = $1.47 per hour credit).

The general formula to use is as follows:

\[
\text{Amount of employer contribution paid on behalf of the employee} \div \text{All hours worked by the employee during the contribution time period (including non-PWR hours)} = \text{Allowable hourly equivalent fringe benefit credit.}
\]

When calculating the hourly fringe credit, a time period shorter than the contribution period may need to be used. For example, if the employer makes contributions to a health insurance plan monthly but pays the employee on a weekly basis, the employer may need to calculate the hourly fringe credit on a weekly basis. This can be done by converting the employer’s monthly contribution to a weekly amount (monthly employer contribution times 12 months, divided by 52 weeks). The resulting weekly contribution equivalent can then be used each pay period to calculate the hourly fringe credit for the week, by dividing the weekly contribution equivalent by the number of hours the employee worked in the week.

Calculate Credits Separately for Each Employee
The allowable hourly credit must be determined and tracked separately for each employee because the credit is based on figures that will vary from person to person, depending on the benefit contribution amount for each particular employee and the number of hours that the employee worked during the contribution period.
**Employer’s Contribution**
Only the employer’s contribution toward a benefit plan may be used to calculate the allowable hourly credit. If an employee contributes toward a benefit plan, the amount of the employee’s contribution may not be used in calculating the credit.

**Eligibility Requirements**
Eligibility requirements for a plan, such as a waiting period, are permissible. However, during the period in which an employee is ineligible to participate in the plan, no credit may be taken against the hourly fringe benefit amount due that employee. Pension plans with vesting provisions are eligible if they meet ERISA requirements. (See Appendix B for contact information for the Employee Benefits Security Administration, the federal agency that enforces ERISA.)

**Pension Plans**
In addition to the general contribution requirements listed previously, contributions to a pension plan must be made to a trustee or to a third person. The “third person” must not be affiliated with the contractor or subcontractor, and the trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid into the plan, or in any way divert the funds to his or her own use or benefit.

**Unequal Contributions**
If a defined contribution pension plan provides for a higher hourly rate of contribution on PWR-covered work than for non-covered work, the higher rate paid for PWR work may be fully credited only if the plan provides for immediate participation by employees and 100 percent vesting after an employee works no more than 500 hours.

For example, if an employer contributes $1.00 per hour to a pension plan for each PWR hour worked, and contributes $.25 per hour for each non-PWR hour worked, the employer may only take the full credit of $1.00 per hour if the pension plan allows for immediate participation and vesting as outlined above.

If unequal contributions are made to a defined contribution pension plan, and the plan does not provide for immediate participation and vesting as outlined above, the allowable credit is based on the average contribution the employer made over the previous fiscal year. The total pension benefit contributions made during this twelve-month period should be divided by the total number of hours worked (including non-PWR hours) during that period. The result is an average hourly contribution the employer may claim.

As an example, an employer contributes $1.00 per hour to a pension plan for each PWR hour worked, and contributes $.25 per hour for each non-PWR hour worked. During the previous year, the employee worked 1,500 PWR hours and 500 non-PWR hours. The total contribution for this year would be $1,625 (1,500 PWR hours x $1.00 per hour) + (500 non-PWR hours x $.25 per hour) = $1,625. The total yearly contribution of $1,625 would then be divided by 2,000 hours, which is the total number of hours worked during the year. The resulting credit would be $.81 per hour ($1,625 / 2,000 hours = $.81).

**Unfunded Plans**
Employers may offer benefits to employees such as vacation, sick (see additional information about sick leave below) and holiday pay. Because employers do not generally put money aside for these benefits, they are referred to as “unfunded” plans. Employers may take a credit for such benefits, but the plan must
meet several requirements:
- The plan must actually provide a benefit to the employees.
- The benefit must represent a commitment that can be legally enforced.
- The benefit must be carried out under a financially responsible plan or program.
- The plan or program providing the benefit must be communicated in writing to the employees.
- The plan must not be required by law.

Unless all of these conditions are met, the employer may not take a credit for an unfunded plan.

The 2015 Oregon Legislature passed a law requiring employers to provide paid sick leave under certain circumstances. (ORS 653.601 – 653.661; OAR 839-007-0000 et seq.) If an employer is required to provide paid sick leave under this law, no credit may be taken for such payments. However, if the employer is not required to provide paid sick leave and does so anyway, credit may be taken for such payment. Additionally, if the employer provides for more paid sick leave than that required under state law, the employer may take credit for the payments made in excess of the legal requirement.

Calculating the allowable hourly credit for unfunded plans is similar to other credit computations: The total benefit amount for a contribution period is divided by the total hours worked during the contribution period. As an example, an employee may earn 40 hours of vacation per year. If the employee’s regular rate of pay is $10 per hour, the total yearly benefit amount is $400 (40 hours x $10 per hour = $400). If the employee worked 2000 hours during the year, the allowable hourly credit for vacation benefits would be $.20 per hour ($400 / 2000 hours = $.20).

The employer must carefully track the amount of unfunded benefits an employee earns and uses. If an employee quits or is terminated and has a “balance” of earned vacation, sick or holiday pay that has not been used, this “balance” must be paid to the employee with the final paycheck.

**Qualified Apprenticeship Programs**

If a contractor or subcontractor employs workers who are registered in a bona fide apprenticeship or training program with BOLI’s Apprenticeship and Training Division, the costs incurred by the contractor or subcontractor in that program may be taken as a credit. Only the actual costs incurred for the training program, such as instruction, books, tools and materials, may be credited. However, time or costs involved in administering the program may not be included in the actual costs of the training program.

Each trade or classification must be treated separately, and the cost incurred for apprenticeship training for one classification may not be used to offset costs required to be incurred for another classification. For example, a contractor may not claim credit for apprenticeship training costs that were actually incurred for electricians and apply that credit toward meeting the prevailing wage obligation for carpenters.

Rather than contribute to an apprenticeship training fund on an hourly basis, some employers contribute a lump sum in advance for the annual cost of the program. If the employer does not make contributions on an hourly basis, the hourly credit should be calculated as follows:

\[
\text{Total contributions to a qualified apprenticeship or training program for a certain classification over a time period} + \text{The total number of hours worked by all employees in that classification} = \text{Hourly credit allowed.}
\]
Reporting Hourly Fringe Benefits
Each fringe benefit contribution must be listed as an hourly rate on certified payroll reports, and the hourly rate must be reported individually for each worker.

For example, if an employer pays $250 one month for a bona fide benefit for an employee, and that translates into a credit of $1.47 per hour, the employer must report $1.47 per hour credit on the certified payroll report rather than the monthly payment of $250.

Frequency of Payment of Fringe Benefits
Contributions must be made on a regular basis and not less often than quarterly. OAR 839-025-0043

“Regular basis” means either the schedule of contribution as provided in writing in the plan, fund, or program, or if none, the regular contribution schedule established by the contractor or subcontractor. For example, if the plan specifies that contributions to a bona fide fringe benefit fund be made by the fifteenth calendar day of each month following the month the wages were earned, then contributions to the fund must be made by that date. If the plan, fund or program does not specify a contribution date, or if the specified contribution date as written in the plan, fund or program does not meet the meaning of “not less often than quarterly” as defined below, the contractor or subcontractor must establish and maintain a contribution date by which payment to the plan, fund or program will be made on a regular bases and not less often than quarterly.

“Not less often than quarterly” means that the fringe benefit portion of wages must be contributed to a bona fide plan, fund or program at least once every three months within an established consecutive twelve-month period. The contribution must represent payment to the plan, fund or program for amounts earned in the three-month period immediately prior to the contribution date.

An established twelve-month period may be a calendar year, fiscal year, plan year, or other consecutive twelve-month period as determined by the employer. The beginning of the twelve-month period may be changed only if the change is intended to be permanent, and is not designed to evade the timely payment of contributions into a bona fide plan, fund or program. If an employer does not determine a consecutive twelve-month period the default period shall be a calendar year; that is, from 12:00 midnight on January 1 to 11:59 p.m. December 31, each year.

As an example, using the calendar year as the established consecutive twelve month period, a contractor or subcontractor establishes a contribution date of April 15 for the payment of fringe benefits earned between January 1 and March 31 into the plan, fund or program; consequently, amounts earned between April 1 and June 30 must be contributed into the plan, fund or program on or before July 15; amounts earned between July 1 and September 30 must be contributed into the plan, fund or program on or before October 15; and amounts earned between October 1 and December 31 must be contributed into the plan, fund or program on or before January 15.

If an employer does not offer any bona fide fringe benefits to an employee, the entire PWR hourly fringe rate must be paid to the worker as wages on regular payroll dates. All hourly fringe benefits that are paid as wages to an employee must be reported separately from the hourly base wages on certified payroll reports.
Posting Details of the Plans on the Project Site
Every contractor and subcontractor must post the details of all fringe benefit plans or programs if any contributions are made to a third party for fringe benefits. The posting should include a description of the plan, information about how to file a claim and where to obtain more information.