

ADMINISTRATIVE RULE REVIEW

<p>New Rule</p> <p>Temporary Rule</p>	<p>Rule No. 150-317-1220</p>	
	<p>Page Page 1 of 2</p>	<p>Last Revised Date February 18, 2020</p>
	<p>NOTICE OF INTENDED ACTION</p>	
	<p>Bulletin Dated March 2020</p>	<p>Hearing Scheduled</p>

PURPOSE: Provides guidance to assist taxpayers in determining who is considered an employee and what compensation includes for purposes of calculating the corporate activity tax labor cost subtraction.

1 **150-317-1220**

2 **Employee Compensation: Labor Cost Subtraction**

3 (1) Definitions. For purposes of the labor cost subtraction, as calculated under OAR 150-317-1200:

4 (a) “Employee” has the meaning given that term in OAR 150-316-0255(5). “Employee” does not
5 include:

6 (A) Partners in a partnership who receive guaranteed payments or distributive income;

7 (B) Members in a Limited Liability Company (LLC) who receive guaranteed payments or distributive
8 income;

9 (C) Statutory employees described in the Internal Revenue Code (IRC) section 3121(d)(3); or

10 (D) Independent contractors, as defined in ORS 670.600.

11 (b) “Compensation” has the meaning given that term in ORS 317A.100(1)(b)(H).

12 (2) The labor cost subtraction, as calculated under OAR 150-317-1200, does not include:

13 (a) Compensation in excess of \$500,000 paid to any single employee;

14 (b) Payroll taxes, including but not limited to, Social Security, Medicare, and Federal unemployment.

15 **Example 1:** A2zk Tech Inc. employs 50 workers who meet the requirements to be considered employees.

16 Each employee receives a base annual salary of \$375,000. In addition, the company pays commission

17 and bonuses, based on performance, and a total of \$15,000, which includes health insurance and other

18 fringe benefits such as employer-provided retirement contributions, for each of its employees. Assume

19 that A2zk also pays \$25,000 in payroll taxes for each employee. Although A2zk Tech pays taxes for each

20 employee, any tax amount paid for its employees is not used to calculate the total compensation. During

21 2020, 10 of the employees earned \$150,000 each in commission and bonuses. Because the total

22 compensation of each of those 10 employees exceeds \$500,000, $(\$375,000 + \$15,000 + \$150,000 =$

23 $\$540,000)$, A2zk Tech calculates the total labor cost as $[(40 * \$390,000)$ (base salary plus benefits) + $(10$

24 $* \$500,000)] = \$20,600,000$.

25 **Stat. Auth.:** ORS 305.100 & 317A.100



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1 **Stats. Implemented:** ORS 316.167, 317A.100 & 670.600