

ADMINISTRATIVE RULE REVIEW

New Rule	Rule No. 150-317-1220	
	Page Page 1 of 2	Last Revised Date April 17, 2020
Temporary Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated May 2020	Hearing Scheduled May 26, 2020

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. A temporary rule has been in effect since March 6, 2020. The permanent rule adopts the language of the temporary rule and makes a minor grammatical change to the example.

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 commissions
17 and bonuses based on performance. The company also provides its employees with fringe benefits,
18 including health insurance and employer-provided retirement contributions, at a total cost of \$15,000 per
19 employee. Assume that A2zk also pays \$25,000 in payroll taxes for each employee. Although A2zk Tech
20 pays taxes for each employee, any tax amount paid for its employees is not used to calculate the total
21 compensation. During 2020, 10 of the employees earned \$150,000 each in commission and bonuses.

22 Because the total compensation of each of those 10 employees exceeds \$500,000, (\$375,000 + \$15,000 +
23 \$150,000 = \$540,000), A2zk Tech calculates the total labor cost as [(40 * \$390,000) (base salary plus
24 benefits) + (10 * \$500,000)] = \$20,600,000.



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- 1 **Stat. Auth.:** ORS 305.100 & 317A.100
- 2 **Stats. Implemented:** ORS 316.167, 317A.100 & 670.600