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.

150-317-1220
Employer Compensation: Labor Cost Subtraction
(1) Definitions. For purposes of the labor cost subtraction, as calculated under OAR 150-317-1200:
(a) “Employee” has the meaning given that term in OAR 150-316-0255(5). “Employee” does not include:
(A) Partners in a partnership who receive guaranteed payments or distributive income;
(B) Members in a Limited Liability Company (LLC) who receive guaranteed payments or distributive income;
(C) Statutory employees described in the Internal Revenue Code (IRC) section 3121(d)(3); or
(D) Independent contractors, as defined in ORS 670.600.
(b) “Compensation” has the meaning given that term in ORS 317A.100(1)(b)(H).
(2) The labor cost subtraction, as calculated under OAR 150-317-1200, does not include:
(a) Compensation in excess of $500,000 paid to any single employee;
(b) Payroll taxes, including but not limited to, Social Security, Medicare, and Federal unemployment.
Example 1: A2zk Tech Inc. employs 50 workers who meet the requirements to be considered employees. Each employee receives a base annual salary of $375,000. In addition, the company pays commission and bonuses, based on performance, and a total of $15,000, which includes health insurance and other fringe benefits such as employer-provided retirement contributions, for each of its employees. Assume that A2zk also pays $25,000 in payroll taxes for each employee. Although A2zk Tech pays taxes for each employee, any tax amount paid for its employees is not used to calculate the total compensation. During 2020, 10 of the employees earned $150,000 each in commission and bonuses. Because the total compensation of each of those 10 employees exceeds $500,000, ($375,000 + $15,000 + $150,000 = $540,000), A2zk Tech calculates the total labor cost as [(40 * $390,000) (base salary plus benefits) + (10 * $500,000)] = $20,600,000.
Stat. Auth.: ORS 305.100 & 317A.100
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 Stats. Implemented: ORS 316.167, 317A.100 & 670.600