



Employer, Employee & Wages

Definitions as they pertain to Oregon Employment Department Law.

Employer

An employer is an employing unit which 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. Agricultural and domestic employers have different guidelines.

NOTE: The amount of remuneration paid to corporate officers, even if the officers are excluded from UI coverage, is to be included in determining whether an employing unit meets the subjectivity requirements for Agricultural employment.

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 paid 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, or payments by the job; vacation, sick, holiday, disability, and guaranteed wage payments; commissions, dividends, distributions, bonuses, gifts, fees, prizes, and tips. Examples of payments that should be reported as wages are:

- Dismissal and Separation allowances - regardless of whether the allowance is paid in a lump sum or in installments.
- Corporate Officer and Shareholder pay - dividends, distributions, and draws are wages to the extent that they are reasonable compensation for services provided to the corporation.
- Sickness and accident disability payments - note exceptions and exclusions.

- Compensation other than cash - the 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.

Casual Labor

Individuals hired and compensated on a temporary basis (including trial periods) are employees and their compensation for services is taxable wages. If individuals perform services that do not promote or advance trade or business of the employer and the total payroll is less than \$1,000 in any quarter, the compensation for these services is not taxable wages.

Exceptions and Exclusions

- Sickness and accident disability payments made under workers' compensation law, those paid from employee funded plans, or those paid after the end of six months after the employee last worked for the employer.
- Dependant care assistance program which meets the requirements of the Internal Revenue Code sections 129(b) and 129(d)
- 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.

- Closely held family corporations may elect to exclude from unemployment insurance corporate officers who are directors, stockholders and family members, and who have substantial ownership in the corporation. See Closely Held Family Corporations in the next section for more detail.
- Fees paid to directors of a corporation for serving the Board of Directors are not subject to UI Tax coverage.
- House Bill 3632 created an exclusion from unemployment tax on individuals who provide services related to ski activities on a volunteer basis, and who receive no other remuneration other than a ski pass worth \$50 or less.

Service By Family Members

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

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

Partnership – There is no familial relationship with a partnership. Therefore, only the partners are not reported. All other employees are to be reported.

Limited Liability Company – There is no familial relationship with a Limited Liability Company. Therefore, only the members are excluded. All other employees are to be reported.

Corporation, General - Individuals who perform services for a corporation, including corporate officers and their family members, are employees of the corporation and their wages are taxable.

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, stepparents, 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 written and, if approved, will be effective the first day of the quarter in which the election was sent. The exclusion form can be found on our tax web site at www.oregon.gov/employ/tax/TaxDocs.shtml in the New Account/Modifying Account Forms section. We will notify the employer in writing whether the election is approved or denied.
- 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 (UI PUB 208) on Corporations and Limited Liability Companies.

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 the name, social security number, the number of hours worked, the pay for each pay period, and the totals by calendar quarter of each individual.

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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