

AMERICAN PAYROLL ASSOCIATION

January 31, 2020

Ms. Sarah Medary
City Manager
City Manager's Office
Lane County Public Service Building
125 East 8th Street, 2nd Floor
Eugene, OR 97401

Ms. Betty Taylor
President
City of Eugene Council
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Mr. Denny Braud
Executive Director
Planning and Development Administration
99 W. 10th Avenue
Eugene, OR 97401

Ms. Emily Semple
Vice President
City of Eugene Council
Lane County Public Service Building
125 East 8th Street, 2nd Floor
Eugene, OR 97401

Re: Consideration of Rules on Council Ordinance 20616 (Council Bill 5210), *An Ordinance to Fund Community Safety Services with a Payroll Tax and Adding New Sections to the Eugene Code, 1971* (June 11, 2019)

Dear Ms. Medary, Mr. Braud, Ms. Taylor, and Ms. Semple:

The American Payroll Association (APA) brings to your attention several points of consideration for administrative rules regarding Council Ordinance 20616, *An Ordinance to Fund Community Safety Services with a Payroll Tax and Adding New Sections to the Eugene Code, 1971*. These points include:

1. Addressing payroll taxes for employees with variable rates of pay and other pay-related issues;
2. Employees may work for employers physically located within the City of Eugene but work outside of the city limits and employees may occasionally travel to Eugene for work; and
3. Administrative tracking, remitting, and reporting requirements.

Payroll Taxes for Employees With Variable Rates of Pay and Other Pay-Related Issues

Payroll managers and their employers need to understand how the city ordinance will apply to the many methods by which employees are paid.

Ordinance 20616 § 3.722 defines employee pay subject to the payroll tax as a “fixed rate” for “time spent in the performance of the services, on the number of operations accomplished or on the quantity produced or handled.” Today, employees are paid in a variety of ways. This pay is not always at a fixed rate or defined by hours, number of operations, or by quantity produced. Examples include:

Tipped employees: They must receive the minimum wage for hours worked, but the amount of tip pay is variable based on customer choice.

Commissioned employees: The amounts may be paid in addition to a base salary or instead of a salary or hourly rate. They may be paid based on the value or number of products or services they sold, team-based pay structures, an employer’s overall profits at year end, or some combination of criteria. Some commissioned employees can draw against the commission at the beginning of a year, quarter, month, or pay period. These employees must pay their employer back any unearned commissions or receive any excess earned at the end of the year, quarter, month, or pay period. Some employees earn a residual commission, such as insurance salespeople whose clients continue to purchase from the company. In some instances, employees may receive a residual commission after employment ends. Commissions may be paid regularly through an employer’s scheduled payday, monthly, quarterly, at year end, or when earned. Commissioned amounts may be paid separately from pay-period wages.

Retroactive and bonus pay: At times, employees may receive retroactive pay resulting from retroactive collective bargaining agreements, late submission of pay increases, internal investigations, labor department investigations, or litigation. These wages are unknown until the investigation is completed or litigation is settled. Bonuses may be paid at any time. They may be discretionary or nondiscretionary based on many factors, including but not limited to business success, production, safety and attendance awards, incentive plans, and shift differentials.

Piecework pay: Some employees are paid a fixed output rate for each unit produced or action performed regardless of hours worked. Examples include a grape grower who pays pruners by the number of vines cut or a cucumber grower paying by the number of buckets filled. A writer may be paid by the number of articles written. A production-line worker may be paid for each unit ready for sale. Perhaps piecework pay is intended to be included in the term “quantity produced or handled,” but this is not intuitive.

The regulations should answer the following questions:

- How do the definitions and thresholds apply to the different methods by which employees are paid?
- How should the payroll tax be calculated and processed, especially for employees paid at variable rates and at inconsistent times?

- How will the ordinance apply when the regular wages appear not to qualify under the definitions requiring payroll taxes, but the commission qualifies, e.g., should the employer assess the tax on all of the pay or only the commission and does it matter if the regular wage and commission are paid together through the pay period?
- How does the ordinance apply to piecework pay and how should the payroll tax be calculated?

Employees May Work for Employers Physically Located Within the City of Eugene but Work Outside of the City Limits and Employees May Occasionally Travel to Eugene for Work

The ordinance applies only to employers physically located within the City of Eugene's limits and does not apply to physical locations outside the limits or to employees working outside the limits (Section 3.724(6)). However, an employee may regularly work outside the city limits and occasionally travel to an employer's physical location within the city or report to a physical location within the city and work in multiple locations outside the city. Examples include employees who telecommute, construction workers with projects outside the city limits, delivery workers and truck drivers whose routes are in and out of the city, and business managers who occasionally travel to Eugene to meet with employees and check operations.

The regulations should answer the following questions:

- What is the definition of employer's physical location as applied to employees that telecommute?
- How does the ordinance apply to the wages earned by employees with multiple work locations?
- Will the payroll tax apply to the wages earned during occasional work situations (i.e., definitions are needed explaining applicability to occasional and part-time work)?
- How does the ordinance apply to wages earned by an employee traveling to or from the City of Eugene?

Administrative Tracking, Remitting, and Reporting Requirements

Clear guidance is needed on how employers should track and report employees' pay subject to the payroll tax, especially as applied to variable pay situations and occasional work.

The ordinance refers to payment and remittance quarterly and less frequently if allowed by the administrative rules (Section 3.726). As described above, procedures are needed on remittance regarding variable pay situations.

The ordinance is effective on July 1, 2020. Payroll software developers and payroll departments require at least six months from the date of final administrative rules to upgrade and test software and train employees on the rules and software changes. APA urges the City of Eugene to issue the final administrative rules as soon as possible because it may be difficult to meet the July 1, 2020, implementation date.

About APA

Established in 1982, APA is a nonprofit association serving the interests of about 21,000 payroll professionals nationwide. Nearly 300 members are physically located in Oregon, including 20 within the City of Eugene and another 10 in the surrounding areas. Many more members work for employers conducting business in Oregon, including payroll service providers serving Oregon employers and payroll software developers.

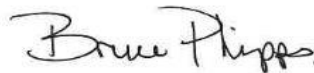
APA's primary mission is to educate its members and the payroll industry about the best practices associated with paying America's workers while complying with applicable federal, state, and local laws and regulations. APA members are directly responsible for calculating wages and tax withholding for their employers.

APA would be pleased to discuss implementation further with you. To reach APA, contact Alice Jacobsohn at 202-248-3901 or ajacobsohn@americanpayroll.org.

Sincerely,



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Cochair, APA State & Local Topics Subcommittee



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Cochair, APA State & Local Topics Subcommittee



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