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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

ED 2-2024

CHAPTER 471

EMPLOYMENT DEPARTMENT

FILED

03/13/2024 9:21 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Amending Paid Leave Oregon rules regarding assistance grants and benefits

EFFECTIVE DATE: 03/15/2024 THROUGH 09/10/2024

AGENCY APPROVED DATE: 03/11/2024

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NEED FOR THE RULE(S):

These temporary administrative rule amendments are needed to ensure the proper administration of the Paid Leave Oregon program. The Oregon Employment Department has carefully assessed program operations since Paid Leave went live on September 3, 2023. As the division has reached 6 months of issuing Paid Leave benefits, program staff have determined the need for administrative rule changes in the areas of benefits and assistance grants. With the goal of clear communication in rule language, these needed changes clarify verification requirements for those seeking benefits for Family, Medical and Safe Leave, by listing specific elements and document types that are acceptable and specify who can receive and provide information to Paid Leave Oregon on behalf of another person, including filing a claim for benefits. The changes also provide detailed guidance for small business owners seeking an assistance grant to help with costs when an employee is on approved leave, by listing the requirements for an individual to qualify as a temporary worker for an assistance grant.

JUSTIFICATION OF TEMPORARY FILING:

Without these temporary rule changes, employees, employers and third parties providing verification documents may be unaware that there are additional documents and combinations of documents that are acceptable forms of verification and which information must be included in the documents when a claimant applies for family leave to bond with a child, care for themselves or a family member with a serious health condition, or seek safety from domestic violence, harassment, sexual assault, bias or stalking. Without the clarifications employees may struggle to understand the verification requirements and risk delayed payment of benefits. Without clarifications claimants and their family members may not be fully aware of who can provide and submit information to Paid Leave, including filing a claim for benefits, on behalf of the claimant, in case they become incapacitated. This leaves incapacitated claimants at risk of not receiving benefits that they qualify for.

Moreover, without these changes, employers may fail to understand the specific requirements for individuals to qualify as temporary workers for the small business to be eligible for assistance grants. Without clarity, employers risk losing out on critical funds, or the possibility of having to repay an assistance grant because of incomplete documentation. Ultimately, the Paid Leave Oregon program's objective in filing these temporary rules, is to make immediate needed

changes in program administrative rules to openly communicate requirements with Oregon employers and their employees who seek Paid Leave services.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

- Paid Leave Oregon statute - ORS chapter 657B (https://www.oregonlegislature.gov/bills_laws/ors/ors657B.html)
 - Protective Proceedings statute – ORS chapter 125 (https://www.oregonlegislature.gov/bills_laws/ors/ors125.html)
 - Powers of Attorney statute – ORS chapter 127 (https://www.oregonlegislature.gov/bills_laws/ors/ors127.html)
 - (Bias Crimes Victims and Tenancy Bill) HB3443 (oregonlegislature.gov)
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RULES:

471-070-1110, 471-070-1120, 471-070-1130, 471-070-1250, 471-070-3710

AMEND: 471-070-1110

RULE TITLE: Benefits: Verification of Family Leave to Care for and Bond with a Child

RULE SUMMARY: This administrative rule is amended to clarify allowable documents and information needed to verify Paid Leave Oregon claims for leave to care for and bond with a child in the first year after birth, or placement through adoption, or foster care.

RULE TEXT:

(1) A claimant applying for Paid Family and Medical Leave Insurance (PFMLI) benefits to care for and bond with a child during the first year after the child's birth must provide one of the following forms of verification:

- (a) The child's government issued birth certificate;
- (b) A Consular Report of Birth Abroad;
- (c) Court issued documents establishing paternity or guardianship;
- (d) A Voluntary Acknowledgement of Paternity (form 45-31) signed and witnessed by a hospital representative and issued within 5 calendar days of the date of birth;
- (e) A document issued by a health care provider of the child or pregnant parent. If issued before the date of birth, the document must be dated and signed within 60 calendar days before the expected date of birth;
- (f) A hospital admission form associated with delivery;
- (g) The Paid Leave Oregon Verification of Birth Form. If issued before the date of birth, the form must be dated and signed within 60 calendar days before the expected date of birth; or
- (h) Another document approved by the department for this purpose. If issued before the date of birth, the form must be dated and signed within 60 calendar days before the expected date of birth.

(2) A claimant applying for PFMLI benefits to care for and bond with a child during the first year after the placement of the child through foster care or the first year after the placement of the child through adoption must provide one of the following forms of verification that includes the child's first and last name:

- (a) A copy of a court order verifying placement;
- (b) A letter signed by the attorney representing the foster or adoptive parent that confirms the placement;
- (c) A document from the foster care, adoption agency, or social worker involved in the placement that confirms the placement;
- (d) A document for the child issued by the United States Citizenship and Immigration Services;
- (e) The PFMLI Verification of Adoption or Foster Care Placement Form; or
- (f) Another document approved by the department for this purpose.

(3) The verification required in sections (1) and (2) of this rule must show the following:

- (a) Claimant's first and last name as parent or guardian of the child after birth or placement of the child through foster care or adoption;

- (b) If applying for PFMLI benefits under section (1) of this rule, the date of the child's birth or the expected date of the child's birth;
- (c) If applying for PFMLI benefits under section (2) of this rule, the date of placement;
- (d) Unless issued by a government entity, the document must also contain:
 - (A) The issuer's first and last name;
 - (B) The issuer's title or specialization;
 - (C) The issuer's contact information, such as mailing address or telephone number;
 - (D) The issuer's handwritten or electronic signature; and
 - (E) The date the document was signed or issued.
- (4) If any of the documents listed in sections (1) and (2) of this rule do not include the full name of the claimant or the claimant's child or do not show the relationship of the child to the claimant, the claimant must submit one or more of the following documents to meet the verification requirements described in this rule:
 - (a) A legal marriage certificate;
 - (b) A certified Declaration of Domestic Partnership;
 - (c) A legal birth certificate;
 - (d) A notarized Voluntary Acknowledgement of Paternity Affidavit (Form 45-21); or
 - (e) One or more documents issued by an independent and verifiable third party that establishes the parent relationship to the child. The document must be issued within six months before the claimant's start of leave.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

STATUTORY/OTHER AUTHORITY: ORS 657B.340, ORS 657B.090

STATUTES/OTHER IMPLEMENTED: ORS 657B.090

AMEND: 471-070-1120

RULE TITLE: Benefits: Verification of a Serious Health Condition

RULE SUMMARY: This administrative rule is amended to clarify allowable documents and information needed to verify Paid Leave Oregon medical or family leave claims involving a serious health condition.

RULE TEXT:

(1) A claimant applying for Paid Family and Medical Leave Insurance (PFMLI) benefits for their own serious health condition or to care for a family member with a serious health condition must provide one of the following forms of verification:

- (a) The PFMLI Verification of a Serious Health Condition Form;
- (b) The Oregon and Federal Family and Medical Leave Health Care Provider Certification issued by the Oregon Bureau of Labor and Industries (BOLI);
- (c) The Family and Medical Leave Act (FMLA) certification of health care provider for a serious health condition form issued by the U.S. Department of Labor;
- (d) A FMLA certification for a serious health condition form issued by an employer;
- (e) A document issued by a health care provider; or
- (f) Another document approved by the department for this purpose.

(2) The forms of verification listed in section (1) of this rule must include:

- (a) The health care provider's:
 - (A) First and last name;
 - (B) Type of medical practice/specialization;
 - (C) Contact information, such as mailing address and telephone number; and
 - (D) Handwritten or electronic signature. If issued before the start of leave, the verification document must be signed by the health care provider within 60 calendar days before the claimant's leave start date;
- (b) The patient's first and last name;
- (c) The claimant's first and last name, when different from the patient identified in section (2)(b) of this rule;
- (d) The approximate date on which the serious health condition commenced or when the serious health condition created the need for leave;
- (e) A reasonable estimate of the duration of the condition or recovery period for the patient;
- (f) A reasonable estimate of the frequency and duration of intermittent leave and estimated treatment schedule, if applicable; and
- (g) Other information as requested by the department to determine eligibility for the PFMLI benefits; including:
 - (A) For medical leave, information sufficient to establish that the claimant has a serious health condition, including but not limited to a diagnosis; or
 - (B) For family leave, information sufficient to establish that the claimant's family member has a serious health condition, including but not limited to a diagnosis.

(3) If any of the documents listed in section (1) of this rule do not include the full name of the patient or the claimant, when different from the patient identified in section (2)(b) of this rule, or do not show the family relationship of the claimant and the patient, the claimant must submit at least one of the following documents to meet the verification requirements described in this rule:

- (a) A legal marriage certificate;
- (b) A certified Declaration of Domestic Partnership;
- (c) A legal birth certificate; or
- (d) One or more documents issued by an independent and verifiable third party that establishes marriage, domestic partnership, or a significant family relationship between claimant and patient. The document must be issued within six months before the claimant's start of leave.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the

publication referred to or incorporated by reference in this rule.]

STATUTORY/OTHER AUTHORITY: ORS 657B.340, ORS 657B.090

STATUTES/OTHER IMPLEMENTED: ORS 657B.090

AMEND: 471-070-1130

RULE TITLE: Benefits: Verification of Safe Leave

RULE SUMMARY: This administrative rule is amended to clarify allowable documents and information needed to verify Paid Leave Oregon safe leave claims.

RULE TEXT:

- (1) A claimant applying for Paid Family and Medical Leave Insurance (PFMLI) benefits for safe leave must provide verification certifying the claimant or the claimant's child as defined in OAR 471-070-1000 is a survivor of domestic violence, harassment, sexual assault, bias, or stalking. Any of the following documents may be provided as verification:
- (a) A copy of a federal agency or state, local, or tribal police report, or a formal complaint to a school's Title IX Coordinator indicating that the claimant or the claimant's child was a survivor of domestic violence, harassment, sexual assault, bias, or stalking;
 - (b) A copy of a protective order or other evidence from a federal, state, local, or tribal court, administrative agency, school's Title IX Coordinator, or attorney that the claimant or the claimant's child appeared in or was preparing for a civil, criminal, or administrative proceeding related to domestic violence, harassment, sexual assault, bias, or stalking;
 - (c) Documentation from an attorney, law enforcement officer, health care provider, licensed mental health professional or counselor, member of the clergy, employee of the Department of Justice division providing victim and survivor services, or victim services provider, verifying that the claimant or the claimant's child was undergoing treatment or counseling, obtaining services, or relocating as a result of domestic violence, harassment, sexual assault, bias, or stalking;
 - (d) The PFMLI Safe Leave Verification Form; or
 - (e) Another document approved by the department for this purpose.
- (2) The documentation listed in section (1) of this rule must include:
- (a) The full name of the claimant, and
 - (b) The full name of the child of the claimant, if the claimant's child is a survivor of domestic violence, harassment, sexual assault, bias, or stalking.
- (3) The documentation listed in section (1) of this rule must be dated no more than 12 months before the date the claimant applied for leave.
- (4) If the documentation is dated earlier than 12 months before the date the claimant applied for leave, the claimant must provide a written statement in addition to documentation listed in section (1) of this rule that describes the current need for leave, along with any additional information requested by the department.
- (5) In cases where a claimant can demonstrate good cause for not providing one of the forms of documentation in section (1) of this rule, the claimant may instead provide a written statement attesting that they are taking eligible safe leave, which includes a brief description of the purpose for taking leave. Good cause for not providing the documentation is determined at the discretion of the department and includes, but is not limited to, the following:
- (a) Difficulty obtaining verification due to a lack of access to services; or
 - (b) Concerns for the safety of the claimant or the claimant's child.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

STATUTORY/OTHER AUTHORITY: ORS 657B.340, ORS 657B.090

STATUTES/OTHER IMPLEMENTED: ORS 657B.090

AMEND: 471-070-1250

RULE TITLE: Benefits: Claimant Designated Representative and Representation of Incapacitated Claimants

RULE SUMMARY: This administrative rule is amended to include the process for assigning representatives for incapacitated claimants, who do not have a claimant designated representative, as well as for legal representatives who have a power of attorney or are the court-appointed representative for a claimant.

RULE TEXT:

- (1) A claimant may designate as a claimant designated representative an individual, 18 years of age or older, who is authorized by the claimant to represent the claimant by exchanging information with the Paid Family and Medical Leave Insurance (PFMLI) program on behalf of the claimant as specified in section (2) of this rule.
- (2) A claimant designated representative, or an individual otherwise approved by the department to represent a claimant, is authorized to do the following:
 - (a) Receive information submitted to the PFMLI program by the claimant;
 - (b) Receive information about PFMLI benefits that the claimant has received or will receive;
 - (c) Receive information about pending or issued decisions made on the claimant's PFMLI claim;
 - (d) Provide information to the PFMLI program on behalf of the claimant, including information required to complete a PFMLI claim for benefits; and
 - (e) File a PFMLI claim for benefits on behalf of the claimant.
- (3) Except as otherwise specified in this rule, to designate a representative, the claimant must complete and submit the department's Claimant Designated Representative Form, electronically or by mail. In order for the representative to be approved by the department to exchange information, the form must be complete. At a minimum, it must include the following:
 - (a) Claimant information:
 - (A) First and last name;
 - (B) Social Security Number or Individual Taxpayer Identification Number;
 - (C) Date of birth; and
 - (D) Contact information, including mailing address and telephone number;
 - (b) Claimant designated representative information:
 - (A) First and last name;
 - (B) Relationship to claimant; and
 - (C) Contact information, including mailing address, and telephone number;
 - (c) Authorization beginning and end dates;
 - (d) A dated attestation with a handwritten signature by the claimant declaring that the claimant understands the purpose of the authorization, that the claimant has not been pressured to sign the authorization, and that the designation can be revoked at any time; and
 - (e) A dated attestation with a handwritten signature by the claimant designated representative declaring that they are acting in the best interest of the claimant.
- (4) The claimant may revoke the authorization at any time by providing written notification to the department.
- (5) The authorization will automatically end on the last day of the claimant's current benefit year. If no valid claim is established, authorization will end 30 days after the claimant's signature date on the Claimant Designated Representative Form.
- (6) The claimant designated representative must maintain the confidentiality of any information they receive from the department on behalf of the claimant. The department is not responsible for any disclosure of the claimant's information by the claimant designated representative.
- (7) If the claimant designated representative provides inaccurate information to the department, the claimant is responsible for any resulting delay, denial, overpayment, or disqualification of PFMLI benefits.
- (8) If a claimant is incapacitated due to a serious health condition as defined in OAR 471-070-1000 and is physically or

mentally unable to designate a representative by filling out the department's form, an individual who has a family relationship to the claimant as defined in ORS 657B.010 may request to represent the claimant as described in section (9) of this rule to exchange information with the PFMLI program on behalf of the claimant as specified in section (2) of this rule. For the purposes of this rule, 'incapacitated' has the meaning given that term in ORS 125.005.

(9) To request representation of a claimant who is incapacitated due to a serious health condition as provided in section (8) of this rule the requesting individual must submit:

(a) The completed Claimant Designated Representative form referenced in section (3) of this rule. At a minimum, the form must include:

(A) The information listed in section (3)(a) to (b) of this rule;

(B) Authorization beginning date;

(C) A dated attestation with a handwritten signature from a health care provider as defined in OAR 471-070-1000 attesting, within the scope of their license, that the claimant is incapacitated and unable to complete the requirements for filing or providing information on a PFMLI claim and unable to independently designate a representative; and

(D) A dated attestation with a handwritten signature from the individual requesting approval, declaring that they will:

(i) Act in the best interest of the claimant;

(ii) Maintain claimant confidentiality, as outlined in section (6) of this rule; and

(iii) Inform the department within 48 hours of learning that the claimant is no longer incapacitated;

(b) One or more of the following documents that show the individual's family relationship to the claimant:

(A) Certified Declaration of Domestic Partnership;

(B) Legal marriage certificate;

(C) Legal birth certificate; or

(D) At the discretion of the department, other documents issued by an independent and verifiable third party that establish marriage, domestic partnership, parenthood, or other family relationship between the individual and claimant; and

(c) Documentation approved by the department for this purpose that is sufficient to establish the identity of the claimant and the individual requesting approval.

(10) The authorization referenced in section (8) of this rule will automatically end on the date that the department is informed that the claimant is no longer incapacitated, or on the last day of the claimant's current benefit year, whichever is earliest. The claimant may choose to continue the authorization by independently designating the representative as described in section (3) of this rule.

(11) In addition to individuals referenced in sections (1) and (8) of this rule, the following individuals are authorized to provide information to and receive information from the PFMLI program as specified in section (2) of this rule:

a) An individual who was court-appointed as a claimant's legal guardian or conservator with the authority to make decisions on the claimant's behalf, if the authorized individual provides a copy of the guardianship or conservatorship documentation to the department; or

(b) An individual with granted power of attorney by the claimant to act as a claimant's 'agent' or 'attorney-in-fact,' if the authorized individual provides documentation to the department that shows the individual has specific authority to act on behalf of the claimant for paid family and medical leave claim purposes.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

STATUTORY/OTHER AUTHORITY: ORS 125.025, ORS 127.002 to 127.045, ORS 657B.400

STATUTES/OTHER IMPLEMENTED: ORS 657B.400

AMEND: 471-070-3710

RULE TITLE: Assistance Grants: Application Requirements

RULE SUMMARY: This rule, which outlines the application requirements for small employers seeking assistance grants, is amended to clarify the requirements for an individual to qualify as a temporary worker for the purpose of an assistance grant.

RULE TEXT:

(1) An employer may apply for an assistance grant only:

- (a) After an eligible employee has been approved by the department for family leave, medical leave or safe leave; and
- (b) Prior to the end of the fourth month following the last day of the eligible employee's period of leave.

(2) An application for a grant must be submitted online or by another method approved by the department. The grant application must be complete and include the following:

(a) Information about the employer applying for the grant, including:

(A) Business Identification Number or Federal Employer Identification Number;

(B) Business name;

(C) Business address; and

(D) Business contact person's name and contact information;

(b) Information about the eligible employee taking leave for which the employer is requesting the grant, including but not limited to:

(A) First and last name;

(B) Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN);

(C) Start date of the leave; and

(D) End date or expected leave end date;

(c) Information about the grant being requested, including:

(A) Type of grant requested; and

(B) Grant amount requested, when applicable;

(d) Written documentation demonstrating that the employer:

(A) Hired a temporary worker to replace an eligible employee on family leave, medical leave, or safe leave, including the temporary worker's name, start date, SSN or ITIN, and documentation demonstrating that the worker qualifies as a temporary worker for an assistance grant under section (7) of this rule; or

(B) Incurred significant additional wage-related costs due to an eligible employee's use of leave and the amount, including, but not limited to, receipts, personnel or payroll records, or sworn statements; and

(e) Acknowledgement that:

(A) The employer is required to pay the employer contribution for a period of eight calendar quarters in accordance with OAR 471-070-3750; and

(B) The employer could be required to repay an assistance grant if the employer is later deemed to be ineligible in accordance with OAR 471-070-3850.

(3) An employer that receives a grant under ORS 657B.200(1)(b) may submit another grant application requesting an additional grant under ORS 657B.200(2).

(a) The new grant application must contain:

(A) A new leave end date or new expected leave end date showing an extension of the initial period of leave requested; and

(B) Written documentation demonstrating that a temporary worker was hired to replace an eligible employee on family leave, medical leave or safe leave including the temporary worker's name, start date, SSN or ITIN, and documentation demonstrating that the worker qualifies as a temporary worker for an assistance grant under section (7) of this rule.

(b) The additional grant application submitted under this section will not count against an employer's application limit under ORS 657B.200(3).

(4) An incomplete application will not be considered by the department until and unless it is completed and will not count against an employer's application limit under ORS 657B.200(3).

(5) The department may deny an application for a grant for reasons that include, but are not limited to, the employer's failure to demonstrate that:

(a) The employer hired a temporary worker or incurred significant additional wage-related costs; or

(b) The temporary worker hired or significant additional wage-related costs incurred was due to an employee's use of family leave, medical leave or safe leave.

(6) A denied grant application will count against an employer's application limit under ORS 657B.200(3).

(7) A worker hired to replace an eligible employee during the eligible employee's family leave, medical leave or safe leave qualifies as a temporary worker for an assistance grant under ORS 657B.200(1)(a) or (2) if all of the following are true:

(a) The worker was hired on or after the date an eligible employee provided notice of expected qualifying leave;

(b) The worker was hired to perform the same or substantially similar duties and responsibilities as the eligible employee on leave, entailing equivalent skill, effort, responsibility, and authority; and

(c) The worker was not initially hired for a period extending more than 30 calendar days beyond the expected end of the eligible employee's qualifying leave.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

STATUTORY/OTHER AUTHORITY: ORS 657B.200, 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.200