

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

PERMANENT ADMINISTRATIVE ORDER

ED 2-2022

CHAPTER 471

EMPLOYMENT DEPARTMENT

FILED

01/31/2022 8:35 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Definitions and administrative provisions related to self-employed for PFMLI program.

EFFECTIVE DATE: 01/31/2022

AGENCY APPROVED DATE: 01/28/2022

CONTACT: Anne Friend
503-947-1471
OED_Rules@employ.oregon.gov

875 Union Street NE
Director's Office
Salem, OR 97311

Filed By:
Anne Friend
Rules Coordinator

RULES:

471-070-2000, 471-070-2005, 471-070-2010, 471-070-2030, 471-070-2170

ADOPT: 471-070-2000

RULE TITLE: Self-employed: Definition

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Defines taxable income from self-employment as Oregon net income from self-employment or earned as an independent contractor necessary to regulate self-employed elections of the Paid Family and Medical Leave Insurance program.

RULE TEXT:

"Taxable income from self-employment" means Oregon net income from self-employment or earned as an independent contractor as reported on the Oregon personal income tax return.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.130, 657B.150

ADOPT: 471-070-2005

RULE TITLE: Self-Employed: Eligibility

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Clarifies a self-employed individual with at least \$1,000 in taxable income from self-employment in the prior calendar year, completes a notice of election, and isn't terminated within the last three years may elect coverage for the Paid Family and Medical Leave Insurance program.

RULE TEXT:

A self-employed individual, as defined in ORS 657B.010(22), may elect coverage under the Paid Family and Medical Leave Insurance program if the individual:

- (1) Earns at least \$1,000 in taxable income from self-employment in the preceding calendar year;
- (2) Completes a notice of election and provides the required documentation as described in OAR 471-070-2010; and
- (3) Is not terminated from elective coverage within the previous three calendar years, in accordance with OAR 471-070-2170.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.130

ADOPT: 471-070-2010

RULE TITLE: Self-employed: Election Requirements and Effective Date

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Clarifies the requirements for a self-employed individual's coverage election to the Paid Family and Medical Leave Insurance Program approval and establishes a timeline. Allows eligible self-employed individuals to elect coverage any time and explains what is needed on the notice of election. The notice of election needs information about the individual applying, information about the individual's business, individual's total taxable income from self-employment in the prior calendar year, and documentation verifying who they are and their income.

RULE TEXT:

(1) An eligible self-employed individual may apply to elect coverage under the Paid Family and Medical Leave Insurance program at any time.

(2) A notice to elect must be in writing and submitted online or in another method approved by the department. To be reviewed, the notice must be complete and include:

(a) Information about the individual applying for elective coverage, including:

(A) First and last name;

(B) Social Security Number or Individual Taxpayer Identification Number; and

(C) Address and contact information.

(b) Information on the individual's business, when applicable, including:

(A) Business Identification Number;

(B) Business name; and

(C) Business address and contact information.

(c) The individual's total taxable income from self-employment for the preceding calendar year;

(d) Documentation verifying:

(A) The individual's identity and

(B) The individual's taxable income from self-employment, including but not limited to, income reported to Oregon on the personal income tax return from the preceding calendar year.

(e) An agreement to:

(A) Pay contributions for a period of not less than three years;

(B) Provide any information and documentation on the individual's taxable income from self-employment that the department deems necessary for the administration of the elective coverage, including but not limited to, a copy of the Oregon personal income tax return annually; and

(C) Provide additional information to confirm eligibility for elective coverage, if requested by the department;

(f) Acknowledgement of the conditions for termination of self-employed elective coverage established in OAR 471-070-2170, including, but not limited to, the condition that coverage cannot be terminated until coverage has been in effect for at least three years.

(3) The department may deny a notice to elect if:

(a) The notice does not include the required information and documentation in accordance with this rule or

(b) The self-employed individual does not meet the eligibility requirements in OAR 471-070-2005 or other applicable law.

(4) Approved elective coverage becomes effective on the date the complete notice to elect was received with the department.

[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

STATUTES/OTHER IMPLEMENTED: ORS 657B.130

ADOPT: 471-070-2030

RULE TITLE: Self-employed: Contribution Payments and Reporting Requirements

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Clarifies the responsibility for self-employed individuals to pay Paid Family and Medical Leave Insurance (PFMLI) contributions and file appropriate reports. Describes how the self-employed individual calculates their quarterly PFMLI payments. It also requires the self-employed individual to annually report to the department their prior year's taxable income from self-employment reported on the Oregon personal income tax return.

RULE TEXT:

(1) A self-employed individual who elects coverage under ORS 657B.130 must contribute to the Paid Family Medical Leave Insurance (PFMLI) Trust Fund in an amount that is equal to 60 percent of the total contribution rate described in OAR 471-070-3010 up to the taxable income from self-employment that is equal to the calendar year maximum wage amount described in OAR 471-070-3010.

(2) Total contribution payments will be based on the individual's total taxable income from self-employment from the tax return required to be filed in the previous calendar year and generally shall be divided into four quarterly contribution payments. The contribution payments will begin in the quarter the self-employed election is made and continue through the first quarter of the next year. If a contribution is due for only part of a quarter, the contribution amount shall be prorated based on the number of calendar days that the elective coverage is in effect.

Example 1: Grace, a self-employed individual, elects PFMLI coverage on May 1, 2024. Grace earned \$80,000 in taxable income from self-employment in 2023. Assuming a total contribution rate of one percent, Grace's four quarterly contribution amounts due are calculated as follows:

The first payment period of May 1 through June 30 (second quarter for calendar year 2024), will be \$80.44 [(\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters) x 61/91 calendar days in the quarter].

The second payment period of July 1 through September 30 (third quarter for calendar year 2024), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).

The third payment period of October 1 through December 31 (fourth quarter for calendar year 2024), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).

The fourth payment period of January 1 through March 30 (first quarter for calendar year 2025), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).

Example 2: Bert, a self-employed individual, elects PFMLI coverage on August 22, 2024. Bert earned \$40,000 in taxable income from self-employment in 2023. Because Bert's election is made during the third quarter of 2024, Bert only has three quarterly payments (third quarter of 2023, fourth quarter of 2023, and first quarter of 2024) until a new quarterly amount is determined. Assuming a total contribution rate of one percent, Bert's three quarterly contribution amounts due are calculated as follows:

The first payment period of July 1 through September 30 (third quarter for calendar year 2024), will be \$26.09 [(\$40,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters) x 40/92 calendar days in the quarter].

The second payment period of October 1 through December 31 (fourth quarter for calendar year 2024), will be \$60 (\$40,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).

The third payment period of January 1 through March 30 (first quarter for calendar year 2025), will be \$60 (\$40,000

taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).

Bert's next payment will be based on the taxable income from self-employment in 2024.

(3) Quarterly contributions shall be due and payable in accordance with OAR 471-070-3030.

(4) The date of receipt of contributions transmitted through the mail or private express carrier shall be determined as provided in ORS 293.660. The date of receipt shall be used in the calculation of interest charges, delinquencies, penalties or other sanctions provided by law.

(5) The self-employed individual must annually report information and provide documentation provided in subsection (a) and (b) of this section the department deems necessary for the administrative of elective coverage. Failure to provide the information by December 31 will result in termination of the self-employed individual's election of PFMLI coverage.

(a) Except as specified in subsection (b) of this section, a self-employed individual must annually report to the department the prior year's taxable income from self-employment required to be filed and provide their Oregon personal income tax return to the department on or before April 30 of each year.

(b) If a self-employed individual fails to provide their Oregon personal income tax return, the department will use the information on the individual's last tax return filed to calculate quarterly contribution payments that begin in the second quarter. The department will adjust the quarterly contribution payment amounts due, if appropriate, when the prior year's tax return is filed and provided to the department on or before December 31 of each year.

Example 3: Tobi, a self-employed individual, elects PFMLI coverage on June 5, 2023 and provides his 2022 Oregon personal income tax return showing \$40,000 of taxable income from self-employment. Assuming a total contribution rate of one percent, Tobi's quarterly contribution amounts due are \$60 ($\$40,000 \text{ taxable income from self-employment} \times 0.01 \text{ total contribution rate} \times 0.6 \text{ self-employed contribution percentage} / \text{four quarters}$).

By April 30, 2024, Tobi needs to provide to the department their 2023 Oregon personal income tax return; however, Tobi is filing an extension for their 2023 Oregon personal income tax return and therefore does not have a tax return to provide to the department. Since the department does not have the prior year's taxable income from Tobi's self-employment, the department calculates Tobi's contribution amount for 2024 based on their 2022 Oregon personal income tax return on file. Tobi will continue to pay \$60 each quarter until the 2023 Oregon personal income tax return is received.

Tobi provides to the department their 2023 Oregon personal income tax on September 22, 2024 which shows Tobi's taxable income from self-employment for 2023 was actually \$50,000. Assuming a total contribution rate of one percent, Tobi's quarterly contribution amounts that should have been paid starting with the second quarter of 2024 was \$75 ($\$50,000 \text{ taxable income from self-employment} \times 0.01 \text{ total contribution rate} \times 0.6 \text{ self-employed contribution percentage} / \text{four quarters}$). By September 22, 2024, Tobi has only made the first quarterly payment (period of April 1 through June 30) of \$60. The department adjusts the amount Tobi should have paid for contributions by \$15 ($\$75 \text{ assessed minus the } \60 paid) and bills Tobi for the difference. The department updates Tobi's contribution amount for the remaining quarters to \$75.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.130, 293.660, 657B.150

ADOPT: 471-070-2170

RULE TITLE: Self-employed: Termination

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Clarifies when and how a self-employed individual or the Oregon Employment Department may terminate Paid Family and Medical Leave elective coverage. The self-employed individual can terminate elective coverage any time after three years of PFMLI coverage, bankruptcy, or no longer eligible. The department may terminate if the individual is delinquent on PFMLI contribution payments.

RULE TEXT:

- (1) A self-employed individual may terminate elective coverage by filing a written notice online or in another method approved by the department.
- (2) A self-employed individual can terminate elective coverage any time after the coverage has been in effect for three years or longer. The termination shall take effect 30 days after the notice to terminate is received by the department, unless a later date is requested by the self-employed individual on the written notice.
- (3) A self-employed individual may terminate elective coverage that has been in effect for less than three years only in the following circumstances:
 - (a) The individual has filed a voluntary or involuntary bankruptcy petition; or
 - (b) The individual changed employment status or is otherwise no longer eligible for elective coverage, in accordance with OAR 471-070-2005.
- (4) The notice to terminate elective coverage under (3) of this rule must provide the following information:
 - (a) The reason for the termination; and
 - (b) Any supporting documentation.
- (5) The department may terminate a self-employed individual's elective coverage if the individual is delinquent on contributions in accordance with OAR 471-070-2030.
- (6) When the department determines that a self-employed individual's election shall be terminated under section (5) of this rule, the department will send the individual a letter to terminate at their last known address or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records that provides:
 - (a) The reason for the termination;
 - (b) Instructions for how to resolve issues leading to the termination; and
 - (c) The date that the termination will take effect absent action on behalf of the self-employed individual.
- (7) All contributions payable in accordance with OAR 471-070-2030 are due immediately upon termination of coverage.
- (8) A self-employed individual whose elective coverage is terminated by the department may not reelect coverage as a self-employed individual for three years following the date of termination.

[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

STATUTES/OTHER IMPLEMENTED: ORS 657B.130