

Presiding Officer's Report to Agency on Rulemaking Hearings

Date: October 31, 2022
To: David Gerstenfeld, Acting Director
From: Anne Friend, OED Rules Coordinator
Subject: Presiding Officer's Report on Rulemaking Hearings – Paid Leave Oregon Batch 5 Rules

Public Hearings and Public Comment Period

Meeting Type	Hearing Date and Time	Hearing Location
Public Hearing	July 21, 2022 10 am - Noon	Virtual via Zoom
Public Hearing	July 23, 2022 – 9 – 11 am	Virtual via Zoom
Public Hearing	July 26, 2022 – 4 – 6 pm	Virtual via Zoom
Public Hearing	August 23, 2022 – 9 – 11 am	Virtual via Zoom
Public Hearing	August 25, 2022 – 4 – 6 pm	Virtual via Zoom
Public Comment Period	July 1 to August 31, 2022 at 11:59 pm	Submitted in writing via email.

Notice Filings (OAR 471-070-*)

Notice Number	Rule Numbers
Notice – Benefits	471-070-1000, 1300, 1330, 1410, 1500, 1510, 1520, 1550, 1560

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Hearings Report

There were five rulemaking hearings on the proposed rules for the Paid Leave Oregon Division's Batch 5 administrative rules related to benefits. The first three hearings covered the four notice of proposed rulemaking filing that the Department filed on June 29, 2022, relating to appeals, benefits, contributions, and equivalent plans. The last two hearings covered the benefit notice of proposed rulemaking filing that the Department filed on July 26, 2022, with the Secretary of State's Office. All hearings were held virtually via the Zoom platform and recorded for the official record. Below, is a summary of each hearing and a summary of any comments received on the draft administrative rules related to benefits. The public comment period for this rulemaking effort was opened on July 1, 2022, and closed at 11:59 p.m. on August 31, 2022. This report covers only those comments related to benefits. A separate report will cover public comments received related to appeals, equivalent plans, and contributions.

Public Hearing #1 – July 21, 2022

The first public hearing for the administrative rules took place on Thursday, July 21, 2022, from 10 a.m. to 12 p.m. The hearing occurred through Zoom and was recorded as part of the official record. Participants put their name in the Q & A or raised their hands within the Zoom meeting to comment on the proposed rules. There were 384 individuals registered to attend and 248 actually attended the hearing. Of the attendees, 11 different attendees provided testimony during the hearing on the draft administrative rules. Seven different attendees asked general questions about the program not specific to the administrative rules. A summary of the comments on the draft administrative rules can be found in the table below and in "Exhibit 001" attached.

Public Hearing #2 – July 23, 2022

The second public hearing for the administrative rules took place on Saturday, July 23, 2022, from 9 to 11 a.m. The hearing occurred through Zoom and was recorded as part of the official record. Participants put their name in the Q & A or raised their hands within the Zoom meeting to comment on the proposed rules. There were 44 individuals registered to attend and nine actually attended the hearing. Of the attendees, two attendees provided testimony during the hearing on the draft administrative rules. A summary of the comments on the draft administrative rules can be found in the table below and in "Exhibit 002" attached.

Public Hearing #3 – July 26, 2022

The third public hearing for the administrative rules took place on Tuesday, July 26, 2022, from 4 to 6 p.m. The hearing occurred through Zoom and was recorded as part of the official record. Participants put their name in the Q & A or raised their hands within the Zoom meeting to comment on the proposed rules. There were 138 individuals registered to attend and 56 actually attended the hearing. Of the attendees, five attendees provided testimony during the hearing on the draft administrative rules. Three different attendees asked general questions about the program not specific to the administrative rules. A summary of the comments on the draft administrative rules can be found in the table below and in "Exhibit 003" attached.

Public Hearing #4 – August 23, 2022

The fourth public hearing for the benefit administrative rules administrative rules took place on Tuesday, August 23, 2022, from 9 to 11 a.m. The hearing occurred through Zoom and was recorded as part of the official record. Participants put their name in the Q & A or raised their hands within the Zoom meeting to comment on the proposed rules. There were 132 individuals registered to attend and 46 actually attended the hearing. Of the attendees, four attendees provided testimony during the hearing on the draft administrative rules. 32 different attendees asked general questions about the program not

specific to the administrative rules. A summary of their comments can be found in the table below and in “Exhibit 004” attached.

Public Hearing #5 – August 25, 2022

The fifth public hearing for the benefit administrative rules administrative rules took place on Thursday, August 25, 2022, from 4 to 6 p.m. The hearing occurred through Zoom and was recorded as part of the official record. Participants put their name in the Q & A or raised their hands within the Zoom meeting to comment on the proposed rules. There were 382 individuals registered to attend and 217 actually attended the hearing. Of the attendees, one attendee provided testimony during the hearing on the draft administrative rules. 16 different attendees asked general questions about the program not specific to the administrative rules. A summary of their comments can be found in the table below and in “Exhibit 005” attached.

Public Comment Period – July 1, 2022 – August 31, 2022

The Notice of Proposed Rulemaking and Statement of Need and Fiscal Impact filing for the Batch 5 administrative rules was published in the Oregon Bulletin on July 1, 2022 and August 1, 2022. Between July 1 and 11:59 p.m. on August 31, 2022, the public comment period was open for the public, interested parties and groups, and legislators to submit comments on the draft administrative rules. Comments and questions were primarily received via the Rules@employ.oregon.gov email box. Any comments received regarding the Paid Leave Oregon Batch 5 administrative rules in other email boxes were subsequently forwarded to the Rules email box and recorded.

During the public comment period, the Department received written testimony from 23 different individuals or groups. Summary of the testimony received specifically regarding Paid Leave Oregon Batch 5 administrative rules related to benefits can be found in the table below under the rule(s) the testimony was provided for. The exact comments can be found in the attached exhibits.

Summary of Comments Received on and Responses for Paid Leave Oregon Batch 5 Administrative Rules

Benefits:

Rule Number	Name Affiliation	Exhibit Number	Comment Summary	Responses	Rule Change – Yes/No
471-070-1000 – Benefits: Definitions	Susan Murphy, Prudential Insurance; Carol Williams, DAS	004, 009	(1) Question – Is the intent to only allow paid leave earned to the “eligible employee’s average weekly wage” (EEAWW) instead of current pay in ORS 657B.030(2)?	The proposed rule definition of EEAWW mirrors that of the statutory definition; therefore, the employee’s use of paid leave in addition to Paid Leave Oregon benefits is limited to the calculated EEAWW per statute.	No
	Cassandra Gomez, A Better Balance;	006, 016, 028	Support - Proposed definitions should work well for the program and aligns	Support for administrative rule as written, no changes needed.	No

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	Teresa Hoard-Jackson, SEIU; Time to Care Oregon, Lisa Kwon		with Washington State paid leave.		
	Jennifer Gwin, Rebuilding Center	004	(2)(a) – Oppose as suggest rewording or clarifying fiscal year is the Oregon’s fiscal year.	The average weekly wage is not determined for each employee but rather as the state average weekly wage as a whole. It is determined for the fiscal year just like Unemployment Insurance.	No
	Julie Samples & David Henretty, Oregon Law Center; Laurie Hoefler, Legal Aid Services of Oregon; ERISA Industry Committee, James Gelfand	024, 026	(3) & (10) – Oppose as dividing total wages earned during the base year by 52 weeks is unfair to seasonal and temporary workers.	The benefit year definition is set in statute (SB 1515 during the 2022 Legislative Session) to divide by 52 weeks. Also, the eligible employee’s average weekly wage in statute [ORS 657B.010(12)] states it is the total wages earned during the year divided by the number of weeks in the base year; which is 52 weeks. This is similar to how Unemployment Insurance is calculated. For employees that have multiple employers, the total wages from all employers is added and then divided by 52 to reach the eligible employee’s average weekly wage.	No
	Julie Samples & David Henretty, Oregon Law Center; Laurie Hoefler, Legal	024	(13) – Oppose as no examples of serious health conditions.	Examples can be added in the guidebooks.	No

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	Aid Services of Oregon				
	Jennifer Gwin, Rebuilding Center	004	(13)(d) – Question as meaning four consecutive days or three or more?	Mean four or more consecutive days. The rule language aligns with OFLA.	No
	Jennifer Gwin, Rebuilding Center	004	(13)(d)(A)/(B) – Question can two or more treatments be telehealth appointments?	How the treatment is scheduled/handled is not specified in rule as all options for how the health care provider provides the treatment is available. Further information may be provided in guidebooks/instructions.	No
	Paloma Sparks, Oregon Business & Industry; Julie Samples & David Henretty, Oregon Law Center; Laurie Hoefler, Legal Aid Services of Oregon	022, 024	(18) & (19) Oppose – Remove “should have known” as is highly subjective and could result in uneven application of the law.	Paid Leave Oregon Division has kept “should have known” in to cover situations where an individual receives a benefit payment and they knew the amount was incorrect and didn’t contact the Division. The Division may ask the claimant for additional information before applying penalty.	No
471-070-1300 – Benefits: Written Notice Poster to Employees of Rights and Duties	Cassandra Gomez, A Better Balance; Teresa Hoard-Jackson, SEIU; Time to Care Oregon, Lisa Kwon	006, 003, 016, 002, 028	Oppose removal of failure to provide notice is unlawful employment practice, as was in prior rule draft.	There is no statutory authority to include unlawful employment practice in the rule. The Paid Leave Oregon Division will monitor to see if this becomes an issue and may suggest a legislative change in the future.	No
	Daris Freeman, Unum; Abigail O’Connell, Sun Life; Cindy Goff, American	001, 011, 019, 012, 021	(2)(a) – Oppose as believe the department does not want to approve every poster the employer customizes.	Eliminated the language from the rule and instead required the employer to display the department’s notice poster.	Yes

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	Council of Life Insurers				
	Julie Samples & David Henretty, Oregon Law Center; Laurie Hoefler, Legal Aid Services of Oregon	024	(2)(a) – Oppose as would like poster provided to all employee, not just remote employees. Also require a font size.	The model notice can be provided by the employer to all employees electronically if the employer chooses; the rule doesn't require this for employees in the office. This is similar to other poster requirements for other agencies. The model notice is provided on the Paid Leave Oregon Division's website is in size 14 font in 11 languages.	No
	Cassandra Gomez, A Better Balance	006	(2)(b) - Oppose as specify electronic notice posting is supplemental to workplace posting.	The poster shall be displayed at the worksite <i>and</i> provided electronically if an employee works remotely.	No
	Cassandra Gomez, A Better Balance; Paloma Sparks, Oregon Business & Industry	006, 022	(2)(b) – Support for allowing electronic delivery.	Support for administrative rule as written, no changes needed.	No
	Cassandra Gomez, A Better Balance	006	(3)(a) – Support for poster provided in each language typically uses to communicate with the employee.	Support for administrative rule as written, no changes needed.	No
	Julie Samples & David Henretty, Oregon Law Center; Laurie Hoefler, Legal Aid Services of Oregon	024	(3)(a) – Oppose as focusing on the language that the employer typically uses to communicate with the employee could inadvertently result in some employees being overlooked as employer may not	This section of the rule is based on statutory language.	No

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			be able to speak their dominant language.		
	Julie Samples & David Henretty, Oregon Law Center; Laurie Hoefler, Legal Aid Services of Oregon	024	(3)(a) – Oppose as recommend expanding “employer” to include employer’s agents and/or others, such as supervisors.	This section of the rule is based on statutory language.	No
	Paloma Sparks, Oregon Business & Industry	022	(3)(a) – Opposed as change “displayed” to “provided” in the second line to more accurately reflect how the information will be conveyed.	This section of the rule is for the worksite poster; therefore, the poster will be displayed and not provided. The poster will be provided in (b) for remote workers.	No
	Carol Williams, DAS	009	(3)(b) Oppose - Allow posting of notice on Intranet.	For employees that are working remotely, the rule allows for electronic delivery methods. The rule does not go into detail of all the different electronic methods that may be but the Intranet is one option.	No
471-070-1330 – Benefits: Job Protection	Daris Freeman, Unum; Cindy Goff, American Council of Life Insurers; Paloma Sparks, Oregon Business & Industry	001, 011, 019, 021, 022	Oppose – Modify rule to include language that the protections do not apply if the employee has not provided proper notice to their employer as outlined in ORS 657B.040.	The job protection statute (ORS 657B.060) does not have a requirement that job protection doesn’t apply if the employee doesn’t provide proper notice to the employer; therefore, the Paid Leave Oregon Division does not have the authority to add it by administrative rule. Job protections apply to an “eligible employee”. If Paid Leave Oregon has determined an employee is eligible, the job protections apply, even if Paid	No

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				Leave Oregon reduces the benefits.	
	Cassandra Gomez, A Better Balance; Dana Hepper, Children’s Institute; Teresa Hoard-Jackson, SEIU; Amy Powers, APANO; Michele Ruffin, Oregon Education Association; Unite Oregon, Gloria Ochoa-Sandoval; Movement Building, Danita Harris; Time to Care Oregon, Lisa Kwon	001, 006, 014, 003, 016, 018, 023, 004, 025, 005, 027, 002, 028	Oppose - Restore to prior rule draft by including equivalent position must include the location and be within 20 miles of former job site and restoration to former position regardless whether employee is taking consecutive or nonconsecutive leave.	Per ORS 657B.025, Paid Leave Oregon program should run concurrently with OFLA/FMLA. The mileage requirement is required for OFLA [ORS 659A.171(1)] but wasn’t included in Paid Leave Oregon’s statute. Therefore, the mileage requirement is not included as it goes beyond statute.	No
	ERISA Industry Committee, James Gelfand	026	Support - Eliminating the 20 miles of a former job site language.	Per ORS 657B.025, Paid Leave Oregon program should run concurrently with OFLA/FMLA. The mileage requirement is required for OFLA [ORS 659A.171(1)] but wasn’t included in Paid Leave Oregon’s statute. Therefore, the mileage requirement is not included as it goes beyond statute.	No
	Sarah Ewing & Heidi Vass, TriMet	017	(1) Oppose – The example of the delivery driver creates a problem for unions where the employees chose their route and garage location	The rule states if the employee would have been reassigned if not taking leave; therefore, the rule already covers the scenario for	No

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			three times a year based on seniority.	collective bargaining agreement changes.	
Breanna Scott, New York Life; Daris Freeman, Unum; Cindy Goff, American Council of Life Insurers	007, 011, 019, 021		(2) Oppose - Removing replacement worker one day after employee on leave provides notice of intent to return, is too soon.	Changed the language within two business days, similar with FMLA [825.311(c)].	Yes
Julie Samples & David Henretty, Oregon Law Center; Laurie Hoefler, Legal Aid Services of Oregon	024		(3) Oppose – Additional explanation of what the employer needs to show that they would have terminated the job if employee was not on leave.	Job protection is administered by BOLI. The job protection language aligns with OFLA and FMLA. Will monitor this with BOLI to determine if additional changes are needed to the rule in the future.	No
Jamie Bailey, GE	020		(4)(a) – Oppose as contradicts (5)(d).	Amended rule to clarify unless section (5)(d) of the rule applies.	Yes
Julie Samples & David Henretty, Oregon Law Center; Laurie Hoefler, Legal Aid Services of Oregon; ERISA Industry Committee, James Gelfand	024, 026		(4)(a)(B) – Oppose – Remove “virtually identical”.	Not all positions may be identical to the position they left due to collective bargaining agreements or position has changed; therefore, the language has been left in the rule. However, expanded the section to clarify further based on OFLA rule.	Yes
Julie Samples & David Henretty, Oregon Law Center; Laurie Hoefler, Legal Aid Services of Oregon	024		(4)(a)(B) & (b) – Oppose – Add “rides’ to the list of benefits the work must possess as agricultural workers receive rides to work through agreements and that must continue when back.	The rule already includes “working conditions”. Paid Leave Oregon Division feels rides fits under working conditions and the rule doesn’t list out all possible options of working conditions.	No
Breanna Scott, New York Life	007		(4)(b) Oppose - Change “same” to “similar” in regard to	Changed to similar for working conditions only to	Yes

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			benefits, pay, etc. of different position offered employee returning to work at small employer as may not have role as exact same position that left.	align with statute [ORS 657B.060(1)(b)].	
Jennifer Gwin, Rebuilding Center	004	(4)(b) – Unclear if contradicts (5)(d) and how it should be handled for small employers if position is eliminated.	Amended rule to clarify unless section (5)(d) of the rule applies.	Yes	
Carol Williams, DAS	009	(5)(b) Oppose - Remove “however” from second sentence.	Agree with suggestion and eliminated “however” from this section of the rule.	Yes	
Julie Samples & David Henretty, Oregon Law Center; Laurie Hoefler, Legal Aid Services of Oregon	024	(5)(d) – Oppose – Clarify that the employer has the burden of showing evidence that a layoff would have occurred if they had not taken the leave and what forms of evidence must be presented.	Evidence may need to be provided in a BOLI appeal by either party as to why do not believe job protection was done properly.	No	
Bridget Caswell, Sedgwick; Daris Freeman, Unum; Ali Schaafsma, Brown & Brown	008, 011, 019, 013	(6)(a) Oppose - Recommend section states that employee may be required to pay the amount of premium the employee would have been required to pay if not on leave.	Agree with suggestion and made the clarification in rule.	Yes	
Cassandra Gomez, A Better Balance	006	(6)(c) – Support that the employer must receive permission from the employee to deduct from pay.	Support for administrative rule as written, no changes needed.	No	
Teresa Hoard-Jackson, SEIU; Cassandra Gomez, A Better Balance; Julie Samples & David	003, 006, 024, 028	(7) Oppose – Strike the section because statute only references employer leave policy once and employer policy requiring regular reporting while on leave may be burdensome and	Employers and the Paid Leave Oregon Division need to know if any employee is going to be out on leave or when their leave status changes; therefore the Division is not	No	

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	Henretty, Oregon Law Center; Laurie Hoefler, Legal Aid Services of Oregon; Time to Care Oregon, Lisa Kwon		unnecessarily interfere with employee's leave period.	removing this section from the rule.	
	Cassandra Gomez, A Better Balance; Time to Care Oregon, Lisa Kwon	006, 028	(8) Oppose - Restore to previous rule draft requiring employer to continue health care benefits if employee provides notice will not return at end of leave period.	Paid Leave Oregon ceases when an employee is not working. If an employee gives notice to not return to work, they are no longer working.	No
	Sarah Ewing & Heidi Vass, TriMet	017	(8) Oppose – Expand rule to include notice be given by telephone also.	Changed rule to remove how the notice is given to the employer, just a notice needs to be given.	Yes
	Breanna Scott, New York Life; Carol Williams, DAS	007, 009	(9) Oppose - Move this section higher in rule. Easy to miss and rest of rule is dependent on this section.	Moved section (9) to section (1) of the rule.	Yes
	Cassandra Gomez, A Better Balance; Time to Care Oregon, Lisa Kwon	006, 004, 028	(9) Oppose - Recommend removing “consecutive” from job protections provided an employee has been employed by an employer for at least 90 “consecutive” calendar days.	ORS 657B.060(7) is not specific so clarified it in rule that the 90 days are consecutive; otherwise, the rule would need to further explain 90 days from when? Ever? Within the last year? The Paid Leave Oregon Division will monitor this to determine if a rule or statutory change is needed in the future. Expanded rule to clarify what mean by consecutive days.	Yes
	Julie Samples & David Henretty,	024	(9) Oppose – Clarify the agency and replacement employer to comply	Per statute (ORS 657B.060), job protection is required by the	No

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	Oregon Law Center; Laurie Hoefler, Legal Aid Services of Oregon		with reinstatement provisions when temporary agencies are also involved.	employer. The temporary agency is not the employer; therefore, does not have the job protection requirements.	
	Cassandra Gomez, A Better Balance; Time to Care Oregon, Lisa Kwon	006, 028	(10) Oppose – Recommend prohibiting employer from using this rule as “subterfuge” to avoid responsibilities under ORS chapter 657B, from prior draft back into the rule.	Using the word subterfuge was not plain language and therefore was removed from the draft rule.	No
	Cassandra Gomez, A Better Balance	006	(10) – Support for expansion of any provision of ORS chapter 657B or this rule.	Support for administrative rule as written, no changes needed.	No
	Sarah Ewing & Heid Vass, TriMet	017	Question – The claimant that can submit an application up to 1 year later for good cause, do they qualify for job protection for the entire year?	No, job protection only occurs while the employee is eligible to receive Paid Leave Oregon benefits, up to a total of 12 weeks. Some claimants will qualify to submit the application for payment of benefits up to one year later from the leave date; however, that doesn't extend the job protection.	No
471-070-1410 – Benefits: Initial and Amended Monetary Determinations	ERISA Industry Committee, James Gelfan	026	(1)(a) –Oppose as change rule to allow employer to receive similar information.	OAR 471-070-1320 discusses the communication the Paid Leave Oregon Division will have with employers about employee benefits.	No
	Daris Freeman, Unum; Cindy Goff, American Council of Life Insurers	011, 019, 021	(1)(a)(A) – Oppose as missing words or has additional words.	Changed this section of the draft rule to make it clearer.	Yes

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	Time to Care Oregon, Lisa Kwon	004, 028	(1)(c) & (2) Oppose – Specify a time period when the department will notify workers of their initial wage and benefit determination.	The statute (ORS 657B.090) states the department shall make reasonable effort to issue the first payment of benefits to a covered individual within two weeks after receiving the claim. The determination will happen during this same time period and since already in statute, no change to the rule is needed.	No
	Cassandra Gomez, A Better Balance; Time to Care Oregon, Lisa Kwon	006, 028	(3) Oppose – Clarify the claimant has 60 days to appeal the initial determination or equivalent statement from the department if the initial determination is amended.	If the claimant disagrees with the initial claim, the Paid Leave Oregon will submit the appeal to Office of Administrative Hearing at the same time the Division researches the wages. Therefore, there will only be an initial or amended determination if a change is made. However, did clarify further in the rule.	Yes
471-070-1500 – Benefits: Review of Overpaid Benefits	Carol Williams, DAS	009	Oppose – Rule does not mention notification to employer of overpayment that will be collected.	At this time the Paid Leave Oregon Division will not let the employer know of the overpaid amount. Will continue to monitor and make changes if necessary.	No
	Bridget Caswell, Sedgwick; Cindy Goff, American Council of Life Insurers	008, 015, 021	Are equivalent plans required to follow this process? If not, what process can they do?	Equivalent plans are not required to follow this rule. When writing the benefit rules, the intent was to provide clarification for the state plan and not intended for the equivalent plans; however, equivalent plans are not	No

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				restricted from choosing to bill back on overpayments.	
	Cassandra Gomez, A Better Balance	006	(2)(b) – Support for change from “shall” to “may”.	Support for administrative rule as written, no changes needed.	No
	Cassandra Gomez, A Better Balance; Teresa Hoard-Jackson, SEIU; Julie Samples & David Henretty, Oregon Law Center; Laurie Hoefler, Legal Aid Services of Oregon; Time to Care Oregon, Lisa Kwon	006, 016, 024, 004, 028	(4) – Oppose as section should be deleted as claimants should not be at fault for overpayment when all relevant information was submitted to the department.	Previously removed “be considered at fault” and changed to “have received benefits they were not entitled to” to align with ORS 657B.120(4). The Paid Leave Oregon Division may receive information after a determination is made that if would have received it prior, the outcome would have been different. An example, the dr. changed their leave duration and employee kept receiving benefits but didn’t let the department know of the leave change.	No
	Cassandra Gomez, A Better Balance; Julie Samples & David Henretty, Oregon Law Center; Laurie Hoefler, Legal Aid Services of Oregon; Time to Care Oregon, Lisa Kwon	006, 024, 028	(6) – Support that the department will consider all factors.	Support for administrative rule as written, no changes needed.	No
471-070-1510 – Benefits: Repayment of Overpaid	Cassandra Gomez, A Better Balance	006	(1) & (2) - Support changes since prior versions.	Support for administrative rule as written, no changes needed.	No
	Breanna Scott, New York Life	007	(3)(a) Oppose - If claimant makes a	The statute gives authority for the Paid	No

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Benefits; Interest			true error, interest should not be applied. False statement or failure to report material fact should result in interest charged.	Leave Oregon Division to write a rule for penalties and interest for overpayments [ORS 657B.120(7)]. However, the rule was written with “may” as it allows the Division the discretion.	
	Cassandra Gomez, A Better Balance	006	(3)(a) – Support changes since prior versions.	Support for administrative rule as written, no changes needed.	No
	Cassandra Gomez, A Better Balance; Time to Care Oregon, Lisa Kwon	006, 028	(4)(b) – Support changes since prior versions.	Support for administrative rule as written, no changes needed.	No
471-070-1520 – Benefits: Waiving Recovery of Overpayments	Julie Samples & David Henretty, Oregon Law Center; Laurie Hoefler, Legal Aid Services of Oregon	024	(4) – Oppose as would like to request late cause for a waiver that isn’t received the week for good cause provisions.	A waiver can be submitted anytime; however, the Paid Leave Oregon Division will only waive the overpayment that remains and not past overpayments that were already paid.	No
	Time to Care Oregon, Lisa Kwon	028	Oppose as statute doesn’t allow a request for a waiver, only the department to waive. Recommend provide clarification on the process for requesting waivers.	Expanded rule to clarify the waiver process will be available in instructions provided by the department.	Yes
471-070-1550 – Benefits: Penalties for Employer Misrepresentation	Cindy Goff, American Council of Life Insurers	015, 021	(1) Oppose – Expand to include equivalent plans and employers may report fraudulent claims to Paid Leave Oregon for further investigation.	Generally, Paid Leave Oregon will not do investigative work for equivalent plan employers. The Division will monitor to see if needed in the future.	No
	Time to Care Oregon, Lisa Kwon	028	Support for administrative rule.	Support for administrative rule as written, no changes needed.	No

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471-070-1560 – Benefits: Disqualification and Penalties for Claimant Misrepresentation	Bridget Caswell, Sedgwick	008	(2)(a) – Oppose as statute states disqualification will be for one year but rule states 52 consecutive weeks. Is one year defined as 52 weeks?	For the purposes of this rule, one year is 52 consecutive weeks to align with the definition of benefit year.	No
	Breanna Scott, New York Life	007	(3) Oppose - Suggest adding “meaning that there could be multiple occurrences in one application.” at end of 2 nd sentence.	Clarified further in rule that there could be more than one occurrence in a single application.	Yes
	Cassandra Gomez, A Better Balance	006	(3) Oppose – Include more guidance as to how the department will count the number of instances of willful failure to report material fact.	Section (3) of the rule, the second sentence, explains that the occurrence will be counted each time a claimant makes a false statement or fails to report material facts and expanded rule to include that more than one occurrence can be applied in a single application. Additional explanation can be provided in the guidebooks/instructions.	Yes
	Cassandra Gomez, A Better Balance; Julie Samples & David Henretty, Oregon Law Center; Laurie Hoefler, Legal Aid Services of Oregon; Time to Care Oregon, Lisa Kwon	006, 024, 028	(3)(e) Oppose - Delete this section to avoid inequitable outcome in situations of undocumented worker using false social security numbers.	This section was not intended for workers using false social security numbers but rather for someone who has stolen an identity with the intent to submit a fraudulent application for benefits, and received payment – fraudulent activity.	No
	Paloma Sparks, Oregon	022	Oppose – Would like additional rules to recognize difference between accidental	Section (3)(e) of the rule addresses Fraud/identity theft as they are charged	No

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	Business & Industry		or minor misrepresentation and intentional fraud. Rule doesn't address identity theft.	the 30 percent penalty. The Division will continue to monitor to see if additional rules are needed in the future.	
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General Comments:

Rule Number	Name Affiliation	Exhibit Number	Comment Summary	Responses	Rule Change – Yes/No
General Rule Comments	Daris Freeman, Unum; Bridget Caswell, Sedgwick	001, 008	Comment - Clarify whether reference to "days" is calendar or business days.	Clarified within the rules that mean calendar days.	Yes
	Jessica Berdaguer, Swire Coca-Cola	001	Comment – Employers need more guidance on intermittent leave and what the letter provided by the state would tell the employer about the employee on leave.	The Paid Leave Oregon Division is still assessing the precise information that will be provided to employers, including the weekly benefit amount, dates of leave, etc. after an employee files a Paid Leave Oregon benefit application. The Division will take this feedback into consideration.	No
	Carol Reynolds, Coast Property Management	010	Comments - FMLA/OFLA leave should be used concurrently with Paid Leave Oregon leave. Employers should have access to state leave cases to record intermittent days the employee uses. Employee should be required to use accrued leave before using paid leave. Employee should make weekly claim similar to Unemployment Insurance.	The Paid Leave Oregon Division will take these comments into consideration when determining what information the employer should receive when an employee is on leave. If an employee's leave duration or work days change after the application is approved, they must submit a change request.	No

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	Daris Freeman, Unum	001	Suggestion - Clarify how employee contribution limit works for equivalent plans – 60% of the state plan or 60% of the equivalent plan cost?	Per ORS 657B.200(5) the equivalent plan employer may assume all or part of the cost of the plan; however, the employee cannot pay more than 60% from what they would have paid under the state plan.	No
	Breanna Scott, New York Life	003	Question – When planned rulemaking activities wrap up, will there be a consolidated collection of all the various rules and statutes?	The compilation of Paid Leave Oregon administrative rules can be found on the Secretary of State's website once final. The Paid Leave Oregon statute can be found on the Oregon Legislative website .	No
	Daris Freeman, Unum	011	Additional rules or guidance needed: <ul style="list-style-type: none"> • Paid Leave Oregon interaction with OFLA • Details on 2-week pregnancy entitlement • Clarify how periods of holidays, school breaks, and manufacturing shut-downs will affect Paid Leave benefits • Clarify whether qualifying events that began prior to 9/3/2023 will be eligible for benefits immediately 	The Paid Leave Oregon Division appreciates the additional list and will continue to work on these items by either drafting an administrative rule(s), rule amendments, or include in instructions or guidebooks.	No
	Sarah Ewing & Heidi Vass, TriMet	017	Comment – Parental leave must be taken in a continuous block under FMLA and OFLA unless the employer allows employee to take intermittent. Paid Leave Oregon parental leave should be taken continuously.	Correct, per ORS 659A.162(5) requires the employee to take consecutive leave for OFLA unless approved by the employer. Paid Leave Oregon does not have that requirement in statute; therefore, incremental leave	No

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				can be taken to care for a new child, adoption, or foster child in the first year.	
	Sarah Ewing & Heidi Vass, TriMet	017	Suggestion – Allow employees to take leave in less than one work day increments.	The statute provides for benefits in one work day increments; therefore, the claimant must take leave for the entire day.	No
	Mark Seibert, Employer	001	Question - How will rulemaking allow for investigation, detection, and any civil actions that need to be taken when a claimant is fraudulently getting paid leave without having a valid reason so it can be minimized or not happen?	The Paid Leave Oregon Division has drafted administrative rules for willful false statement penalties and benefits cannot be claimed for a year if fraudulently claimed.	No