

SUBJECT: DCBS Comments on Proposed Rule OAR 440-150-0001
FROM: Theresa Van Winkle, Legislative Director
DATE: February 12, 2021

The Department of Consumer and Business Services is developing a permanent rule on the Quarantine Time Loss Program due to the following:

Extension of spending Coronavirus Relief Fund allocations. The original deadline for states to spend funding from the Coronavirus Relief Fund (CRF) was December 30, 2020. The Consolidated Appropriations Act extended the deadline to December 31, 2021. This action allows DCBS to accept Quarantine Time Loss Program applications and administer benefits into calendar year 2021.

Continued administrative authority. The authority for administering the Quarantine Time Loss Program is a temporary rule that expires on March 13, 2021. A permanent rule is needed for successful program continuation and will be repealed upon program closure.

The proposed permanent rule is very similar to the temporary rule, with changes that reflect current federal regulation and qualification criteria for workers who apply in calendar year 2021. The primary changes:

Adjustments to reflect federal regulation. The permanent rule language will update the deadline for spending CRF moneys to December 31, 2021.

Updates to program qualification criteria - income threshold. The income threshold requirements will include qualifications for applications submitted in calendar year 2021.

Clarifying program qualification criteria - federally mandated COVID-19 emergency paid sick leave. The federal requirement for certain employers to provide emergency paid sick leave expired on December 31, 2020. Although the mandate was not extended, covered private employers can voluntarily provide COVID-19 paid leave through March 31, 2021. Public sector employers are also allowed to extend the emergency paid sick leave if they wish or develop their own short-term leave provisions. The permanent rule language will be updated to reflect this change.

Clarifying when DCBS can stop accepting applications. The temporary rule allows the DCBS Director to stop accepting applications when allocated funds are expended in full, after administrative costs are reimbursed. The permanent rule may include additional reasons for closing the program application portal. Examples include federal regulation that preempts the Quarantine Time Loss Program; and the end of Oregon's State of Emergency declaration and withdrawal of applicable executive orders.

Program funding. The permanent rule may include a new provision, allowing the Quarantine Time Loss Program to be funded with additional appropriations from the Legislature, should it occur.

Program closure. The permanent rule may contain provisions that allow for administrative activities for program closure, outside of existing DCBS authority.

A working draft of the proposed permanent rule was distributed at the Fiscal Impact Advisory Committee meeting on February 10.

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**Division 150
Quarantine Time Loss Program
440-150-0001
Quarantine Time Loss Program**

- 1
2 (1) Definitions:
- 3 (a) "Employee" means a person working in Oregon and who was employed when they
 - 4 were directed to quarantine or isolate by a public health official or health care provider
 - 5 due to Coronavirus Disease 2019 (COVID-19), or experiencing COVID-19 symptoms
 - 6 and isolating while seeking medical diagnosis, and who is subject to income tax
 - 7 withholding requirements under ORS 316.162.
 - 8 (b) "Department" means the Department of Consumer and Business Services.
 - 9 (c) "Director" means the director of the Department.
 - 10 (d) "Health care provider" has the meaning given that term in ORS 433.443(1)(b).
 - 11 (e) "Local public health authority" has the meaning given that term in ORS 431.003.
 - 12 (f) "Quarantine" has the meaning given that term in ORS 433.001.
 - 13 (g) "Isolation or isolate" has the meaning given that term in ORS 433.001.
 - 14 (h) "Public health officer" means an individual employed by or under contract with a
 - 15 state or local public health authority or a tribe who has the authority to direct or order
 - 16 that an individual quarantine or isolate.
 - 17 (i) "State public health authority" means the Oregon Health Authority, Public Health
 - 18 Division.
 - 19 (j) "Tribe" means a federally recognized Oregon tribe.
 - 20 (k) "Qualified employee" means an employee eligible to receive quarantine time loss
 - 21 payments under sections (2) and (3) of this administrative rule.
- 22 (2) Quarantine Time Loss Payments:
- 23 (a) A qualified employee may claim quarantine time loss payments of \$120 per day, up
 - 24 to 10 days.
 - 25 (b) Payments are intended to reimburse the qualified employee for time missed when
 - 26 the employee would otherwise have worked.
 - 27 (A) If an employee would otherwise have been scheduled to work for part of a day, it
 - 28 shall be considered a whole day scheduled for work for purposes of reimbursement
 - 29 under this section.

Commented [TVW1]: Correcting scrivener's error.

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1 (B) A standard work week is five days a week, eight hours a day totaling 40 hours a
2 week. Employees working a non-standard work week will calculate the hours scheduled
3 for the non-standard work week and convert the days otherwise scheduled for work to a
4 standard work week.

5 (3) Qualifications. To qualify for Quarantine Time Loss payments, an employee must
6 attest:

7 (a) To being directed by a public health officer or health care provider to quarantine or
8 isolate, or experiencing COVID-19 symptoms and isolating while seeking medical
9 diagnosis;

10 (b) To being in isolation or quarantine on or after the date the program begins;

11 (c) To the employee's inability to work because the employee is in quarantine or isolated
12 pursuant to section (3)(a) of this rule;

13 (d) That the employee is not currently receiving or seeking time loss payments through
14 an active worker's compensation claim related to the employee's COVID-19 status
15 covering the same time period for which the employee is seeking payment under this
16 rule;

17 (e) That the employee is not seeking or receiving unemployment benefits covering the
18 same time period for which the employee is seeking payment under this rule;

19 (f) That the employee is not seeking or receiving any other benefit for time lost due to
20 isolation or quarantine from any other Oregon program, or any other state's quarantine
21 time loss program, or similar program, covering the same time period for which the
22 employee is seeking payment under this rule;

23 (g) That the employee is not seeking or receiving vacation leave, sick leave or any other
24 form of paid leave provided by the employer covering the same time period for which
25 the employee is seeking payment under this rule;

26 (h) That the employee is not furloughed or laid-off from the employer covering the same
27 time period for which the employee is seeking payment under this rule;

28 (i) That the employee:

29 (A) Had federal adjusted gross income of less than \$60,000 in tax year 2019 for
30 individual filing status (\$120,000 federal adjusted gross income if filing joint filing status),
31 as shown on a filed 2019 Oregon return, and, based on income received in tax year
32 2020 as of the date of application, estimates gross income of less than \$60,000 for
33 individual filing status (\$120,000 gross income if filing joint filing status);

34 (B) Had federal adjusted gross income greater than \$60,000 in tax year 2019 for
35 individual filing status (\$120,000 federal adjusted gross income if filing joint filing status)
36 and, based on income received in tax year 2020 as of the date of application, estimates

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1 gross income of less than \$60,000 in tax year 2020 for individual filing status (\$120,000
2 gross income if filing joint filing status); or

3 (C) Was not required to file an Oregon income tax return for tax year 2019, and, based
4 on income received in tax year 2020 as of the date of application, estimates gross
5 income of less than \$60,000 for individual filing status (\$120,000 gross income if filing
6 joint filing status).

7 (j) That the employee has provided notice to the employee's employer consistent with
8 other leave policies of the employer; and

9 (k) To one or more of the following:

10 (A) The employee's employer(s) claimed exemption from the paid emergency COVID-
11 19 sick leave provisions of the Families First Coronavirus Relief Act (FFCRA) and has
12 provided no COVID-19 sick leave benefits for the calendar year 2020;

13 (B) The employee's employer(s) is not subject to the provisions of the FFCRA and has
14 provided no COVID-19 sick leave benefits for the calendar year 2020; or

15 (C) The employee has exhausted any COVID-19 sick leave benefits any of the
16 employee's employers provided for quarantine or isolation purposes during calendar
17 year 2020.

18 (4) Application.

19 (a) A qualifying employee must apply to the Department of Consumer and Business
20 Services, in the time, form and manner provided by the department and must:

21 (A) Identify the public health officer or health care provider issuing the directive to
22 isolate or quarantine and;

23 (B) List the period of isolation or quarantine in the application;

24 (C) Provide the name of all employers for which Quarantine Time Loss payments are
25 requested in the application;

26 (D) Authorize the release of any information from a state or local public health authority,
27 tribe, or health care provider necessary to verify information in the application; and

28 (E) Agree to reimburse the State of Oregon the amount of any Quarantine Time Loss
29 payments received, if the Department of Consumer and Business Services determines
30 upon audit that the information contained in the employee's application was inaccurate,
31 false or fraudulent, the employee exceeded the income thresholds for the calendar year,
32 or otherwise did not meet the qualifications to which the employee attested in the
33 application.

34 (b) An employee whose claim has been denied because the department determined
35 that the employee is not a qualifying employee due to an incomplete application may

Commented [TVW2]: Language will be amended to reflect qualifications for workers who apply in CY 2021. The income thresholds will not change.

Commented [TVW3]: Language will be amended to include COVID-19 sick leave benefits for CY 2021. The intent is to reflect federal guidance that allows workers to utilize unused employer-offered COVID-19 paid leave from CY 2019; or additional COVID-19 paid voluntarily provided by an employer.

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1 reapply for program benefits. An employee whose application is denied due to
2 exceeding income limits, or other reasons, will not be accepted.

3 (5) Administration of the Quarantine Time Loss Program.

4 (a) The Oregon Legislature appropriated \$30 million dollars to fund the Quarantine Time
5 Loss program to be administered by the Department of Consumer and Business
6 Services. The funds must be expended not later than December 31, ~~2020~~2021, under
7 federal law. ~~Claims for the Quarantine Time Loss program will be paid in the order
8 received by the department until the funds are expended in full, after administrative
9 costs are reimbursed.~~

Commented [TVW4]: Change to reflect the deadline extension for states to spend allocated Coronavirus Relief Fund (CRF) moneys.

Commented [TVW5]: Moved to a new subsection.

10 (b) ~~[New subsection to reflect any additional appropriation, should it occur.]~~

11 (c) ~~Claims for the Quarantine Time Loss program will be paid in the order received by
12 the department until the funds are expended in full, after administrative costs are
13 reimbursed.~~

14 (d) ~~[Possible new subsection: Establish the ability for the DCBS Director to stop
15 accepting applications for reasons such as the end of Oregon's State of Emergency or
16 federal regulation that preempts QTLP.]~~

Commented [TVW6]: This section needs wordsmithing, but the idea is to include language that allows for closing the program's application portal without conducting a second round of rulemaking.

17 (e) ~~The Department of Consumer and Business Services may enter into an
18 interagency agreement with any other state agency to assist it in carrying out the
19 Quarantine Time Loss program.~~

Commented [TVW7]: Correcting scrivener's error.

20 (f) Agencies who enter into an agreement with the department under section (5)(b) of
21 this rule may recover administrative costs from the funds appropriated by the legislature
22 to the program.

23 (g) The department and any agency with which it has an agreement under section 5(b)
24 of this rule may keep information obtained as part of the Quarantine Time Loss program
25 from public disclosure to the extent allowed under the Public Records Laws, ORS
26 192.311 to 192.431.

27 (6) Payment of benefits.

28 (a) An employee who has received Quarantine Time Loss payments previously is not
29 eligible to reapply.

30 (b) Benefits are payable only to the extent that moneys are available in the Quarantine
31 Time Loss program for that purpose.

32 (7) Recovery of overpaid benefits.

33 (a) If the Director of the Department of Consumer and Business Services determines
34 that an individual received any benefits under this rule to which the individual is not
35 entitled because the individual, made or caused to be made a false statement or
36 misrepresentation of a material fact, or failed to disclose a material fact, the individual is
37 liable to repay the amount of benefits to the director for the Coronavirus Relief Fund.

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1 (b) Any amount subject to recovery under this section may be collected by the director
2 in a civil action against the individual brought in the name of the director.

3 (c) In any case in which the director may bring a civil action for collection of benefits
4 obtained through false statements or misrepresentations, the director may instead issue
5 a warrant for the amount to be repaid, together with the cost of collection from the date
6 when the benefits were received, pursuant to ORS 705.175.

7 (8) [Potential new section: necessary administrative activities for program closure, such
8 as auditing applications and transferring collection files to the Department of Revenue
9 as required in existing Oregon law.]

Commented [TVW8]: Language for this section will likely be resolved later than sooner in the rulemaking process, but the focus is solely on ensuring that the program can properly wind down. Program staff are currently researching if these activities can be conducted through existing statutory authority.

Statutory/Other Authority: ORS 82.010, ORS 293.550 & ORS 705.135

Statutes/Other Implemented: ORS 293.550

History:

DO 1-2020, temporary adopt filed 09/15/2020, effective 09/15/2020 through 03/13/2021