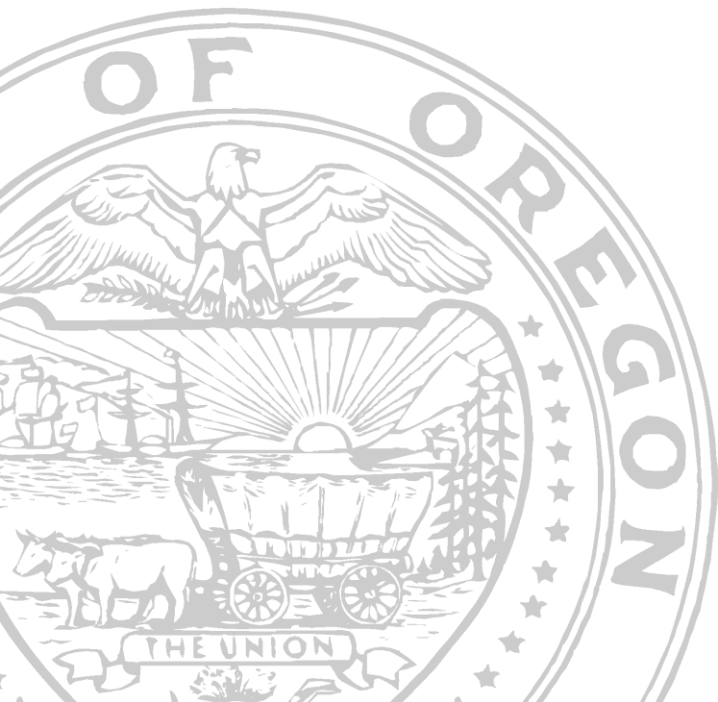


2021 Legislative Summary

September 2021



Executive Summary

The 81st Oregon Legislative Assembly adjourned sine die on Saturday, June 26. The 2021 legislative session lasted 159 days – ending a day prior to the constitutional deadline, Sunday, June 27. Over the course of this session, the Legislative Assembly introduced over 2,519 measures and passed 714. The Employment Department’s experts reviewed each measure, ultimately identifying 344 bills relevant to the agency’s interests.

In 2020 and 2021, the challenges faced by the Employment Department due to the COVID-19 Pandemic were unprecedented. There was overwhelming concern raised by the public and the legislative body about the administration of the unemployment insurance (UI) program. Obtaining the necessary budgetary limitation and appropriations to enable the department to continue to serve Oregonians to the best of our ability was key to the success in session. Not without receiving meaningful feedback about how better to support Oregonians, the department’s budget bill ([House Bill 5007](#)) passed prior to the end of session without significant opposition.

In response to the pandemic however, Oregon’s legislative body introduced a slew of new temporary and permanent policy measures to offer relief to Oregonians facing some of the negative consequences of the pandemic and the COVID-19 recession. Additionally, the department sought support for additional policy changes necessary to support the federal programs in place as a result of the pandemic. The department was fully engaged in providing the highest quality information and in estimating the potential impacts. Some key pieces of legislation included:

- [House Bill \(HB\) 3043](#), an extension of [Senate Bill \(SB\) 1703](#) passed in the 2nd Special Session in 2020, which enables the department to continue receiving income data from the Department of Revenue.
- [HB 3178](#), a modification of another bill passed in the 2nd Special Session in 2020, [SB 1701](#), which enables workers working less than full time to only experience a reduction in their weekly benefits if they earn \$300 over their weekly amount.
- [HB 3389](#), which provides substantial short and long-term UI tax relief to employers negatively impacted by the pandemic.
- [SB 172](#), which expands relief to UI claimants who were overpaid benefits through no fault of their own.

Additionally, the department sought approval via [HB 3398](#) for an extension to implement the Paid Family and Medical Leave Insurance program. All of these measures and more were approved to support the department’s administration of our programs and the citizens of Oregon.

The department appreciates the hard work of our entire legislative team which included subject matter experts and executives from across the agency who provided their knowledge and time over the course of the session. And a special thanks to the 2021 Budget and the Legislative Coordination Teams; their expertise, dedication, and contributions cannot be overstated.

The Employment Department continues working with the legislature year-round, as the agency maintains communication with legislators, provides education and outreach, implements legislation, and coordinates with internal divisions to identify policy issues to bring forward in the next legislative session. If you have any questions, or are interested in learning more about the legislative process, please contact the Legislative Affairs Team at OED_Legislative_Affairs@Oregon.Gov.

The Employment

Department’s Legislative Affairs Team, Budget Team, and Legislative Coordination Team provided the expertise to review, coordinate, and analyze the agency’s response to legislative measures, activities, and requests.

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Section I: Legislation Tracked and Passed

In 1999, the Legislative Assembly adopted Oregon Revised Statute (ORS) 171.022. Under this statute, legislative measures take effect on January 1 of the year after the measure is passed, or on the prescribed effective date. Unless otherwise noted, the effective date of each measure is January 1, 2022. Common alternative effective dates prescribed by the Legislative Assembly include inserting an emergency clause, which ensures the measure is effective upon passage, or directing that the measure go into effect on the 91st day following the adjournment of the Legislative Session. For the 2021 session this date is September 25, 2021.

House Measures

House Bill 2168: Juneteenth Holiday

Chapter 201

Effective date September 25, 2021

House Bill (HB) 2168 annually established June 19 as a legal holiday to commemorate the abolition of slavery in the latter part of the 19th century. With the passage of HB 2168, Oregon's state legislature officially recognized the day as a day "to honor and reflect on the significant ways that African Americans have enriched society through their steadfast commitment to promoting freedom, brotherhood and equality." Juneteenth was added to the list of 10 other holidays included under the statute which establishes state holidays, Oregon Revised Statute (ORS) 187.010.

While the passage of HB 2168 is consistent with the Employment Department's mission and guiding principles, more significantly, the department acknowledges the importance to recognize Juneteenth as a legal holiday. Although the creation of a new state holiday does not require any changes to departmental processes or procedures, HB 2168 did create a minimal fiscal impact for the department because it required the updating of forms and holiday messages, to both our telephone and online systems, and along with other state agencies, it resulted in additional holiday pay for staff.

House Bill 2359: Health Care Interpreter Employment Rights Expansion

Chapter 453

Effective date July 14, 2021

House Bill (HB) 2359 modified a variety of laws for the agencies responsible administering the programs to support workers providing health care interpretation services. One of the changes included in HB 2359 was to repeal the exclusion of interpreters from coverage under the unemployment insurance (UI) program as administered by the Employment Department.

As a result, only individuals performing work as translators or interpreters who are determined under Oregon Revised Statute (ORS) 670.600 to be independent contractors would still be excluded from coverage. This change in law means that the work performed by all non-independent contractor language translators and interpreters will be considered as employment for the purposes of UI.

As reported by the department to the legislature, HB 2359 will result in both costs and revenue to the UI Trust Fund. The department estimates a net positive impact of approximately \$2 million to the UI Trust Fund in the 2021-23 and \$2.5 million in the 2023-25 biennia. The department believes that any administrative impact would be minimal and could be absorbed using existing resources.

House Bill 2474: Worker Leave Protection Expansion

Chapter 182

Effective date January 1, 2022

House Bill (HB) 2474 expanded worker protections under Oregon Family Leave Act (OFLA). These changes enable covered employees to:

- 1) Qualify for protected leave during public health emergency as long as they were employed 30 days or more prior to commencing leave or worked an average of 25 hours or more per week in 30 days prior to commencing leave;
- 2) Take leave even if they have separated from employment as long as they were eligible at the time of separation but were reemployed within 180 days of separation, or if they were eligible at the time their hours of work were temporarily ceased but who returned to work within 180 days;
- 3) Ensure the covered employee returning to work after a separation or temporary cessation in their hours of work receives credit for the total amount of time they worked for employer if they return to work within 180 days.

Additionally, HB 2474 allowed employers to request verification for the need for leave to care for a child who requires home care due to the closure of the child's school or child care provider as a result of a public health emergency and removed the gendered language from the OFLA provisions related to pregnancy.

As reported by the Employment Department to the legislature, HB 2474 only created a minimal impact for the agency. HB 2474 may enable some department employees to qualify for family leave sooner and potentially have wider eligibility through the expanded list of qualifying family members and could therefore create a workload impact for our Human Resources section. Additionally, the department is currently the process of implementing the Paid Family and Medical Leave Insurance (PFMLI) program and PFMLI leave is intended to coordinate with leave taken under OFLA for certain purposes. Therefore, the changes resulting from HB 2474 will require the department's Paid Family and Medical Leave Insurance (PFMLI) program to update any processes, and reference and training materials to correspond with the expanded OFLA eligibility and coverage.

House Bill 3043: Department of Revenue Data Access Extension

Chapter 3

Effective date April 15, 2021

House Bill 3043 provided authority to the Director of the Department of Revenue (DOR) to temporarily share certain taxpayer information with the Employment Department to assist in administering any state or federal program during a state of emergency.

The Employment Department had access to the taxpayer information it needed to administer programs enacted as a result of the COVID-19 pandemic until February 28, 2021. However, continued access to the

DOR data was necessary to assist in verifying eligibility of self-employed individuals receiving Pandemic Unemployment Assistance (PUA) benefits and/or other federal programs for individuals with earnings from self-employment because these programs were extended.

This temporary change only applies to law through the earliest of:

- a) 90 days following the latest date of expiration of any temporary federal COVID-19-related program administered by the Employment Department;
- b) December 31, 2022; or
- c) The date on which the Governor revokes the grant of authority.

House Bill 3178: Earnings Disregard Modification

Chapter 30

Effective date May 17, 2021

House Bill (HB) 3178 provides a temporary change to the definition of “unemployed” for individuals filing weekly claims for unemployment insurance (UI) benefits. Prior to the passage of HB 3178, in order for UI claimants to be considered unemployed they must work less than 40 hours per week and earn less than their Weekly Benefit Amount (WBA).

HB 3178 was an update to the temporary changes established during the Second Special Session of 2020 as a result of Senate Bill (SB) 1701. The Commissioner of the Bureau of Labor and Industries requested this change in consultation with the Employment Department to ensure UI claimants whose WBAs are \$300 or less and who earn more than their WBA are eligible for benefits.

As a result of SB 1701, claimants who earn more than \$300 or one-third their WBA, whichever is greater, during a week they have claimed UI benefits experience a reduction in the weekly amount they can receive through January 1, 2022. However, HB 3178 modified this requirement to allow claimants working less than 40 hours per week to potentially receive benefits even if their earnings are equal to or exceed their WBA including those that have a WBA of \$300 or less.

This change in law only applies to weeks claimed from May 17, 2021 through January 1, 2022 and after January 2, 2022, UI claimants will only be considered unemployed if they work less than 40 hours per week and earn less than their WBA.

House Bill 3188: Workers’ Compensation Employment Status

Chapter 257

Effective date January 1, 2022

House Bill (HB) 3188 changes how a worker is considered under workers’ compensation law from any person “who engages to furnish services for a remuneration, subject to the direction and control of an employer” to any person “other than an independent contractor, who engages to furnish services for a remuneration.” HB 3188 clarifies in law that a worker who meets this definition cannot be considered as an independent contractor under workers’ compensation law and that only workers who meet the definition under existing independent contractor law, ORS 670.600, are considered independent contractors.

While the Employment Department also makes independent contractor determinations under ORS 670.600 for the purposes of administering the unemployment insurance (UI) program, HB 3188 does not change the definition of “employer” or “worker” under UI law or how the department determines which workers meet the independent contractor definition. The department believes that HB 3188 reduces the risk that workers will not be categorized the same way under workers’ compensation law as they would be under UI law but the bill creates no fiscal or administrative impact for the department.

House Bill 3206: Special Fraud Control Fund

Chapter 259

Effective date June 11, 2021

On August 8, 2020, President Trump issued a memorandum to establish the Lost Wages Assistance (LWA) program, administered through the Federal Emergency Management Agency (FEMA), to provide additional unemployment benefits to out of work Oregonians. Oregon paid over \$400M in LWA payments to almost 275,000 people. Federal law requires states to repay FEMA for LWA overpayments it does not recoup and remit to FEMA, and does not allow states to use other federal funds to make these repayments.

House Bill (HB) 3206 enabled the department to use our state Special Fraud Control Fund (SFCF) to repay these overpaid benefits, as well as cover administrative costs associated with the LWA program and administration of other agency benefit programs. HB 3206 also establishes that if the SFCF is used to reimburse FEMA for overpaid LWA benefit payments, any amounts recovered from overpaid recipients shall be deposited into the SFCF. Additionally, HB 3206 allows the department to collect LWA overpayments in same manner overpayment of regular unemployment benefits are recovered and to waive the recovery of overpaid LWA benefits if administratively impracticable to pursue.

House Bill 3389: Unemployment Insurance Tax Relief for Employers

Chapter 638

Effective date September 25, 2021

House Bill (HB) 3389 was developed in consultation with the Governor’s Office, a variety of stakeholder groups, a group of bipartisan members of the legislative body, and the department to reduce unemployment insurance (UI) tax impacts on employers in Oregon as a result of the COVID-19 Pandemic. To achieve this, HB 3389:

- Enhances long-term UI Trust Fund stability by extending the ‘look back period’ used to determine the fund adequacy level from 10 years to 20 years;
- Removes 2020 and 2021 from the ‘look back period’, the ‘high cost’ benefit years during the COVID-19 Pandemic so the solvency target in the future is not based on the pandemic;
- Disregards the impact of the pandemic when determining each employer’s experience rating by applying the respective experience rating used to determine their 2020 UI tax rate when determining their rates for 2022 through 2024;
- Decreases the statewide tax schedules by about 10% overall without putting the UI Trust Fund at risk;

- Codifies current department policy in statute to allow employers who meet certain criteria to defer up to one-third of the taxes due for calendar year 2021 until June 30, 2022 without accruing interest or penalties on the deferred amounts; and
- Enables some employers to be eligible for full or partial forgiveness of their deferred 2021 UI taxes based on the amount their UI tax rates increased from 2020 to 2021.
- Broadens the types of contributions that may be received for the UI Trust Fund.

The department estimated that it will cost approximately \$500,845 to fund the limited duration positions to perform the necessary administrative work to make these changes during the 2021-23 biennium. This cost includes implementation of the changes to the department’s Information Technology systems; the manual work to minimize any potential impact on the department’s current modernization effort; the processing of tax forgiveness requests on behalf of employers; and the identification, testing, and analyzing of business requirements prior to, during, and after implementation.

Additionally, HB 3389 created a UI Trust Fund impact because it permanently changes the statewide tax schedule formula, provides full or partial forgiveness of deferred taxes in 2021, and affects benefit ratios for 2022, 2023, and 2024. The department estimates that these changes will result in a reduction in the UI Trust Fund by:

- \$290,893,811 in the 2021-2023 Biennium; and
- \$649,493,175 in the 2023-2025 Biennium.

HB 3389 did not change the statewide tax schedule that is currently in effect for 2021 in Oregon but the department estimates that HB 3389 will lower the statewide tax schedule by two schedules in 2023, 2024, 2025, and 2026, and lower it by one schedule in 2022, 2027, and 2028.

Taking advantage of Oregon’s solvent UI Trust Fund, these changes use some of the existing reserves to provide short and long-term relief to Oregon businesses, and together for 2021 through 2029, are projected to save employers \$2.4 billion. They provide a mix of short-term and long-term tax relief for businesses, while protecting them against long term risks of the Trust Fund becoming insolvent to the extent we can predict. Businesses most impacted by the pandemic – like restaurants, barbershops and others that saw big increases in their experience ratings, will see the most relief.

Projected Employer Savings	UI tax schedule forecast for by year (lower schedules have lower taxes)									
	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
No interventions	4	5	8	6	5	5	4	3	2	1
Under HB 3389	4	5	6	4	3	3	3	2	2	1

Please note: These are long term projections, depending on many interrelated variables in a very volatile economic environment so inherently have increased margins of error.

House Bill 3398: Paid Family and Medical Leave Insurance Implementation Extension

Chapter 639

Effective date September 25, 2021

At the time Oregon's Paid Family and Medical Leave Insurance (PFMLI) program was established in 2019, it included an ambitious timeline to be implemented by the Employment Department. However, given the impacts over the last year, and the responsibility for the department to focus efforts on administering unemployment benefits to hundreds of thousands of Oregonians, the department requested House Bill (HB) 3398 to ensure the successful implementation of the PFMLI program.

HB 3398 extended the time-frame for the department to:

- Begin collecting employer contributions from January 1, 2022 to January 1, 2023.
- Initiate payment of benefit provisions from January 1, 2023 to September 3, 2023.
- Provide employer assistance grants payable from January 1, 2023 to September 3, 2023.
- Repay the General Fund loan received to implement the program from January 1, 2023 to no later than June 30, 2023.

Additionally, the new timeline under HB 3398 allows the department to:

- More adequately develop policy and administrative rules prior to collecting contributions from employees and employers and paying benefits to eligible workers;
- Build a modernized technology platform that serves both unemployment insurance (UI) taxes and PFMLI contributions, which would significantly improve customer experience by permitting employers to utilize a single system;
- Afford time for adequate planning and preparation by partner agencies responsible for components of the program.
- Review and process employer equivalent plan applications using our new technology, avoiding the need for a separate manual process.
- Involve user groups in substantial testing of the contributions technology solution prior to go-live, which would allow for a smoother rollout.
- Stabilize rollout, ensure staff are prepared to effectively serve customers, and improve the customer experience.

Because HB 3398 delayed the administrative costs to implement the program until January 1, 2023, there is a corresponding reduction \$36,578,108, both in General Fund (GF) and Other Funds, to the department's budget in the 21-23 biennium. While there will still be some administrative impact from implementation of the program during this biennium, these costs are shifted instead to the 23-25 biennium.

The department also sought two Policy Option Packages (POP) in conjunction with HB 3398 which factors in these adjustments along with other required revisions to the department's budget for the program. These are included in the department's budget, HB 5007, which also passed into law in the 2021 Legislative Session.

Lastly, although HB 3398 delays contributions to the PFMLI to begin from January 1, 2023 until eight

months later, September 3, 2023, it does not impact the department’s ability to repay the GF loan by the end of the 21-23 biennium, before June 30, 2023.

House Bill 5006: Budget Reconciliation Bill

Chapter 669

Effective date August 6, 2021

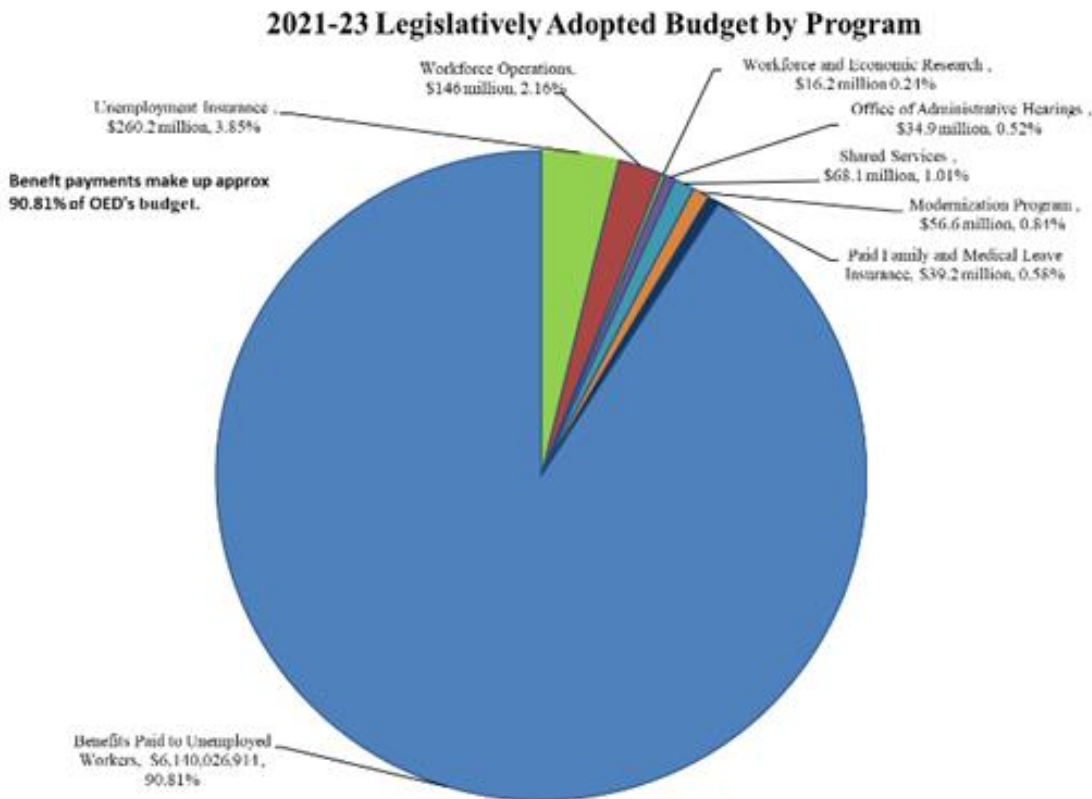
House Bill (HB) 5006 includes modifications to funding appropriations and expenditure limitations for the purpose of state financial administration during the 2021-23 biennium. Included among the appropriations in HB 5006 is an increase to the expenditure limitation for the Employment Department in the amount of \$872,278 to administer the changes to the unemployment insurance (UI) program resulting from the passage of SB 172.

HB 5006 also reduced the appropriations and expenditure limitations of the Employment Department for the biennium by approximately \$2.7 million (including approximately \$3,000 in General Fund, \$1.3 million in Other Funds, and \$1.4 million in Federal Funds). These reductions are a result of adjustments to the Legislatively Approved Budget due to changes in State Government Service Charges, DAS Assessments, and Attorney General fees and do not create any impact for the department.

House Bill 5007: Employment Department Budget

Chapter 426

Effective date July 1, 2021



House Bill (HB) 5007 provided the budget authority for the Oregon Employment Department to carry out its mission to support business and promote employment. HB 5007 provides the Employment Department with a budget of \$6,726,294,732 and 3,144 positions (2127.47 FTE), and the Office of Administrative Hearings a budget of \$34,882,041 and 126 positions (112.80 FTE) for the 2021-23 biennium.

The Employment Department's programs and services are supported by primarily Federal Funds and Other Funds. In 2021-23 the agency also receives a General Fund loan dedicated to the implementation of the Paid Family and Medical Leave Insurance (PFMLI) program. All General Fund revenue received is scheduled to be repaid by the end of the 2021-23 biennium. Federal modernization funds made available to the state under the Social Security Act are appropriated in the bill and will be expended for modernizing the department's aging business and technology infrastructure. Revenue collected from penalties and interest (Special Employment Department Administrative Fund) is also appropriated in the bill to support general agency activities. Federal Funds expenditure limitation is established to accommodate federally funded programs.

For the 2021-23 biennium, the predominant source of revenue for the department is unemployment insurance (UI) taxes collected by the department and held by the U.S. Treasury for payment of UI benefits to eligible claimants. HB 5007 authorized non-limited expenditures for these payments. The bill also authorized non-limited expenditures for benefits related to the Trade Adjustment Assistance Program and unemployment insurance benefits paid to federal employees and reimbursed by the federal government.

HB 5007 also provided budget authority for the Office of Administrative Hearings (OAH). While independent, the OAH receives administrative support from the department and is funded entirely by Other Funds revenue, charging fees to other state agencies to support its services.

HB 5007 included seven packages approved by the legislature, including:

- 1) \$26,617,716 in costs associated with the continuation of the department's Modernization Initiative;
- 2) \$35,190,884 in General Fund, \$7,730,445 in Other Funds and 368 positions to support Paid Family and Medical Leave Insurance (PFMLI) Implementation;
- 3) \$9,171,374 in General Fund and \$2,220,395 in Other Funds for PFMLI Information Technology Implementation;
- 4) \$13,522,148 in Other Funds limitation, \$4,420,606 in Federal Funds and 56 positions associated with contracted job placement assistance to state agency clients and southern Oregon residents impacted by wildfires;
- 5) \$9,612,656 in additional Federal Funds limitation and 45 positions to increase individual case management and other support activity in the federal Trade Act program;
- 6) \$1,025,313 in Federal Funds and a decrease of \$21,446 in Other Funds limitation to enable the agency to make adjustments to positions; and
- 7) \$32,570,210 in Federal Funds and \$23,142,553 in Other Funds to extend the current 865 limited duration positions (288.33 FTE) in the department due to the continuation of the federal unemployment compensation benefits.

Senate Measures

[Senate Bill 172](#): Non-Claimant Fault Overpayment Relief

Chapter 388

Effective date June 23, 2021

Senate Bill (SB) 172 changed how the department administers unemployment insurance (UI) benefits overpaid before, on, or after the effective date of the act to:

- 1) Limit recovery of non-fraudulent, claimant-caused UI benefit overpayments to the five year period following the week in which the decision establishing the overpayment becomes final;
- 2) Permanently waive recovery of non-fraudulent claimant-caused UI benefits if repayment of the benefits would be against equity and good conscience; and
- 3) Intercept future UI benefits payable to recover past overpaid benefits at less than 100%.

SB 172 also modified Employment Department law to:

- a) Enable the department to consider back payment awards as earnings in determining whether or not weekly UI benefits are payable and prohibits an employer from reducing an employee's back payment award based on the unemployment benefits they are eligible to receive;
- b) Update the terminology for being a victim of the crime of "intimidation" to a "bias crime" in the list of reasons why a person claiming UI benefits cannot be disqualified to be consistent with criminal statutes defining what it means to be a victim of this crime; and
- c) Require the basis for overpaid benefits and the consequences of the overpayment, including the methods of recovery of the overpaid amount, with interest and penalties, and the possibility for waiver to be included in department notices concerning their liability for non-fraudulent claimant-caused UI benefits

The department anticipates that the passage of SB 172 will create a reduction to the UI Trust Fund. The majority of non-claimant-fault overpayments are not collected within five years, and reducing the deduction percentage to less than the maximum 100% will result in recovery of fewer overpaid benefits. The department estimated that changing which overpayments can be waived and the limitation of the recovery of those overpayments to five years will reduce the amount the department is able to collect by a little more than \$117 million and will result in a loss of interest of around \$3 million over the course of the next three biennia.

SB 172 also created an administrative impact for the department. While there will need to be an immediate work effort to put some of the changes into place, the department will defer some of the changes required to fully implement SB 172 until the modernization of the department's UI benefits system is complete (estimated spring 2024). The costs associated with the administrative impact for Information Technology will be absorbed using existing resources. However, the department estimated the limited duration staffing cost to administer the retroactive waiving of overpaid UI benefits would be \$827,278.

Senate Bill 184: Veterans Hiring Preference

Chapter 195

Effective date January 1, 2022

Senate Bill (SB) 184 amended the veterans and service personnel benefits law which gives preference to veterans who apply for public employment. Prior to the passage of SB 184, veterans did not have the option to request preference if they have not yet officially separated from active duty and the impact in hiring a veteran due adding five or 10 preference points to their score may vary depending on the public employer and their respective scoring models. Changing these requirements enables veterans to more effectively transition from active duty to public service and more proportionately obtain preference on their score when being considered for a public service position.

As a state agency, the department accepts applications for work from veterans and follows the requirements under existing law to provide preference to veterans. Additionally, the department's Workforce Operations Division provides guidance and assistance to veterans seeking work public service work. The passage of SB 184 did not create an impact for the department because it creates no administrative burden and does not otherwise create any fiscal impact. The department will continue to adhere to the requirements in law to provide preference to both disabled and non-disabled veterans whether they are transitioning from active duty, or have already been discharged or released from service under honorable conditions, or medically separated under honorable conditions.

Senate Bill 493: Prevailing Wage Collection Bargaining

Chapter 104

Effective date September 25, 2021

Senate Bill (SB) 493 modified how the Commissioner of the Bureau of Labor and Industries (BOLI) establishes the definition of "Prevailing rate of wage" from the wages paid in the locality to the majority of workers employed on projects of a similar character in the same trade or occupation to the definition amended by the bill under Oregon Revised Statute (ORS) 279C.815.

Prior to the passage of SB 493, BOLI was required to determine the prevailing rate of wage for workers in each trade or occupation in each locality by means of an independent wage survey. SB 493 replaces the requirement to use an independent wage survey instead to use the method described under ORS 279C.815 except in the case that a collective bargaining agreement does not exist for a trade or occupation in a locality.

Historically, BOLI contracted with the Employment Department to conduct the independent wage survey but SB 493 did not change how or who BOLI may choose to conduct the survey. Therefore, SB 493 created no direct impact on the Employment Department.

Senate Bill 495: Unemployment Insurance for Instructional Assistants

Chapter 43

Effective date September 1, 2021

Senate Bill (SB) 495 amended ORS 657.010 to specify that the work performed by instructional assistants, as defined under school personnel law (ORS 342.120), is not considered by the department as instructional, research or principal administrative for the purpose of determining eligibility for unemployment insurance (UI) benefits.

Prior to the passage of SB 495, the department could determine whether or not the work an instructional assistant performs is under the statute provided for employees who perform instructional, research, and principal administrative services, ORS 657.167. SB 495 specified that the department will determine an instructional assistant's potential eligibility for UI under the statute for school employees who provide other services, ORS 657.221.

Because the department determines the eligibility of UI for school employees based on the job duties performed and not the job title of the school employee, it is not anticipated that SB 495 will result in an increase in the number of claims filed or an increase in the number of individuals eligible for benefits. Therefore, the department believes that HB 495 is revenue neutral and will not create any impact to the UI Trust Fund in the future.

Senate Bill 496: Unemployment Insurance for Food Preparation and Service Workers, and Early Intervention and Pre-K Service and Support Workers

Chapter 79

Effective date September 1, 2021

Senate Bill (SB) 496 amended the statute, Oregon Revised Statute (ORS) 657.221, followed by the department to administer unemployment insurance (UI) benefits for employees of educational institutions performing services other than instructional, research or principal administrative capacity. SB 496 enables food preparation and service workers, and early intervention or prekindergarten service and support workers, to qualify for UI benefits during academic break periods even if they have reasonable assurance to return to work.

Prior to the passage of SB 496, food preparation and service workers, and early intervention or prekindergarten service and support workers may not have qualified for UI benefits during an academic break period unless they did not have reasonable assurance that they would be returning to work in the following term.

Although the department anticipates an increase in UI claims filed because individuals performing food preparation and service work for educational institutions who had previously been denied but would now be eligible for benefits, the majority of the employers impacted by this change must reimburse these benefits dollar for dollar. Although the department does not anticipate a significant impact to the UI Trust Fund, the department estimates that these individuals will receive and that their employers will reimburse \$3,152,705 and \$2,817,059 in UI benefits in the 2021-23 and 2023-25 biennia respectively.

Senate Bill 569: Unlawful Employment Practice to Require Driver's License

Chapter 279

Effective date January 1, 2022

Senate Bill (SB) 569 established that it is an unlawful employment practice for an employer to:

- 1) Require, as a condition for employment or continuation of employment, an employee or prospective employee to possess or present a valid driver license unless the ability to legally drive is an essential function of the job or is related to a legitimate business purpose; and
- 2) Refuse to accept from an employee or prospective employee, as an alternative to a driver license, any other identification documents that are deemed acceptable for the purpose of forms prescribed by the United States Citizenship and Immigration Services that are used for verifying the identity and employment authorization of individuals hired for employment in the United States.

The Employment Department provides reemployment service to unemployed Oregonians and provides assistance to job-seekers to ensure they have the legally-required credentials and documentation for work in Oregon. The department also lists job opportunities as referred by employers in Oregon on our reemployment service website, iMatchSkills.Org, which may include identification documentation requirements for each position offered. SB 569 did not change the fact that a driver's license may be required for work or that an employer may choose to establish such a requirement for an open position if the ability to drive is an essential function of that position. Therefore, the department will continue to offer the same services to job seekers and employers, and will educate them on the changes under SB 569 accordingly.

Additionally, the department may consider whether or not identification documentation was provided by a worker to their employer or potential employer or whether or not the employer refused to accept any alternative documentation as a factor in determining the worker's eligibility for unemployment insurance (UI) benefits. While the changes in SB 569 may result in potentially different outcomes for UI eligibility determinations, the changes will only require additional training or awareness for UI Division staff.

Lastly, as a state agency which employs workers in the State of Oregon, the department may require a valid driver's license as a condition for employment or continuation of employment but only when the ability to legally drive is an essential function of the job or is related to a legitimate business purpose. However, the department would only require a valid driver's license for this reason and does not refuse to accept any legally acceptable alternative forms of identification documents when hiring workers.

SB 569 created no fiscal or administrative impact for the department.

Senate Bill 623: Workforce Development System Assessment

Chapter 280

Effective date June 11, 2021

Senate Bill (SB) 623 created a requirement in law for the State Workforce and Talent Development Board, in consultation with state workforce agencies and local workforce development boards, to establish the Committee for Continuous Improvement to assess the effectiveness of Oregon's public workforce development system. SB 623 requires the State Workforce and Talent Development Board and

local workforce development boards to jointly appoint members to the committee.

SB 623 also established a requirement for the committee to identify and contract with an independent third-party entity to conduct an initial and bi-annual comprehensive assessment of the public workforce programs and services administered through the public workforce system. The committee will ensure that input from a variety of Oregon's historically marginalized groups of stakeholder groups is incorporated in the assessment.

Under SB 623, the focus of the assessment will be to:

- 1) Advance racial justice, equity, diversity and inclusion through the programs and services delivered through the public workforce system;
- 2) Align state and local efforts to improve the public workforce system in this state;
- 3) Support improvements that create a more comprehensive public workforce system;
- 4) Provide quality employment experiences and equitable outcomes for job seekers and businesses participating in workforce programs;
- 5) Improve the quality of workforce resources, programs and services made available through the public workforce system and the transparency of information regarding performance metrics and outcomes related to those resources, programs and services; and
- 6) Build on any current workforce program assessments that are required by law.

SB 623 also required the committee to present the results of each assessment, along with any recommendations for improvements, in reports to the Governor and to the interim committees of the Legislative Assembly related to workforce development every even-numbered year.

The Employment Department is included in the group of state workforce agencies, along with the Higher Education Coordinating Commission, the Department of Human Services, the Housing and Community Services Department, and the Commission for the Blind, to be consulted to assess Oregon's public workforce development system. It is anticipated that the direct fiscal impact resulting from the passage of SB 623 will be minimal for the department.

While the cost for the bi-annual assessment is not addressed in the bill, based on conversations with the Governor's Office, the other state agencies impacted by the bill, and local workforce development boards, the department understood it will provide a proportionate contribution to cover the expense and will do so within existing resources.

Senate Bill 716: Child Care Work Schedule Accommodations

Chapter 176

Effective date June 3, 2021

Senate Bill (SB) 716 modified the labor law which requires an employer to give an employee the right to provide input into their own work schedule at time of their hiring and during their employment to include but not be limited to their child care needs. Making this change to law protects employees against retaliation from employers if they have a limitation at the time of hiring or experience a limitation during their employment in their work schedule availability due to child care needs. SB 716 did not remove an employer's right to disapprove an employee's request, it only clarified that their child care needs may be considered as a factor in terms of approving the request.

As a function of the department's responsibility for administering the unemployment insurance (UI) program, there are times when the agency must make UI benefit eligibility decisions as a result of an employee's separation from work, ability to work, availability for work, and efforts to actively seek work. While an employee's child care needs may be a factor in the department's determinations, SB 716 does not change how the department must make those decisions. Therefore, SB 716 will not impact the department's administration of the UI program.

Additionally, the department has employees whom from time to time may experience fluctuations in their work schedule availability due to their child care needs. However, the agency generally seeks to reasonably accommodate those fluctuations as best as we can given state and federal requirements as well as staffing availability. Depending on the circumstances, the department may not always be able to grant approval in some scenarios. Since SB 716 did not change an employer's authority to disapprove such a request, it does not appear that the bill would create any impact for the department as an employer.

Senate Bill 846: State Financial Administration

Chapter 10

Effective date April 30, 2021

Senate Bill (SB) 846 creates new provisions for state financial administration. Among several other changes, SB 846 extends the time frames to transfer money from various governmental funding sources, including the Bureau of Labor and Industries' (BOLI) Wage Security Fund, to the General Fund for general government purposes from May 31, 2021 to June 30, 2021.

Funding for BOLI's Wage Security Fund is established under one of the statutes under the chapter of Oregon Law administered by the Employment Department, Oregon Revised Statute (ORS) chapter 657. ORS 657.4369 requires that a percentage of an employer's total taxable payroll be provided for wages paid during the first calendar quarter of each odd-numbered year. The extension of the time frame to transfer money from the Wage Security Fund to the General Fund does not create any impact for the department.

Section II: Other Legislation (Not Passed During 2021 Legislative Session)

House Measures

House Bill 2252: Wage Survey Methodology Study

House Bill (HB) 2252 would have established a requirement for the Employment Department and the Bureau of Labor and Industries to study the methodology for the basis of the prevailing wage survey.

Under current law, BOLI is required to determine the prevailing rate of wage for workers in each trade or occupation in each locality when collective bargaining agreement does not exist by means of an independent wage survey. While there is no requirement in law that the independent wage survey be conducted by the Employment Department, historically BOLI has contracted with the department to conduct the survey.

After introduction, HB 2252 was referred to the House Business and Labor Committee and was in committee upon adjournment.

House Bill 2300: Unemployment Insurance Quarterly Tax Payment Study

With a broad ‘relating to’ clause, it appeared House Bill (HB) 2300 was introduced as a potential vehicle for amendment, but based on the introduced language it would have only established a requirement for the Director of the Employment Department to conduct a study of methods of allowing employers to pay quarterly unemployment insurance taxes over an extended period.

After introduction, HB 2300 was referred to the House Business and Labor Committee and was in committee upon adjournment.

House Bill 2302: Independent Contractor Benefit Program

House Bill (HB) 2302 would have established a worker-funded program to pay emergency benefits during state of emergency declared by Governor to unemployed independent contractors to be administered by the Employment Department.

After introduction, HB 2302 was referred to the House Business and Labor Committee and was in committee upon adjournment.

House Bill 2337: Statewide Demographic Data Collection

House Bill (HB) 2337A would have required all state agencies that collect demographic data within the course of operations to comply with the data collection standards as specified under Oregon Health Authority (OHA) rules on the collection of data on race, ethnicity, preferred spoken and written languages and disability status.

The Employment Department currently gathers demographic data as required by federal and state

guidelines for several programs. The data collection standards currently followed by the OHA require that information be provided in substantially more detail (e.g. physical and mental disabilities) and be presented in additional languages and formats (e.g. open ended questions) beyond how information is currently obtained by the department. Therefore, if it had been passed into law, it appears that HB 2337A would have required changes to how the department currently gathers demographic data.

After amendment in the House Rules Committee, the bill was referred to the Joint Ways and Means Committee where it remained upon adjournment.

House Bill 2489: Independent Contractor Definition Alignment

House Bill (HB) 2489 would have required the state agencies, the Department of Revenue, the Department of Consumer and Business Services, the Employment Department, the Construction Contractors Bureau, and the Bureau of Labor and Industries who perform independent contractor determinations to all follow the same process for these determinations under Oregon Revised Statute 657.600.

After introduction, HB 2489 was referred to the House Business and Labor Committee and was in committee upon adjournment.

House Bill 2820: Prosperity 1,000 Program

House Bill (HB) 2820 would have created a new workforce development program, requiring the Department of Human Services (DHS) to refer eligible individuals to participate in a program, the Prosperity 1,000 Pilot Program. The program would have been created to provide career coaching, occupational training, and job placement services for at least 1,000 low-income job seekers who reside in areas of concentrated poverty. The program would have been administered by local workforce development boards.

The Employment Department currently provides job placement services and facilitates provide career coaching and occupational training to out of work Oregonians, including low-income job seekers who reside in areas of concentrated poverty, through the department's Workforce Operations Division. Additionally, DHS currently maintains a contract with the department to use the department's iMatchSkills system as the management information system for tracking services provided to customers served under Supplemental Nutrition Assistance Program (SNAP) Training and Employment Programs (STEP). Under HB 2820, DHS would have been required to incorporate the pilot program into the statewide plan for serving STEP customers.

Depending on how the program was administered by the boards and how DHS opted to implement HB 2820, the overlap of services among existing programs and the pilot could have required additional administrative resources by the Employment Department.

After a public hearing and a work session were held in House Economic Recovery and Prosperity Committee, HB 2820 was referred to the Joint Ways and Means Committee where it remained upon adjournment.

House Bill 3205: Unemployment Insurance Tax Rate Freeze

Sister bill to Senate Bill 760, House Bill (HB) 3205 would have established a requirement for the Employment Department to maintain the unemployment insurance tax rate in effect for each employer for calendar year 2020 until the later of December 31, 2022 or the date Oregon's COVID-19 pandemic state of emergency declaration is no longer in effect.

After introduction, HB 3205 was referred to the House Business and Labor Committee and was in committee upon adjournment.

House Bill 3409: Return to Work Incentive

Introduced at the end of session, House Bill (HB) 3409 would have required the Department of Consumer Business Services (DCBS) to establish a program to make one-time payments to essential frontline workers to incentivize their return to work or continue working in their existing capacity. Under HB 3409, these workers would need to have earned a base pay rate that was equal to or less than 150 percent of the state average wage for the year 2019 to qualify for the incentive. Additionally, among other criteria, workers would only be eligible for the return-to-work incentive if they had received at least one week of unemployment insurance (UI) benefits since March 8, 2020, and did not work, did not get paid, or did work but less than full-time, the same definition for being 'unemployed' as for UI, as of June 30, 2021.

Had HB 3409 been passed into law, it likely would have required close collaboration with DCBS and the Employment Department. Although it is not likely that administration of the program would have created any significant fiscal impact for the department, it would have been necessary for the department to share information for DCBS to administer this program.

After introduction, HB 3409 was referred to the House Rules Committee and was in committee upon adjournment.

House Joint Resolution 7: Administrative Law Judge Redistricting Oversight

House Joint Resolution (HJR) 7 would have created a requirement to refer a ballot measure to the voters at the next general election to amend the Oregon Constitution to create a Citizen's Redistricting Commission. The Commission would have been responsible for drawing district boundaries for Oregon legislative and US Congressional districts every 10 years after the federal census.

HJR 7 would have required the chief administrative law judge at the Office of Administrative Hearings (OAH) to create a panel of three administrative law judges (ALJs) to review applications for the Commission. The bill would also have required that the ALJs on the panel to be selected based on political affiliation, two registered with the two largest political parties in Oregon, and the third not registered with either party.

The OAH receives administrative support from the Employment Department but is decisionally independent. One of the key functions the OAH performs on behalf of the State of Oregon is to provide an independent and impartial forum for citizens and businesses to challenge agency actions that directly

affect their interests. The OAH currently administers contested case hearings for over 70 state agencies, boards, and commissions. ALJs who conduct these hearings are required by law to be fair and impartial. As HJR 7 was written, by requiring the OAH to ask ALJs to disclose their political party affiliation, and to organize a review panel along party lines, both the OAH and the department had concerns that HJR 7 could result in an unintended shift in purpose and function of the OAH.

After introduction, HJR 7 was referred to the House Rules Committee and was in committee upon adjournment.

Senate Measures

Senate Bill 170: Bureau of Labor and Industries Paid Family and Medical Leave Insurance Program Study

With a broad ‘relating to’ clause, it appeared Senate Bill (SB) 170 was introduced as a potential vehicle for amendment, but based on the introduced language it would have only established a requirement for the Bureau of Labor and Industries to conduct study and make recommendations regarding implementation of paid family and medical leave program.

After introduction, SB 170 was referred to the Senate Labor and Business Committee and was in committee upon adjournment.

Senate Bill 339: State Bank of Oregon

Senate Bill (SB) 339 would have established the Bank of the State of Oregon under the direction of a board. As part of the requirements for the bank under SB 339, it would have accepted deposits of public funds as defined in ORS 295.001 and could have accepted deposits of funds from any other source.

Although SB 339 did not specify that state agencies would be required to secure public funds in the state bank, the bill would have required the State Treasurer to deposit moneys as authorized by the Bank of the State of Oregon Board. Since many moneys administered by the Employment Department are maintained by the State Treasurer, it is possible that the board could have required the treasurer to deposit the funds in the State Bank.

After introduction, SB 339 was referred to the Senate Finance and Revenue Committee and was in committee upon adjournment.

Senate Bill 514: Unemployment Insurance Statistics Study

With a broad ‘relating to’ clause, it appeared Senate Bill (SB) 514 was introduced as a potential vehicle for amendment, but based on the introduced language it would have only established a requirement for the Director of the Employment Department to compile statistics related to unemployment in Oregon and submit report of statistical findings to interim committees of Legislative Assembly.

After introduction, SB 514 was referred to the Senate Labor and Business Committee and was in committee upon adjournment.

Senate Bill 520: Secretary of State Unemployment Insurance Benefit Audit

Senate Bill (SB) 520 would require the Secretary of State to audit the Employment Department to determine whether department processes claims for unemployment insurance benefits promptly as required under ORS chapter 657 and to submit report of audit findings to interim committees of Legislative Assembly.

After introduction, SB 520 was referred to the Joint Committee on Legislative Audits and was in committee upon adjournment.

Senate Bill 677: Third Party Contracting to Administer Unemployment Insurance Benefits

Senate Bill (SB) 677 would have provided the Director of the Employment Department with the authority to enter into contracts with third parties to process claims for unemployment insurance benefits when there is an unforeseeable increase in claims due to a public health emergency.

After introduction, SB 677 was referred to the Senate Labor and Business Committee and was in committee upon adjournment.

Senate Bill 760: Unemployment Insurance Tax Rate Freeze

Sister bill to House Bill 3205, Senate Bill (SB) 760 would have established a requirement for the Employment Department to maintain the unemployment insurance tax rate in effect for each employer for calendar year 2020 until the later of December 31, 2022 or the date Oregon's COVID-19 pandemic state of emergency declaration is no longer in effect.

After introduction, SB 760 was referred to the Senate Labor and Business Committee and was in committee upon adjournment.

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