

## Presiding Officer's Report to Agency on Rulemaking Hearing

**Date:** December 5, 2023

**To:** David Gerstenfeld, Acting Director

**From:** Dan Rembert, Rules Coordinator for Paid Leave Oregon

**Subject:** Presiding Officer's Report on Rulemaking Hearing - Paid Leave Oregon Batch 9 Rules

### Public Hearings and Public Comment Period

Meeting Type	Hearing Date and Time	Hearing Location
<b>Public Hearing</b>	November 16, 2023, 1:00 p.m.	Virtual via Zoom
<b>Public Hearing</b>	November 20, 2023, 4:00 p.m.	Virtual via Zoom
<b>Public Comment Period</b>	November 1, 2023 to November 30, 2023, at 11:59 p.m. PST	Submitted in writing via email

### Notice Filings (OAR 471-070-\*)

Notice Title for Filing	Rule Numbers
<b>Appeals, Assistance Grants, Benefits, Confidentiality, Equivalent Plans, and Self-Employment</b>	471-070-0001, 471-070-0900, 471-070-0910, 471-070-0920, 471-070-0930, 471-070-1000, 471-070-1130, 471-070-1250, 471-070-1330, 471-070-2030, 471-070-2200, 471-070-2230, 471-070-2400, 471-070-3790, 471-070-8010, 471-070-8070

### Contents

Hearings Report Summary.....	2
Public Hearing #1 – November 16, 2023.....	2
Public Hearing #2 – November 20, 2023.....	2
Public Comment Period – November 1 – 30, 2023 .....	2
Summary of Comments Received and Responses for Paid Leave Oregon Batch 9 Administrative Rules	3

### Hearings Report Summary

The division filed Notice of Proposed Rulemaking with the Secretary of State's Office on October 25, 2023, and held two rulemaking hearings for the Paid Leave Oregon Batch 9 proposed administrative rules. The hearings occurred virtually using the Zoom platform, and they were recorded to create an official record. The public comment period began on November 1, 2023, and closed on November 30, 2023, at 11:59 p.m. Pacific Standard Time (PST).

Below is a summary of each hearing including any comments or questions received on the Batch 9 proposed administrative rules. This report covers only those comments related to the 16 proposed administrative rules. General program and rule comments are not included.

### Public Hearing #1 – November 16, 2023

The first public hearing for the proposed administrative rules took place on Thursday, November 16, at 1:00 p.m. PST via Zoom, and was recorded to maintain a record. 136 individuals registered to attend and 75 attended the hearing. During the hearing, 1 attendee asked a question related to the proposed administrative rules regarding a change she would like to see made. 4 attendees asked general questions about the program or administrative rules that were not specific to the Batch 9 proposed administrative rule and those questions are not included in this report.

### Public Hearing #2 – November 20, 2023

The second public hearing for the proposed administrative rules took place on Monday, November 20, at 4:00 p.m. PST via Zoom, and was recorded to maintain a record. There were 58 individuals registered to attend and 21 attended the hearing. During the hearing, 1 attendee asked general and clarifying questions related to a proposed rule but did not provide any support or opposition regarding the proposed rule language. Another attendee provided 1 general comment about the program that was not specific to the Batch 9 proposed administrative rules. Neither the questions nor comment are included in this report.

### Public Comment Period – November 1 – 30, 2023

The Notice of Proposed Rulemaking filing for the Batch 9 proposed administrative rules, which included a Statement of Need with Racial Equity and Fiscal Impact considerations, was published in the Oregon Bulletin on November 1, 2023. For the entire month of November – ending at 11:59 p.m. PST on November 30, 2023 – the public comment period was open for interested parties and the general public to submit comments on the proposed rules. The Oregon Legislators' comment period also opened on November 1 and closed at 11:59 p.m. PST on December 20, 2023. Comments and questions were primarily received via the [Rules@employ.oregon.gov](mailto:Rules@employ.oregon.gov) email box. Any comments received regarding the Paid Leave Oregon Batch 9 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 3 different individuals or groups through the [Rules@employ.oregon.gov](mailto:Rules@employ.oregon.gov) email inbox related to the proposed rules.

Summary of Comments Received on and Responses for Paid Leave Oregon  
Batch 9 Administrative Rules

A summary of the Paid Leave Oregon Batch 9 administrative rules written comments and verbal testimony received can be found in the table below, under the rule number the comment was provided for. Additional information regarding the comments can be found in the attached exhibits. There were a total of 10 comments provided by 4 individuals during the public hearings and public comment period.

Rule Number	Name & Affiliation	Exhibit Number	Comment Summary	Responses	Rule Change – Yes/No
<b>471-070-0930 Confidentiality: Permissible Disclosures</b>	Dillon Clair, The Erisa Industry Committee	03	(3) Oppose as limits information the employer needs to run their business and support employees.	<p>We are not able to provide the employer with the schedule of leave (e.g. intermittent days of leave) as this is not known at the time of claim approval.</p> <p>Additionally, with the employee’s authorization, the employer can request the potential benefit amount from the department. This information will not include, however, the actual amount paid to the employee, as this may vary per week (due to a number of circumstances that the department would not be at liberty to disclose with the employer). Specific amounts received would need to provided by the employee.</p>	No

Hearings Officer Report Paid Leave Oregon Batch 9: Appeals, Assistance Grants, Benefits, Confidentiality, Equivalent Plans, and Self-employment

Rule Number	Name & Affiliation	Exhibit Number	Comment Summary	Responses	Rule Change – Yes/No
<b>471-070-1000</b> <b>Benefits:</b> <b>Definitions</b>	Dillon Clair, The Erisa Industry Committee	03	(1) - Oppose expansion of the family definition and is not consistent with other agency affinity definitions, which causes confusion	This definition is in line with intent of statutory change and was developed in coordination with the Bureau of Labor and Industries.	No
	Sonia Wendelschafer, Columbia River PUD	01	Suggested grammatical, typing, and formatting edits.	The suggestions will be reviewed and implemented as necessary.	Yes
<b>471-070-1130</b> <b>Benefits:</b> <b>Verification of Safe Leave</b>	Sonia Wendelschafer, Columbia River PUD	01	Suggested grammatical, typing, and formatting edits.	The suggestions will be reviewed and implemented as necessary.	Yes
<b>471-070-1250</b> <b>Benefits:</b> <b>Claimant Designated Representative</b>	Sonia Wendelschafer, Columbia River PUD	01	Suggested grammatical, typing, and formatting edits.	The suggestions will be reviewed and implemented as necessary.	Yes
<b>471-070-1330</b> <b>Benefits: Job Protection</b>	Darryla Zabransky, Wind Wave Technologies	02	(1) - Oppose as it is unfair for employee who only worked fraction of first 90 days receives job protection and benefits.	Opposition is part of a different question. May have misunderstood how job protection works in context.	No
	Dillon Clair: The Erisa	03	(5) – Oppose 50 mile radius	This amendment is needed in order to comply with a	No

Hearings Officer Report Paid Leave Oregon Batch 9: Appeals, Assistance Grants, Benefits, Confidentiality, Equivalent Plans, and Self-employment

Rule Number	Name & Affiliation	Exhibit Number	Comment Summary	Responses	Rule Change – Yes/No
	Industry Committee		requirement as it disregards other elements of the equivalent position and does not consider impacts to an employee’s choice of position.	statutory change made to ORS 657B.060, following the 2023 Oregon legislative session.	
	Charlotte Hintz	04	Oppose the lack of clarity regarding a claimant’s ability to receive job protections while taking bonding leave from work while their child attends daycare	Job Protections apply when the claimant is approved for benefits. We will research this further in the future to see if it becomes a larger problem that requires a rule amendment.	No
	Sonia Wendelschafer, Columbia River PUD	01	Suggested grammatical, typing, and formatting edits.	The suggestions will be reviewed and implemented as necessary.	Yes
<b>471-070-8010 Appeals: Assignment to Office of Administrative Hearings</b>	Sonia Wendelschafer, Columbia River PUD	01	Suggested grammatical, typing, and formatting edits.	The suggestions will be reviewed and implemented as necessary.	Yes

**REMBERT Daniel A \* OED**

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**From:** Sonia Wendelschafer <SoniaW@crpud.org>  
**Sent:** Tuesday, November 21, 2023 10:48 AM  
**To:** OED\_RULES \* OED  
**Subject:** Batch 9 Public Comment  
**Attachments:** PFMLI Batch 9 Rules Suggestions.pdf

Good morning,

Please see the attached Batch 9 Rules suggestions.

Thank you,  
Sonia Wendelschafer  
Human Resources Manager  
Columbia River PUD  
(503) 397-1844

P.O. Box 1193, St. Helens, OR 97051  
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AMEND: 471-070-1000

RULE SUMMARY: The administrative rule is amended to add a definition for "affinity" that outlines the characteristics of a family relationship to determine whether an affinity relationship exists. Adds a definition for "bias crime." Adds a definition for "claimant designated representative." Adds a definition to clarify the "first year" after the child's birth, foster placement, or adoption for use with family leave determinations as the day before the one-year anniversary. Clarifies the definition of "health care provider" as someone other than the claimant or the person for whom the claimant is providing care. This rule was temporarily amended; these changes are being made to amend the rule permanently.

CHANGES TO RULE:

471-070-1000

Benefits: Definitions

(1) "Affinity," as the term is used in ORS 657B.010, means a relationship that meets the following requirements:

(a) There is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship, and:

(b) The bond under section (a) of this rule may be demonstrated by, but is not limited to, the following factors, with no single factor being determinative:

(A) Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills, or beneficiary designations;

(B) Emergency contact designation of the claimant by the other individual in the relationship, or vice versa;

(C) The expectation to provide care because of the relationship or the prior provision of care;

(D) Cohabitation and its duration and purpose;

(E) Geographical proximity; and

(F) Other factors that demonstrate the existence of a family-like relationship.

(2) "Application" means the process in which an individual submits the required information and documentation described in OAR 471-070-1100 to request benefits for a period of leave. Approval of an application establishes a claim.

(3) "Average weekly wage" means the amount calculated by the department as the state average weekly covered wage under ORS 657.150 (4)(e) as determined not more than once per year. The average weekly wage is:

(a) Set for each fiscal year beginning July 1 and ending June 30 of the following year;

(b) Applied for the calculation of weekly benefit amounts starting the first full week following July 1;

(c) Applied for the entire benefit year after a new benefit year is established, even if the average weekly wage amount changes when the new fiscal year begins.

(4) "Benefit year" means a period of 52 consecutive weeks beginning on the Sunday immediately preceding the day that family, medical, or safe leave commences for the claimant, except that the benefit year shall be 53 weeks if a 52-week benefit year would result in an overlap of any quarter of the base year of a previously filed valid claim. A claimant may only have one valid benefit year at a time.

(5) "Bias," as the term is used for a safe leave purpose described in ORS 659A.272, means a bias crime as defined in ORS 147.380.

(6) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Care," as the term is used in ORS 657B.010(17)(a)(B), means physical or psychological assistance as used for leave taken to care for a family member with a serious health condition.

(a) "Physical assistance" means assistance attending to a family member's basic medical, activities of daily living, safety, or nutritional needs when that family member is unable to attend to those needs themselves, or transporting the family member to a health care provider when the family member is unable to transport themselves.

(b) "Psychological assistance" means providing comfort, reassurance, companionship to a family member, or completing administrative tasks for the family member, or arranging for changes in the family member's care, such as, but not limited to, transfer to a nursing home.

(8) "Child" as the term is used for family leave to care for and bond with a child during the first year after the child's birth, foster placement, or adoption, and as the term is used for a safe leave purpose described in ORS 659A.272, means an individual described in ORS 657B.010(6) and that who is:

(a) Under the age of 18; or

(b) Age 18 or older as an adult dependent substantially limited by a physical or mental impairment as defined by ORS 659A.104.

AMEND: 471-070-1130

RULE SUMMARY: The administrative rule is amended to implement changes from HB 3443 (2023 legislation) relating to verification needed for safe leave purposes due to bias crimes.

CHANGES TO RULE:

471-070-1130

Benefits: Verification of Safe Leave

(1) A claimant applying for Paid Family and Medical Leave Insurance benefits for safe leave must provide verification of the basis for the safe leave, including any of the following forms of documentation:¶

(a) A copy of a federal agency or state, local, or tribal police report, or a formal complaint to a school's Title IX Coordinator indicating that the claimant or the claimant's child as defined in OAR 471-070-1000(6) was a victim of domestic violence, harassment, sexual assault, bias or stalking;¶

(b) A copy of a protective order or other evidence from a federal, state, local, or tribal court, administrative agency, school's Title IX Coordinator, or attorney that the claimant or the claimant's child appeared in or was preparing for a civil, criminal, or administrative proceeding related to domestic violence, harassment, sexual assault, bias, or stalking; or¶

(c) Documentation from an attorney, law enforcement officer, health care provider, licensed mental health professional or counselor, member of the clergy, employee of the Department of Justice division providing victim and survivor services, or victim services provider that the claimant or the claimant's child was undergoing treatment or counseling, obtaining services, or relocating as a result of domestic violence, harassment, sexual assault, bias, or stalking.¶

(2) In cases where a claimant can demonstrate good cause for not providing one of the forms of documentation in section (1) of this rule, the claimant may instead provide a written statement attesting that they are taking eligible safe leave. Good cause for not providing the documentation is determined at the discretion of the department and includes, but is not limited to, the following:¶

(a) Difficulty obtaining verification due to a lack of access to services; or¶

(b) Concerns for the safety of the claimant or the claimant's child.

Statutory/Other Authority: ORS 657B.340, ORS 657B.090

Statutes/Other Implemented: ORS 657B.090, Chapter 549, Oregon Laws 2023



ADOPT: 471-070-1250

RULE SUMMARY: The administrative rule describes what is needed for a claimant to authorize a claimant designated representative. The rule also describes who can be a claimant designated representative and what they can provide to and receive from Paid Leave Oregon. This rule was temporarily adopted; it is now being made permanent.

CHANGES TO RULE:

471-070-1250

Benefits: Claimant Designated Representative

(1) A claimant may designate as a claimant designated representative an individual, 18 years of age or older, who is authorized by the claimant to represent the claimant by exchanging information with the Paid Family and Medical Leave Insurance (PFMLI) program on behalf of the claimant. A claimant designated representative is authorized to provide and receive the following with the PFMLI program:

- (a) Information submitted by the claimant;
- (b) Information about PFMLI benefits that the claimant has received or will receive;
- (c) Information about pending or issued decisions made on the claimant's PFMLI claim; and
- (d) Information provided by a claimant designated representative on behalf of the claimant.

(2) To designate a representative, the claimant must complete and submit the department's Claimant Designated Representative Form, electronically or by mail. In order for the representative to be approved by the department to exchange information, the form must be complete. At a minimum, it must include the following:

- (a) Claimant information:
  - (A) First and last name;
  - (B) Social Security Number or Individual Taxpayer Identification Number;
  - (C) Date of birth; and
  - (D) Contact information, including mailing address and telephone number.

(b) Claimant designated representative information:

- (A) First and last name;
- (B) Relationship to claimant; and
- (C) Contact information, including mailing address, telephone number, and email address.

(c) Authorization beginning and end dates.

(d) A signed and dated attestation by the claimant declaring that the claimant understands the purpose of the authorization, that the claimant has not been pressured to sign the authorization, and that the designation can be revoked at any time; and

(e) A signed and dated attestation by the claimant designated representative declaring that they are acting in the best interest of the claimant.

(3) The claimant may revoke the authorization at any time by providing written notification to the department.

(4) The authorization will automatically end on the last day of the claimant's current benefit year. If no valid claim is established, authorization will end 30 days after the claimant's signature date on the Claimant Designated Representative Form.

(5) The claimant designated representative must maintain the confidentiality of any information they receive from the department on behalf of the claimant. The department is not responsible for any disclosure of the claimant's information by the claimant designated representative.

(6) If the claimant designated representative provides inaccurate information to the department, the claimant is responsible for any resulting delay, denial, overpayment, or disqualification of PFMLI benefits.

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

Statutory/Other Authority: ORS 657B.400

Statutes/Other Implemented: ORS 657B.400

AMEND: 471-070-1330

RULE SUMMARY: The administrative rule is amended to implement changes from SB 999 (2023 legislation) regarding restoring an employee's position within a 50 mile radius of the employee's former job site and allowing an employer to deduct the employee's cost of health or other insurance premiums paid by the employer while the employee is on Paid Leave from future paychecks. This rule was temporarily amended; these changes are being made to amend the rule permanently.

CHANGES TO RULE:

471-070-1330

Benefits: Job Protection

(1) The protections provided under ORS 657B.060 and this rule apply only to an eligible employee who was employed by the employer for at least 90 consecutive calendar days prior to taking Paid Family and Medical Leave Insurance (PFMLI) leave. ~~90~~ <sup>Ninety</sup> consecutive calendar days include the days the employee is not scheduled to work but is still employed with the employer.¶¶

(2) An employer must restore an employee returning from PFMLI leave to the employee's former position, if the position still exists, even if the former position has been filled by a replacement worker during the employee's PFMLI leave. The employee's former position is the position held by the employee at the time PFMLI leave commenced, regardless of whether the job has been renamed or reclassified. (For example, a delivery driver must be returned to the same route, at the same rate of pay and benefits, driving the same type of truck, delivering the same type of goods, on the same shift, and working from the same location as when the driver started PFMLI leave.)¶¶

(3) For the purposes of this rule, any worker hired or reassigned during an eligible employee's leave to perform the same work in the same position that the eligible employee held before the leave was taken is a replacement worker. If the eligible employee on PFMLI leave notifies the employer that they are ready to return to work earlier than anticipated, the employer must give the eligible employee the opportunity to work any hours that the replacement worker would otherwise have been scheduled to work beginning on the second business day following the date the eligible employee notified the employer they were ready to end their leave and return to work.¶¶

(4) Notwithstanding section (2) of this rule, an employee is not entitled to return to the former position if the employee would have been terminated or reassigned from their current position to another position if PFMLI leave had not been taken.¶¶

(5) Subject to section (6)(d) of this rule, if the position held by the employee at the time PFMLI leave began has been eliminated, and not merely renamed or reclassified, then:¶¶

(a) If the employer is a large employer as defined in OAR 471-070-3150, the employer must restore the employee to any available, equivalent position for which the employee is qualified, within a 50 mile radius of the employee's former job site.¶¶

(A) An available position is a position that is vacant or not permanently filled.¶¶

(B) An equivalent position is a position that is virtually identical to the employee's former position in as many aspects as possible in terms of employment benefits and pay, and similar working conditions, including privileges, perks, and status. It must involve substantially the same or similar duties and responsibilities, which must entail equivalent skill, effort, responsibility, and authority.¶¶

(C) If an equivalent position is available at multiple job sites, and the employee is not able to return to the employee's former position because it no longer exists, the employer shall first offer the employee an equivalent position at the job site closest to the employee's former job site.¶¶

(b) If the employer is a small employer as defined in OAR 471-070-3150, the employer may, at the employer's discretion and based on business necessity, restore the employee to a different position. The different position must offer the same employment benefits and pay, and similar working conditions, including privileges, perks, and status as the employee's former position and must have similar job duties and responsibilities as the employee's former position.¶¶

(6)(a) Unless the terms of a collective bargaining agreement, other employment agreement, or the employer's policy provides otherwise, an employee on PFMLI leave is not entitled to accrue employment benefits during a period of leave. Employment benefits include but are not limited to: accrual of seniority, production bonuses, or other non-health-care-related benefits that would have accrued if the employee was working.¶¶

(b) Benefits an employee was entitled to and that accrued prior to starting PFMLI leave, including, but not limited to seniority or pension rights, must be restored in full upon the employee's return to work. The benefits do not have to be restored if such benefits have been eliminated or changed for all similarly situated employees.¶¶

(c) An employee is not entitled to a right, benefit, or position of employment other than a right, benefit, or position

Exhibit 01

to which the employee would have been entitled to if the employee had not taken PFMLI leave; and,¶

(d) An employee is subject to layoff on the same terms or under the same conditions as similarly situated employees who have not taken PFMLI leave.¶

(7) During any PFMLI leave, an employer must maintain any health care benefits the employee had prior to taking such leave, for the duration of the leave, as if the employee had ~~maintained in their~~ maintained in their employment continuously during the period of leave.¶

(a) An employer continuing health care insurance coverage for an employee on PFMLI leave may require that the employee pay only the same share of premium costs during the leave that the employee would have been required to pay if not on leave.¶

(b) If an employee cannot or will not pay their share of the premium costs, the employer may elect to discontinue health care benefit coverage, unless doing so would render the employer unable to restore the employee to full benefit coverage once the employee returns to work. If coverage lapses because an employee has not made required premium payments, upon the employee's return from PFMLI leave the employer must restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including being subject to any new preexisting condition waiting period, to wait for an open ~~season~~ enrollment period, or to pass a medical examination to obtain reinstatement of coverage.¶

(c) If the employer pays (directly or indirectly, voluntarily or as required by state or federal statute) any part of the employee's share of health or other insurance premium while an employee is on PFMLI leave, the employer ~~must receive permission from the employee to~~ may deduct from their pay the employee's share of health or other insurance premiums paid by the employer until the amount is repaid. The employer may deduct up to 10 percent of the employee's gross pay each pay period after the employee returns to work until the ~~amount is~~ health or other insurance premium amounts paid by the employer are repaid.¶

(d) If an employee fails to return to work - unless the failure to return to work is because of a serious health condition or safe leave for which the employee would be entitled to PFMLI leave or another circumstance beyond the employee's control - the employer may recover the employee's share of the health insurance premiums paid by the employer. The employer may use any legal means to collect the amount owed for the employee's share of health insurance premiums paid by the employer, including deducting the amount from the employee's final paycheck.¶

(8) An employer may require an employee to follow the employer's established leave policy regarding reporting to the employer any changes to the employee's leave status.¶

(9) If an employee gives clear notice of intent to ~~not to~~ return to work from PFMLI leave, except as required by other state or federal law, the employer's obligations under ORS chapter 657B to restore the employee's position and maintain any health care benefits cease on the date ~~of~~ the notice is given to the employer.¶

(10) It is an unlawful employment practice to discriminate against an eligible employee who has invoked any provision of ORS chapter 657B or this rule. An employee who alleges a violation of any provision of ORS ~~chapter 657B, 060~~ 657B, 060 or this rule may bring a civil action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820 ~~unless a remedy is provided~~ under ORS 657B.410 or applicable administrative rules.¶

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.060, 675B.070, Chapter 203, Oregon Laws 2023

## Exhibit 01

AMEND: 471-070-8010

RULE SUMMARY: The administrative rule is amended to implement changes from SB 913 (2023 Legislation) and align with changes to OAR 471-070-8070, which allows Paid Leave Oregon discretion to dismiss hearing requests in certain situations.

CHANGES TO RULE:

471-070-8010

Appeals: Assignment to Office of Administrative Hearings

(1) ~~W~~Except as outlined in OAR 471-070-8070(5), when a request for hearing has been timely filed as provided in OAR 471-070-8005 or a late request for a hearing has been filed as provided in OAR 471-070-8025, the department shall refer the request to the Office of Administrative Hearings established under ORS 183.605 for assignment to an administrative law judge.¶

(2) The administrative law judge shall review the determination and, if requested by the employer, self-employed individual, tribal government, or claimant, shall grant a hearing unless a hearing has previously been afforded the requestor on the same grounds that are set forth in the determination.¶

(3) The Director of the Employment Department shall notify the parties of their right, upon request, to receive copies of all documents and records in the possession of the department relevant to the administrative decision, including any statements of the claimant, employer, or others.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.410, Chapter 292, Oregon Laws 2023

Exhibit 01

**REMBERT Daniel A \* OED**

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**From:** Darryla Zabransky <dzabransky@windwave.tc>  
**Sent:** Thursday, November 2, 2023 12:39 PM  
**To:** OED\_RULES \* OED  
**Subject:** Written comments

You don't often get email from dzabransky@windwave.tc. [Learn why this is important](#)

Good morning. I would like to express my written comments for the upcoming rules webinar.

What we've run into as an employer are the following:

1. the rules indicate the benefit is portable for the employee, but HOW is the employer supposed to confirm whether portability exists?
2. The rules indicate the benefit exists for employees who work continuously 90 days. However, what if the employee takes unpaid leave? We have an employee who only worked 23 days his first 90 days, is he eligible? That doesn't seem right.
3. The rules for equivalent plans are different depending where you look. One place will say you have to register every year the next every three years— which is correct?

Thank you.  
Darryla

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Exhibit 03

**REMBERT Daniel A \* OED**

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**From:** Dillon Clair <dclair@eric.org>  
**Sent:** Thursday, November 30, 2023 8:56 AM  
**To:** OED\_RULES \* OED  
**Subject:** ERIC Public Comments – Oregon PFML Proposed Rules – Batch 9 – Oregon Employment Department  
**Attachments:** ERIC Public Comments - OR PFML Proposed Rules - Batch 9 - 11.30.23.pdf; ERIC Public Comments - OR PFML Proposed Rules - Batch 9 - 11.30.23.docx

You don't often get email from dclair@eric.org. [Learn why this is important](#)

Dear Director Gerstenfeld –

Attached for the consideration of the Oregon Employment Department are public comments from The ERISA Industry Committee (ERIC) on the rules proposed by “Paid Leave Oregon – Batch 9 – Appeals, Assistance Grants, Benefits, Confidentiality, Equivalent Plans, and Self-employment”. ERIC urges the Department to consider our comments and amend or continue development of the proposed rules in order to improve the interaction between employers, employees, and Paid Leave Oregon.

If there are any questions about our comments, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,

Dillon Clair | Director, State Advocacy and Litigation | 202.627.1917 | [dclair@eric.org](mailto:dclair@eric.org)





*DILLON CLAIR*  
*Director, State Advocacy and*  
*Litigation*

November 30, 2023

Director David Gerstenfeld  
Oregon Employment Department  
875 Union St. NE  
Salem, OR 97311  
[Rules@employ.oregon.gov](mailto:Rules@employ.oregon.gov)

Submitted Electronically

**Re: Paid Leave Oregon – Batch 9 – Appeals, Assistance Grants, Benefits, Confidentiality, Equivalent Plans, and Self-employment – Public Comments from The ERISA Industry Committee**

Dear Director Gerstenfeld:

The ERISA Industry Committee (“ERIC”) appreciates the opportunity to comment on the proposed permanent regulations contained in “Paid Leave Oregon – Batch 9 – Appeals, Assistance Grants, Benefits, Confidentiality, Equivalent Plans, and Self-employment” (“Proposed Rules”) issued by the Oregon Employment Department (“Department”) covering implementation and administration of the Paid Leave Oregon program.

ERIC is a national advocacy organization exclusively representing the largest employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. With member companies that are leaders in every economic sector, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their ability to sponsor benefit plans. ERIC member companies offer benefits to tens of millions of employees and their families, located in every state and city.

Our member companies already voluntarily offer a wide range of high quality, cost-efficient paid leave benefits for their nationwide workforces. Therefore, it is critical that the interaction of state paid leave programs with existing employer-provided benefits facilitates employee access to these valuable benefits.

ERIC appreciates efforts by the Department to establish regulations that bring greater clarity to the design and administration of Paid Leave Oregon. However, there are several areas of the Proposed Rules that should be amended or developed further to prevent unnecessary compliance complications and facilitate coordination of overlapping benefits. **On behalf of our member companies, ERIC offers the following comments regarding the Proposed Rules and urges the Department to address the impact that key provisions may have on paid leave benefits across the state.**

## Comments

### Additional Claims Information Should be Disclosed to Employers to Facilitate Supplementation of Paid Leave Benefits – (471-070-0930)

While employers play a key role in administering the benefits made available by Paid Leave Oregon, the information they have access to regarding their employees' claims and benefits is currently limited and restricts their ability to provide more generous benefits to employees. Because state-provided benefits are capped, many employers wish to "top off" the paid leave wage replacement that their employees receive via supplemental employer-provided benefit plans. At the same time, employer efforts to coordinate different sources of paid leave and prevent overpayment are impossible without a solid understanding of what benefits are being paid out to employees by Paid Leave Oregon.

Proposed Rule 471-070-0930 currently states that the Department will "*share with the employer only claim information necessary to properly administer the claim (including, but not limited to, the claimant's leave dates and duration of leave)*". Importantly, this disclosed information does not explicitly include the total benefit amount received by an employee while away from work on paid leave. As a result, an employer wishing to "top off" the wages an employee receives would be left without the critical information they need to determine the difference between state benefits and full wage replacement. Furthermore, while employer disclosures currently include the leave dates and duration of leave, they do not explicitly include a schedule of the employee's continuous or intermittent leave, information critical to employer administrative planning. This disclosure disparity ultimately leaves employees worse off, requiring them to go through additional administrative hoops to secure benefits information or otherwise forgo supplemental benefits offered by their employer.

To remedy this administrative constraint and provide employers with the information they need to supplement employees' paid leave benefits, ERIC strongly urges the Department to amend the Proposed Rule to include disclosure to employers of "*claim information necessary to properly administer the claim (including, but not limited to, the claimant's leave dates, duration of leave, scheduled use of leave, and total benefit amount received)*".

### Further Guidance is Needed on the Definition of "Family Member" for Employee Understanding and Employer Administration – (471-070-1000)

A core component of paid family and medical leave benefit design and administration is understanding which individuals an employee may take paid leave from work to care for. Definitions of what constitutes a "family member" for paid leave purposes vary from state to state, but often center on an enumerated list of covered relationships. However, Paid Leave Oregon's underlying statute features an expansive family member definition that also includes "*any individual related by blood or affinity whose close association with a covered individual is*



*the equivalent of a family relationship.*” This open-ended definition leaves both employees and employers unsure who qualifies as a family member and whether paid leave benefits are actually available under certain circumstances.

While Proposed Rule 471-070-1000 attempts to address uncertainty by providing a definition of “affinity,” it does not provide an objective test or process by which family relationships can be determined and instead features a list of “factors” that have to be “examined under the totality of the circumstances”. Furthermore, this list is not exhaustive and actually includes “other factor[s] that demonstrate the existence of a family-like relationship.” Finally, the standard of “affinity” in the Proposed Rule appears to differ from the regulatory interpretation previously established by the Oregon Family Leave Act (OFLA), which provides unpaid leave under many of the same circumstances as Paid Leave Oregon. It is critical that these parallel state sources of leave feature uniform definitions and interpretations of “family member” to ensure coordination of benefits.

Unfortunately, the definition provided by the Proposed Rule does not provide clarity for employers, employees, or state program administrators. Instead, it leaves the responsibility for establishing practicable standards up to future litigation or arbitration while threatening to create inconsistencies with the current OFML. This murky approach to determining familial status stands to create significant challenges and costs for all involved parties down the road. To avoid this serious compliance issue, ERIC strongly urges the Department to formulate concrete compliance standards that employees and employers across the state can rely on while preventing conflict with existing state standards.

### **Job Protection Standards Should Not Arbitrarily Limit the Equivalent Positions Available to Employees Returning from Paid Leave – (471-070-1330)**

Another common feature of paid family and medical leave programs is job protection for employees, ensuring that they do not return from paid leave to an inferior employment position than when they took time away from work. While employers are required by similar state laws to return an employee to their previous position when they return from paid leave, they are often further required to provide an employee with an equivalent employment position in cases where the employee’s original position no longer exists.

Unfortunately, Proposed Rule 471-070-1330 goes beyond these standard protections by placing an additional requirement on large employers in these cases to restore the employee to an available, equivalent position “within a 50-mile radius of the employee’s former job site.” This sort of geographic mandate on equivalent positions is arbitrary, breaks from the policy norms of similar state programs, and fails to consider the wide range of factors that an employee would value or even desire in an “equivalent position”.

For example, an employee whose job site was more than 50 miles from their home may actually prefer an available position at a job site next door to their home, but would be barred by

the 50-mile radius required by the Proposed Rule. At the same time, given the choice between an equivalent position close to their previous job site and a superior position requiring a longer commute, the employee may prefer the latter but would be prevented from accepting it because of the Proposed Rule's geographic requirement. Furthermore, this requirement does not seem to consider the range of jobs that are not based out of a singular job site and involve regular location changes or significant travel.

Essentially, the requirement would disregard the wide spectrum of elements that make up an "equivalent position" and place undue focus on the physical location of employment instead of the many factors that an employee may value more. To prevent the arbitrary restriction of employment options available to employees returning from paid leave, ERIC strongly urges the department to remove the 50-mile radius requirement from the Proposed Rule's job protection standards and allow employees and employers to more broadly consider what an equivalent position entails.

### Conclusion

ERIC appreciates the opportunity to provide comments on the Proposed Rules. As discussed above, ERIC recommends that the Department amend key aspects of the Proposed Rules to prevent unnecessary compliance complications and facilitate coordination of overlapping benefits. **ERIC therefore strongly recommends that the Department consider our comments above and amend or continue development of the Proposed Rules in order to improve the interaction between employers, employees, and Paid Leave Oregon.**

If you have any questions concerning our regulatory comments, the impact the Proposed Rules would have on the administration of paid leave benefits, or changes that could be made to improve interaction between available paid leave sources, please contact us at (202) 789-1400 or [dclair@eric.org](mailto:dclair@eric.org).

Sincerely,



Dillon Clair  
Director, State Advocacy and Litigation

**Exhibit 04**

<b>Hearing</b>	<b>Commenter Name</b>	<b>Rule Number</b>	<b>Comment Summary</b>
Hearing #1	Charlotte Hintz	471-070-1330 Benefits: Job Protection	We've had a lot of people apply for bonding with child in the last year, people have child care, when does bonding become fraud if they are sending their child to child care while they are on bonding leave. Are they protected if it's fraud?