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LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

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

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CHAPTER 471

EMPLOYMENT DEPARTMENT

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CONTACT: Daniel Rembert

503-558-5401

Daniel.A.REMBERT@employ.oregon.gov

875 Union St NE

Salem, OR 97311

Filed By:

Daniel Rembert

Rules Coordinator

RULES:

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

ADOPT: 471-070-0001

REPEAL: Temporary 471-070-0001 from ED 6-2023

RULE TITLE: Purpose

NOTICE FILED DATE: 10/25/2023

RULE SUMMARY: The administrative rule outlines the purpose of chapter 471, division 70 administrative rules.

RULE TEXT:

The purpose of the division 70 rules is to provide procedures, standards, responsibilities, and criteria for administration of the Paid Family and Medical Leave Insurance (PFMLI) program, defined in OAR 471-070-0010. All PFMLI rules are contained within chapter 471, division 70.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.340

ADOPT: 471-070-0900

REPEAL: Temporary 471-070-0900 from ED 6-2023

RULE TITLE: Confidentiality: Definitions

NOTICE FILED DATE: 10/25/2023

RULE SUMMARY: The administrative rule defines the "customer information" and "need to know."

RULE TEXT:

(1) "Customer information" means information pertaining to an individual or a business entity contained in the records of the Employment Department related to the Paid Family and Medical Leave Insurance (PFMLI) program, and includes:

(a) Aggregations of data about fewer than three businesses or in which any one business accounts for more than 80 percent of the aggregated data; and

(b) Aggregations of data about fewer than three individuals.

(2) "Need to know" means that access to, possession of, or other use of customer information is essential in order to carry out official duties.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.400, Chapter 292, Oregon Laws 2023

ADOPT: 471-070-0910

REPEAL: Temporary 471-070-0910 from ED 6-2023

RULE TITLE: Confidentiality: Information Collection

NOTICE FILED DATE: 10/25/2023

RULE SUMMARY: The administrative rule clarifies that information is only collected for the purpose of administering the program and outlines that Social Security Numbers and Individual Taxpayer Identification Numbers are only collected for verifying wages, reporting taxes, repaying debts, and collecting contributions.

RULE TEXT:

(1) The Paid Family and Medical Leave Insurance (PFMLI) program shall collect customer information only for the purpose of administering ORS chapter 657B.

(2) The PFMLI program shall collect an individual's Social Security Number or Individual Taxpayer Identification Number only for the purpose of:

- (a) Verifying a claimant's wages or self-employed income to determine a claimant's eligibility for PFMLI benefits or to determine a self-employed individual's eligibility for PFMLI coverage;
- (b) Collecting contributions;
- (c) Repayment of debts; and
- (d) Tax reporting.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.400, Chapter 292, Oregon Laws 2023

ADOPT: 471-070-0920

REPEAL: Temporary 471-070-0920 from ED 6-2023

RULE TITLE: Confidentiality: Responsibility of Paid Family and Medical Leave Insurance Staff

NOTICE FILED DATE: 10/25/2023

RULE SUMMARY: The administrative rule clarifies that Paid Leave Oregon staff must safeguard information the program collects. The administrative rule clarifies that the information must be accessed only on a need to know basis and provides for the program to charge a reimbursement fee for the cost of providing records.

RULE TEXT:

(1) Paid Family and Medical Leave Insurance (PFMLI) staff must safeguard the confidentiality of customer information collected or obtained and disclose information about the customer only as authorized by law and as necessary to administer ORS chapter 657B.

(2) PFMLI staff and all other entities or individuals with access to PFMLI information are authorized to access confidential customer information only on a "need to know" basis.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.400, Chapter 292, Oregon Laws 2023

ADOPT: 471-070-0930

REPEAL: Temporary 471-070-0930 from ED 6-2023

RULE TITLE: Confidentiality: Permissible Disclosures

NOTICE FILED DATE: 10/25/2023

RULE SUMMARY: The administrative rule clarifies the director's discretion to disclose information, such as to the claimant, the claimant designated representative, the Office of Administrative Hearings as needed for administrative hearings, and the employer or employer's representative for contributions information. Benefit information will not be provided to the employer without authorization by the employee.

RULE TEXT:

In addition to the disclosure described in ORS 657B.400(2)-(5), the director may, at the director's discretion, disclose otherwise confidential information:

(1) Regarding details specific to the claimant's benefits claim:

(a) To a claimant;

(b) To an authorized claimant designated representative, as described in and subject to the requirements described in OAR 471-070-1250;

(c) To the claimant's current or prior employer or the employer's representative. 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) unless the department has the express consent of the claimant or the claimant's designated representative, or unless otherwise required by law; and

(d) To a third party for whom the claimant provides verbal consent for a one-time authorization.

(2) Regarding details specific to the business entity's information:

(a) To the business entity; and

(b) To a third party for whom the business entity provides verbal consent for a one-time authorization.

(3) To the Administrative Law Judges of the Office of Administrative Hearings, as necessary, once a request for hearing has been filed and to prepare for a contested case proceeding under ORS 183.482.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.400, Chapter 292, Oregon Laws 2023

AMEND: 471-070-1000

REPEAL: Temporary 471-070-1000 from ED 6-2023

RULE TITLE: Benefits: Definitions

NOTICE FILED DATE: 10/25/2023

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.

RULE TEXT:

(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 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.

(9) "Claim" means a period of Paid Family and Medical Leave Insurance (PFMLI) benefits that starts with an approved application for benefits and continues through the duration of the approved leave until the approved leave or benefit amount has been exhausted or the approved timeframe for the leave has been reached. A claimant may have multiple claims in a benefit year but may not be approved for more than the allowable benefit or leave amount as described in OAR 471-070-1030.

(10) "Claimant" means an individual who has submitted an application or established a claim for benefits.

(11) "Claimant Designated Representative" means an individual described in OAR 471-070-1250.

(12) "Consecutive" leave means leave taken for a continuous period of time, without interruption, based upon a claimant's regular work schedule from all employment for a single qualifying purpose. A claimant who is taking consecutive leave may not perform work for any employer or perform self-employed work during the leave period.

(13) "Domestic violence," as the term is used for a safe leave purpose described in ORS 659A.272, means abuse or the threat of abuse, as abuse is defined in ORS 107.705.

(14) "Eligible employee's average weekly wage" means an amount calculated by the department by dividing the total wages earned by an eligible employee during the base year by 52 weeks.

(15) "First year" after the child's birth, foster placement, or adoption means the timeframe beginning the day of the child's birth, foster placement, or adoption and ending the day before the child's first birthday or first anniversary of the foster placement or adoption.

(16) "Harassment," as the term is used for a safe leave purpose described in ORS 659A.272, means the crime of harassment described in ORS 166.065.

(17) "Health care provider" means a person, other than a claimant or a person for whom a claimant is providing care, who is one of the following:

(a) A person who is primarily responsible for providing health care to the claimant or the family member of the claimant before or during a period of PFMLI leave, who is licensed or certified to practice in accordance with the laws of the state or country in which they practice, who is performing within the scope of the person's professional license or certificate, and who is:

(A) A chiropractic physician, but only to the extent the chiropractic physician provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays;

(B) A dentist;

(C) A direct entry midwife;

(D) A naturopath;

(E) A nurse practitioner;

(F) A nurse practitioner specializing in nurse-midwifery;

(G) An optometrist;

(H) A physician;

(I) A physician assistant;

(J) A psychologist;

(K) A registered nurse; or

(L) A regulated social worker.

(b) A person who is primarily responsible for the treatment of the claimant or the family member of the claimant solely through spiritual means before or during a period of PFMLI leave, including but not limited to a Christian Science

practitioner.

(18) "Intermittent" leave means leave taken periodically in separate blocks of time or when leave is taken for two or more leave types simultaneously for an entire work day or work week from all employment. A claimant who is taking intermittent leave can perform work for any employer or perform self-employed work on work days they are not taking leave.

(19) "Offset" means the withholding of an amount from a benefit payment which would otherwise be payable to a claimant.

(20) "Self-employed individual's average weekly income" means the amount calculated by the department by adding the total of an individual's taxable income from self-employment, on which contributions have been paid under OAR 471-070-2030, and subject wages, if any, earned during the base year, and dividing by 52 weeks.

(21) "Serious health condition" means an illness, injury, impairment, or physical or mental condition of a claimant or their family member that:

(a) Requires inpatient care in a medical care facility such as, but not limited to, a hospital, hospice, or residential facility such as, but not limited to, a nursing home or inpatient substance abuse treatment center;

(b) In the medical judgment of the treating health care provider poses an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;

(c) Requires constant or continuing care, including home care administered by a health care professional;

(d) Involves a period of incapacity. "Incapacity" is the inability to perform at least one essential job function, or to attend school or perform regular daily activities for more than three consecutive calendar days. A period of incapacity includes any subsequent required treatment or recovery period relating to the same condition. The incapacity must involve one of the following:

(A) Two or more treatments by a health care provider; or

(B) One treatment plus a regimen of continuing care.

(e) Results in a period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity, such as, but not limited to, asthma, diabetes, or epilepsy;

(f) Involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as, but not limited to, Alzheimer's Disease, a severe stroke, or terminal stages of a disease. The employee or family member must be under the continuing care of a health care provider, but need not be receiving active treatment;

(g) Involves multiple treatments for restorative surgery or for a condition such as, but not limited to, chemotherapy for cancer, physical therapy for arthritis, or dialysis for kidney disease that if not treated would likely result in incapacity of more than three calendar days;

(h) Involves any period of disability due to pregnancy, childbirth, miscarriage or stillbirth, or period of absence for prenatal care; or

(i) Involves any period of absence from work for the donation of a body part, organ, or tissue, including preoperative or diagnostic services, surgery, post-operative treatment, and recovery.

(22) "Sexual Assault," as the term is used for a safe leave purpose described in ORS 659A.272, means any sexual offense or the threat of a sexual offense as described in ORS 163.305 to 163.467, 163.472 or 163.525.

(23) "Stalking," as the term is used for a safe leave purpose described in ORS 659A.272, means:

(a) The crime of stalking or the threat of the crime of stalking as described in ORS 163.732; or

(b) A situation that results in a victim obtaining a court's stalking protective order or a temporary court's stalking protective order under ORS 30.866.

(24) "Subject Wages" means PFMLI wages that are paid and reported for an employee, as defined in ORS 657B.010(13), or an employee of a tribal government who has elected coverage under ORS 657B.130.

(25) "Willful" and "willfully" means a knowing and intentional act or omission.

(26) "Willful false statement" means any occurrence where:

(a) A claimant or employer makes a statement or submits information that is false;

(b) The claimant or employer knew or should have known the statement or information was false when making or submitting it;

(c) The statement or submission concerns a fact that is material to the rights and responsibilities of either the claimant or the employer under ORS chapter 657B; and

(d) The claimant or employer made the statement or submitted the information with the intent that the department would rely on the statement or information when taking action.

(27) "Willful failure to report a material fact" means any occurrence where:

(a) A claimant or employer omits or fails to disclose information;

(b) The claimant or employer knew or should have known that the information should have been provided;

(c) The information concerns a fact that is material to the rights and responsibilities of either the claimant or the employer under ORS chapter 657B; and

(d) The claimant or employer omitted or did not disclose the information with the intent that the department would take action based on other information or a lack of information.

(28) "Work day" means any day on which an employee performs any work for an employer and is an increment of a work week. The number of work days in a work week is based on the average number of work days worked by an employee at all employment. There is a maximum of seven work days in a work week. If a work day spans two calendar days, such as a shift beginning on day one at 10 p.m. and ending on the next day at 5 a.m., the work day will count on the calendar day in which the shift began.

(29) "Work week" means a seven day period beginning on a Sunday at 12:01 a.m. and ending on the following Saturday at midnight. If a claimant works a variable or irregular schedule, the number of work days in a work week is determined by counting the total number of work days worked in the preceding 12 work weeks, dividing the total by 12, and rounding up to the nearest whole number. If the employee has not been employed by the employer for at least 12 weeks, the number of weeks the employee has been employed from the date of hire to the first day of leave shall replace 12 in the calculation.

STATUTORY/OTHER AUTHORITY: ORS 657B.090, 657B.120, 657B.340, Chapter 203 Oregon Laws 2023

STATUTES/OTHER IMPLEMENTED: ORS 657B.010, ORS 657B.090, 657B.120, Chapter 203 Oregon Laws 2023, Chapter 549, Oregon Laws 2023

AMEND: 471-070-1130

RULE TITLE: Benefits: Verification of Safe Leave

NOTICE FILED DATE: 10/25/2023

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.

RULE TEXT:

(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 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

REPEAL: Temporary 471-070-1250 from ED 6-2023

RULE TITLE: Benefits: Claimant Designated Representative

NOTICE FILED DATE: 10/25/2023

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.

RULE TEXT:

(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

REPEAL: Temporary 471-070-1330 from ED 6-2023

RULE TITLE: Benefits: Job Protection

NOTICE FILED DATE: 10/25/2023

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.

RULE TEXT:

- (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 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 to which the employee would have been entitled, 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 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 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 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 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 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 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

AMEND: 471-070-2030

REPEAL: Temporary 471-070-2030 from ED 8-2023

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

NOTICE FILED DATE: 10/25/2023

RULE SUMMARY: The administrative rule is amended to clarify that reported taxable income from self-employed individuals who have elected coverage will be prorated for the purposes of contributions and benefits.

RULE TEXT:

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

(2) Total contribution payments will be based on the individual's total taxable income from self-employment from the tax return required to be filed for a prior tax year, per OAR 471-070-2010 and generally shall be divided into four quarterly contribution payments. If a contribution is due for only part of a quarter, the contribution amount and the taxable income from self-employment used to calculate the weekly benefit amount, shall be prorated based on the number of calendar days that the elective coverage is in effect.

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

First quarterly payment, period of May 1 through June 30 (second quarter calendar year 2024), will be \$80.44 $[(\$80,000 \text{ taxable income from self-employment} \times 0.01 \text{ total contribution rate} \times 0.6 \text{ self-employed contribution percentage} / \text{four quarters}) \times 61/91 \text{ calendar days in the quarter}]$. Her taxable income from self-employment for this quarter will be \$13,406.59 $[(\$80,000 \text{ taxable income from self-employment} / \text{four quarters}) \times 61/91 \text{ calendar days in the quarter}]$.

Second quarterly payment, period of July 1 through September 30 (third quarter calendar year 2024), will be \$120 $(\$80,000 \text{ taxable income from self-employment} \times 0.01 \text{ total contribution rate} \times 0.6 \text{ self-employed contribution percentage} / \text{four quarters})$. Her taxable income from self-employment for this quarter will be \$20,000 $(\$80,000 \text{ taxable income from self-employment} / \text{four quarters})$.

Third quarterly payment, period of October 1 through December 31 (fourth quarter calendar year 2024), will be \$120 $(\$80,000 \text{ taxable income from self-employment} \times 0.01 \text{ total contribution rate} \times 0.6 \text{ self-employed contribution percentage} / \text{four quarters})$. Her taxable income from self-employment for this quarter will be \$20,000 $(\$80,000 \text{ taxable income from self-employment} / \text{four quarters})$.

Fourth quarterly payment, period of January 1 through March 31 (first quarter calendar year 2025), will be \$120 $(\$80,000 \text{ taxable income from self-employment} \times 0.01 \text{ total contribution rate} \times 0.6 \text{ self-employed contribution percentage} / \text{four quarters})$. Her taxable income from self-employment for this quarter will be \$20,000 $(\$80,000 \text{ taxable income from self-employment} / \text{four quarters})$.

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

(4) A self-employed individual who fails to timely pay contributions as required by sections (1) through (3) of this rule is delinquent. Any individual found to be delinquent in the payment of contributions is subject to the penalties as specified in ORS 657B.320 and also may be assessed an additional penalty as provided in ORS 657B.910.

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

(6) The self-employed individual must annually report information and submit documentation as provided in

subsections (a) and (b) of this section that the department deems necessary for the administration of elective coverage.

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

(b) If a self-employed individual files their Oregon personal income tax return on extension, the department will use the information on the individual's last tax return filed and provided to calculate quarterly contribution payments. The department will adjust the quarterly contribution payments due when the prior year's tax return on extension is filed and provided to the department. The self-employed individual must report to the department the prior year's taxable income from self-employed filed on extension and provide their Oregon personal income tax return on or before October 31 of each year.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

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

AMEND: 471-070-2200

RULE TITLE: Equivalent Plans: Definitions

NOTICE FILED DATE: 10/25/2023

RULE SUMMARY: This administrative rule defines reporting period to align with the changes made to OAR 471-070-2230 regarding equivalent plan reporting requirements.

RULE TEXT:

(1) "Administrative Costs" means the costs incurred by an employer directly related to administering an equivalent plan which include, but are not limited to, cost for accounting, recordkeeping, insurance policy premiums, legal expenses, and labor for human resources' employee interactions related to the equivalent plan. Administrative costs do not include rent, utilities, office supplies or equipment, executive wages, cost of benefits, or other costs not immediately related to the administration of the equivalent plan.

(2) "Administrator" means either an insurance carrier/company, third-party administrator, or payroll company acting on behalf of an employer to provide administration and oversight of an approved equivalent plan.

(3) "Declaration of Intent" means a legally binding, signed agreement from an employer documenting the employer's intent and commitment to provide an approved equivalent plan with an effective date of September 3, 2023.

(4) "Employer administered equivalent plan" means an equivalent plan in which the employer offers a private plan where the employer assumes all financial risk associated with the benefits and administration of the equivalent plan, whether it is administered by the employer or a third-party administrator.

(5) "Equivalent plan" means a Paid Family and Medical Leave Insurance (PFMLI) plan approved by the department that provides benefits that are equal to or greater than the benefits provided by the Oregon PFMLI program established under ORS 657B.340.

(6) "Fully insured equivalent plan" means an equivalent plan in which the employer purchases an insurance policy from an insurance company approved to sell PFMLI products by the Oregon Department of Consumer and Business Services (DCBS) Division of Financial Regulation and the benefits related to the plan are administered through the insurance policy.

(7) "Reporting period" means:

(a) For equivalent plans beginning in 2023, the first "reporting period" is the timeframe beginning with the start date of the equivalent plan and ending on the earlier of December 31, 2024 or the last effective date of the terminated or withdrawn equivalent plan. The second "reporting period" (and for periods thereafter) is the timeframe beginning January 1 of the calendar year and ending on the earlier of December 31 of the same calendar year or the last effective date of the terminated or withdrawn equivalent plan.

(b) For equivalent plans beginning in 2024 or later, the timeframe beginning the later of January 1 of the calendar year or the start date of the equivalent plan, and ending on the earlier of December 31 of the same calendar year or the last effective date of the terminated or withdrawn equivalent plan.

(8) "Successor in interest" means an employer who is transferred or otherwise acquires all or substantially all of the component's parts of a business, including the employees necessary to carry on day to day operations and essential business functions in the same manner and for the same purposes as carried on prior to the acquisition or transfer.

(9) "Substantial reduction in personnel," as used in ORS 657B.260 and applicable administrative rules, means a situation in which the number of employees employed by the predecessor of the organization, trade, or business is reduced by at least 33 percent by the successor in interest.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.210, 657B.260

AMEND: 471-070-2230

RULE TITLE: Equivalent Plans: Reporting Requirements

NOTICE FILED DATE: 10/25/2023

RULE SUMMARY: This administrative rule clarifies equivalent plan reporting due dates and creates consistency by removing language allowing reports to be filed with annual equivalent plan reapplications. It also clarifies that equivalent plan reports are due for a reporting period.

RULE TEXT:

(1) Employers with an approved equivalent plan are required to file the Oregon Quarterly Tax Report detailing all Paid Family and Medical Leave Insurance (PFMLI) subject wages and the employee count as defined in OAR 471-070-3150 and the Oregon Employee Detail report detailing PFMLI subject wages for each employee in accordance with OAR 471-070-3030.

(2) Employers with an approved equivalent plan must also file annual aggregate benefit usage reports with the department online or in another format approved by the department. The report is due on or before the last day of the month that follows the close of the calendar year. The report shall include, but is not limited to, the following:

- (a) Number of benefit applications received during the reporting period and the qualifying leave purpose;
- (b) Number of benefit applications approved during the reporting period, the qualifying leave purpose, and total amount of leave; and
- (c) Number of benefit applications denied during the reporting period and the qualifying purpose and the number of appeals made on denials and the outcome of the appeals.

(3) If the employer assumes only part of the costs of the approved equivalent plan and withholds employee contributions as described in ORS 657B.210(5) the employer must additionally report the aggregate financial information with the department online or in another format approved by the department. That report is due on or before the last day of the month that follows the close of the calendar year. The report shall include, but is not limited to, the following:

- (a) Total amount of employee contributions withheld during the reporting period;
- (b) Total plan expenses paid during the reporting period, including total benefit amounts paid by an employer administered equivalent plan, and total administrative costs, as applicable; and
- (c) Balance of employee contributions held in trust at end of the reporting period.

(4) Employers or administrators must respond within 10 calendar days from the date of any notice from the department requesting information about current or prior employees employed by an equivalent plan employer in the base year. The employer or administrator must respond to the department's notice either online or by another method approved by the department. The notice may request but is not limited to the following:

- (a) If a benefit year was established;
- (b) The start and end date of the established benefit year;
- (c) Total amount of benefits paid in the benefit year;
- (d) The qualifying leave purpose; and
- (e) The amount of qualifying leave taken in the benefit year.

(5) Employers must provide the reports required under sections (2) and (3) of this rule to the department following withdrawal or termination of an approved equivalent plan within 30 calendar days after the effective date as described in OAR 471-070-2450 and 471-070-2460.

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

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.210, 657B.250

AMEND: 471-070-2400

RULE TITLE: Equivalent Plans: Disputes between an Equivalent Plan Employer and Employee, Request for Hearing

NOTICE FILED DATE: 10/25/2023

RULE SUMMARY: The administrative rule is amended to implement changes from SB 913 (2023 Legislation) providing the added option for equivalent plan employers or employees to request an administrative hearing when either party is not satisfied with the resolution proposed by Paid Leave Oregon.

RULE TEXT:

- (1) As required by ORS 657B.420, the department will provide a dispute resolution process to assist in resolving disputes between employers or equivalent plan administrators, as applicable, and employees regarding coverage and benefits provided under an employer's approved equivalent plan if the appeal with the employer or administrator is not otherwise resolved.
- (2) Prior to the department providing a dispute resolution process, the employee and employer or administrator must follow the equivalent plan appeal process described in OAR 471-070-2220(13).
- (3) In the event that the employee and employer or administrator are unable to resolve an appeal on a coverage or benefit decision through the equivalent plan's appeal process, the employee may request dispute resolution assistance through the department. The dispute resolution request must:
 - (a) Be in writing, by phone, online, or in another format approved by the department.
 - (b) Include a copy of the employer or administrator's appealable decision and any documents related to the dispute, including documents supporting or referencing the employer's or administrator's decision.
 - (c) Be received within 60 calendar days of the issuance of the appealable decision, or as soon as practicable if there is good cause as described under section (8) of this rule, for the delay beyond 60 calendar days.
- (4) The department shall review the dispute resolution request and issue a determination based on the equivalent plan benefit requirements within 20 calendar days of the receipt of the dispute resolution request.
- (5) If an employer or employee disagrees with the determination issued by the department, the employer or employee may file an appeal, as outlined in ORS 657B.410 and related administrative rules, requesting a hearing before the Office of Administrative Hearings.
- (6) If the employer or administrator does not comply with the department's determination or does not comply with a final order issued by an Administrative Law Judge or any reviewing authority, the employee may submit a wage claim with the Oregon Bureau of Labor and Industries under ORS chapter 652.
- (7) The payment of any benefits not placed in issue by the dispute resolution request shall continue during the dispute and appeal processes.
- (8) Good cause for late dispute resolution request includes, but is not limited to, the following:
 - (a) Difficulty obtaining verification;
 - (b) Factors or circumstances beyond the employee's, employer's, administrator's, or department's reasonable control that prevented them from providing information;
 - (c) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents the employee or employer from timely providing information; or
 - (d) A demonstrable inability to reasonably access a means to respond in a timely manner, such as an inability to file a leave report due to a natural disaster or a significant and prolonged outage.

STATUTORY/OTHER AUTHORITY: ORS 657B.420

STATUTES/OTHER IMPLEMENTED: ORS 657B.420, ORS 183.635, Chapter 292, Oregon Laws 2023

ADOPT: 471-070-3790

REPEAL: Temporary 471-070-3790 from ED 6-2023

RULE TITLE: Assistance Grants: Successor in Interest Rights and Responsibilities

NOTICE FILED DATE: 10/25/2023

RULE SUMMARY: The administrative rule clarifies the treatment of assistance grants for full and partial successors in interest when a business with a grant history transfers ownership.

RULE TEXT:

(1) For the purposes of ORS 657B.200 and this rule, an employer is a total successor in interest when all or substantially all of the components or parts of the business necessary to carry on day-to-day operations and essential business functions in the same manner and for the same purposes as carried on prior to the acquisition or transfer are transferred to or otherwise acquired by the successor in interest.

(2) For the purposes of ORS 657B.200 and this rule, an employer is a partial successor in interest when a distinct and severable portion of the business necessary to carry on day-to-day operations and essential business functions in the same manner and for the same purposes as carried on prior to the acquisition or transfer is transferred to or otherwise acquired by the successor in interest.

(3) Rights and responsibilities for assistance grants shall be assessed as follows:

(a) When an employer becomes a total successor in interest by acquiring a trade or business that has obtained an assistance grant, the total successor in interest:

(A) Is liable for any remaining employer contributions required under OAR 471-070-3750; and

(B) Maintains the grant history of the acquired business. Any grants received or applied for before the ownership transfer occurred count toward the successor in interest's annual limit under ORS 657B.200.

(b) When an employer becomes a partial successor in interest by acquiring a trade or business that has obtained an assistance grant, the predecessor:

(A) Maintains liability for any remaining employer contributions required under OAR 471-070-3750; and

(B) Maintains their respective grant history of the partial acquired business.

STATUTORY/OTHER AUTHORITY: ORS 657B.200

STATUTES/OTHER IMPLEMENTED: ORS 657B.200, 657B.320

AMEND: 471-070-8010

RULE TITLE: Appeals: Assignment to Office of Administrative Hearings

NOTICE FILED DATE: 10/25/2023

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.

RULE TEXT:

- (1) 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

AMEND: 471-070-8070

RULE TITLE: Appeals: Dismissal of Requests for Hearing

NOTICE FILED DATE: 10/25/2023

RULE SUMMARY: The administrative rule is amended to implement changes from SB 913 (2023 Legislation) and allows Paid Leave Oregon, at the director's discretion, to dismiss hearing requests in certain situations.

RULE TEXT:

- (1) An administrative law judge may dismiss a request for hearing upon request of the party to withdraw the request for hearing.
- (2) An administrative law judge may order that a request for hearing be dismissed upon request of the Director or the authorized representative of the Director after the Director has:
 - (a) Issued a new or amended determination or decision granting the relief or resolution sought by the party who requested the hearing; or
 - (b) Withdrawn or cancelled the determination or decision upon which the request for hearing was based.
- (3) On the administrative law judge's own initiative, an administrative law judge may order that a request for hearing be dismissed if:
 - (a) The party fails to file the request for hearing within the time allowed by statute or rule without a sufficient showing of good cause, as required for a late request for hearing in OAR 471-070-8025(3);
 - (b) The party fails to provide information requested by the administrative law judge or their designee;
 - (c) The party fails to appear at the hearing at the time and place stated in the notice of hearing;
 - (d) The request for hearing was filed prior to the date of the decision or determination that is the subject of the request;
 - (e) The request for hearing is made by a person not entitled to a hearing on the merits, is made by a person who is not authorized to represent the party, or is made regarding a determination or decision for which there is no lawful authority to request a hearing.
- (4) A dismissal by the administrative law judge is final unless the party whose request for hearing has been dismissed files a request under OAR 471-070-8075 to reopen the hearing, within 20 calendar days after the dismissal notice was sent electronically or mailed to the party's last-known address.
- (5) The Director of the Employment Department may dismiss a request for hearing if the conditions described in sections (1), (2), (3)(d) or (3)(e) of this rule exist.
 - (6)(a) A dismissal by the Director under section (5) of this rule is final unless the party whose request for hearing has been dismissed, files a request for hearing regarding the dismissal, within 20 calendar days after the dismissal notice was sent electronically or mailed to the party's last-known address.
 - (b) If the party files a timely request under subsection (6)(a) of this rule, the hearing regarding the dismissal shall be assigned to an administrative law judge from the Office of Administrative Hearings under OAR 471-070-8010.
 - (c) The administrative law judge assigned under subsection (6)(b) of this rule shall determine whether the dismissal was appropriately entered. If the dismissal was not appropriately entered, the administrative law judge shall decide the underlying issue upon which the hearing was requested.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.410, Chapter 292, Oregon Laws 2023