

Paid Leave Oregon
Proposed Oregon Administrative Rules - Batch 14
For RAC Review

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BENEFITS, EQUIVALENT PLANS, CONTRIBUTIONS & APPEALS

ORS 657B.010 through ORS 657B.110 establish benefit claim administration for Paid Leave Oregon. The below administrative rules add, or update definitions of average weekly wage, electronic signature and in loco parentis and clarify documentation requirements for bonding leave, verification of a serious health condition and safe leave. The rules also add a requirement for employers to update the workplace notice poster whenever the department makes a revised version available, describe benefit payment methods in a more general manner and remove language regarding timing and frequency of employer notices for consecutive and intermittent leave as ORS 657B.040 does not provide specific authority for these notice requirements.

The Oregon Employment Department (OED) is also adding a new rule to describe how Paid Leave Oregon acts on receiving information about a claimant's equivalent plan leave usage. Finally, OED is also adding a new rule based on Senate Bill (SB) 858 (2025), which authorize representatives of incapacitated and deceased claimants to act on the claimant's behalf.

ORS 657B.210 through 657B.260 establishes that an employer may apply to offer an equivalent plan for Paid Leave Oregon benefits for its employees and sets requirements for plan applications, plan benefits, and withdrawal and termination of an equivalent plan. The administrative rules correct an error in the due date for reapproval applications, clarify reporting requirements, require equivalent plan employers to update their workplace notice poster if rule requirements change and amend effective dates for plan withdrawals.

ORS 657B.150 and 657B.175 establish requirements regarding employer and employee contributions, the maximum contribution rate and determine the effects of place of performance. The rules below are amended to align the method for determining contribution rate and maximum wage amount with ORS 657B.150. OED is also making required rule changes regarding localization of work based on changes to ORS 657B.175 made by SB 913 (2023).

ORS 657B.410 establishes the appeals process for claimants and employers. The administrative rules make the batch 13 temporary rule filing permanent to clarify representation requirements for administrative hearings. OED is also amending rules to comply with changes made by SB 913 (2023) regarding appealable items and rules representatives must follow. Lastly, the administrative rules also clarify the process for late hearings requests.

*If an administrative rule is being proposed or amended, new and deleted language is shown in **red** below.*

*Changes made as part of the batch 13 temporary administrative rules, that are being made permanent in this batch, are shown in **purple** below.*

471-070-0001 – Purpose [Amended]

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

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.340]

471-070-1000 – Benefits: Definitions [Amended]

(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 subsection (a) of this section is demonstrated by 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 demonstrates 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 Effective each year for the calculation of weekly benefit amounts for any benefit year commencing on and after the week that includes starting the first full week following July 14; and~~

~~(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 during that benefit year.~~

(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(18)(a)(C) 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, ~~or~~ 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 under ORS 657B.010(18)(a)(A) and (B), or 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 Leave Oregon 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) “Electronic signature” has the meaning given that term in ORS 84.004.

~~(14)~~15 “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)~~16 “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)~~17 “Foster care” means 24-hour care for children in substitution for, and away from, their parents or guardian. Foster care placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, state action must be involved in the removal of the child from parental custody.

~~(1718)~~ “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.

~~(1819)~~ “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 Paid Leave Oregon 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 naturopathic physician;
- (E) A nurse practitioner;
- (F) A nurse practitioner specializing in nurse-midwifery;
- (G) An optometrist;
- (H) A physician;
- (I) A physician associate;
- (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 Paid Leave Oregon leave, including but not limited to a Christian Science practitioner.

(20) “In loco parentis” means acting in the place of a parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

(a) Whether a relationship qualifies as in loco parentis will be evaluated based on the totality of the circumstances, considering the following factors, with no single factor being determinative:

- (A) The age of the child;
- (B) The degree of the child’s dependence on the individual for care or support;
- (C) The extent of financial support provided by the individual;
- (D) The extent to which the individual performs duties commonly associated with parenthood;
- (E) The nature, duration, and consistency of the caregiving relationship; and
- (F) Other factors that demonstrate the existence of an in loco parentis relationship.

(b) The factors listed in (a) may be demonstrated by documentation described in OAR 471-070-1110 and OAR 471-070-1130.

(~~1921~~) “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.

(~~2022~~) “Offset” means the withholding of an amount from a benefit payment which would otherwise be payable to a claimant.

(~~2123~~) “Pre-placement leave” means family leave taken under ORS 657B.010(18)(a)(B) before the actual adoption or foster placement of a child, if leave from work is required for the placement or adoption to proceed. Pre-placement leave may be taken by the prospective foster or adoptive parent in order to:

- (a) Attend counseling sessions;
- (b) Appear in court;
- (c) Consult with an attorney;
- (d) Submit to a physical examination or home study;
- (e) Travel to another state or country to complete an adoption; or
- (f) Perform other actions that the department has determined are necessary for completing the legal process of an adoption or foster placement.

(~~2224~~) “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.

(~~2325~~) “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.

~~(2426)~~ “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.

~~(2527)~~ “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.

~~(2628)~~ “Subject Wages” means Paid Leave Oregon wages that are paid and reported for an employee, as defined in ORS 657B.010(14), or an employee of a tribal government who has elected coverage under ORS 657B.130.

~~(2729)~~ “Willful” and “willfully” means a knowing and intentional act or omission.

~~(2830)~~ “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.

~~(2931)~~ “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.

~~(3032)~~ “Work day” means any day on which an employee performs any work for an employer and is an increment of a work week.

(~~3133~~) “Work week” means a seven day period beginning on a Sunday at 12:01 a.m. and ending on the following Saturday at midnight.

[Stat. Auth.: ORS 657B.090, 657B.340 & 657B.023; Stats. Implemented: ORS 657B.010, ORS 657B.090, 657B.023, 657B.332 & Chapter 73 Oregon Laws 2024]

471-070-1010 – Benefits: Eligibility and Qualification for Benefits [Amended]

(1) For an individual to be eligible to receive Paid Leave Oregon benefits, the individual must:

(a) Be one of the following:

(A) An employee;

(B) A self-employed individual who has elected coverage under ORS 657B.130 and in accordance with OAR 471-070-2010 and whose coverage is currently in effect; or

(C) An employee of a tribal government, where the tribal government has elected coverage under ORS 657B.130 and where the tribal government’s coverage is currently in effect.

(b) Earn at least:

(A) \$1,000 in subject wages, as defined in OAR 471-070-1000, in either the base year or alternate base year;

(B) \$1,000 in taxable income from self-employment, as defined in OAR 471-070-2000, in either the base year or alternate base year; or

(C) \$1,000 in a combination of subject wages and taxable income from self-employment in either the base year or alternate base year.

(c) Contribute to the Paid Leave Oregon Fund established under ORS 657B.430 in accordance with ORS 657B.150 and OAR 471-070-2030 during the base year or alternate base year, as applicable;

(d) Experience a qualifying purpose for benefits under ORS 657B.020;

(e) Have current Oregon employment or self-employment from which they are expected to be available to work but are taking leave from work as described in OAR 471-070-1015;

(f) Submit an application for benefits in accordance with all requirements under ORS 657B.090 and OAR 471-070-1100;

(g) Have not exceeded their maximum paid leave and benefit amounts under ORS 657B.020 and OAR 471-070-1030 in the active benefit year; and

(h) Have no current disqualifications from receiving benefits due to:

(A) The individual being eligible to receive workers' compensation time loss benefits under ORS chapter 656, or Unemployment Insurance benefits under ORS chapter 657; or

(B) A director determination under ORS 657B.332 that the individual previously willfully made a false statement or willfully failed to report a material fact in order to obtain benefits.

(2) An individual may not exceed 12 weeks of paid leave per child for the purpose of caring for and bonding with the child during the first year after the birth or initial placement of the child or for the purpose of pre-placement leave, regardless if whether a new benefit year starts during the first year following birth or initial placement or during the pre-placement process.

(3) An individual may not take the two additional weeks of leave for limitations related to pregnancy, childbirth, or related medical condition more than once per pregnancy, regardless of whether the individual has started a new benefit year.

Example 1: Juan files an application for benefits for seven weeks of paid leave and is approved by the department to care for a family member with a serious health condition and begins a benefit year on November ~~53, 2023~~2024. After returning from this leave, Juan has five weeks of leave remaining in the balance of their benefit year. In March ~~2024~~2025, Juan and their partner adopt a child. Juan submits an application for benefits to the department and is approved for the remaining five weeks of paid leave in the benefit year in order to care for and bond with the newly adopted child. Juan's benefit year expires on November ~~21, 2024~~5, and Juan submits a new application for benefits to the department. Juan is approved for leave to care for and bond with the same child and starts a new benefit year. Because Juan already bonded with the same child for five weeks in the prior benefit year, Juan may only take leave to care for and bond with that child for up to an additional seven weeks in the new benefit year.

Example 2: Julie files an application for benefits and is approved for leave for their own serious health condition and begins a benefit year on September ~~1715, 2023~~2024. Julie takes two weeks of leave to recover from the serious health condition and then returns to work. In June ~~2024~~2025, Julie gives birth to twins. Julie submits an application for benefits to the department and is approved for ten weeks of leave to care for and bond with the first twin. Julie's benefit year expires on September ~~1413, 2024~~2025, and then Julie submits another application for benefits to the department and is approved for twelve weeks of leave to care for and bond with the second twin, starting a new benefit year.

Example 3: Winona decides to adopt a child and applies for pre-placement leave to arrange the adoption. Winona is approved for twelve weeks of pre-placement leave in April 2025. In April 2026, Winona's benefit year ends. In May 2026, Winona submits a new application for twelve weeks of pre-placement leave for the same child. Because Winona already took twelve weeks of pre-placement leave for the same child in the prior benefit year, Winona's application for benefits is denied. In September 2026, the child is placed in Winona's home through adoption. Winona submits a new application for bonding leave, and is approved for twelve weeks of leave to care for and bond with the adopted child.

Example 4: In April 2025, Leyla gives birth to twins. Julie submits an application for benefits to the department and is approved for six weeks of bonding leave to care for and bond with the first twin and for two weeks of additional pregnancy leave for limitations related to childbirth. In July 2025, Leyla submits another application for benefits to the department and requests 6 weeks of leave to care for and bond with the second twin and two weeks of additional pregnancy leave. The department approves Leyla for six weeks of bonding leave for the second twin, but denies the request for additional pregnancy leave, because it can only be taken once per pregnancy.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.015, 657B.020 & Chapter 20 Oregon Laws 2024]

471-070-1110 – Benefits: Verification of Family Leave to Care for and Bond with a Child [Amended]

(1) A claimant applying for Paid Leave Oregon benefits to care for and bond with a child during the first year after the child's birth must provide one of the following forms of verification:

- (a) The child's government issued birth certificate;
- (b) A Consular Report of Birth Abroad;

- (c) Court-issued Legally recognized documents establishing paternity or guardianship, including but not limited to court-issued documents or administrative orders issued by the Department of Justice Division of Child Support;
 - (d) A Voluntary Acknowledgement of Paternity (form 45-31) signed and witnessed by a hospital representative and issued within 5 calendar days of the date of birth;
 - (e) A document issued by a health care provider of the child or pregnant parent. If issued before the date of birth, the document must be dated and signed within 60 calendar days before the expected date of birth;
 - (f) A hospital admission form associated with delivery;
 - (g) The Paid Leave Oregon Verification of Birth Form. If issued before the date of birth, the form must be dated and signed within 60 calendar days before the expected date of birth; or
 - (h) Another document approved by the department for this purpose. If issued before the date of birth, the form must be dated and signed within 60 calendar days before the expected date of birth.
- (2) A claimant applying for Paid Leave Oregon benefits to care for and bond with a child during the first year after the placement of the child through foster care or the first year after the placement of the child through adoption must provide one of the following forms of verification that includes the child's first and last name:
- (a) A copy of a court order verifying placement;
 - (b) A letter signed by the attorney representing the foster or adoptive parent that confirms the placement;
 - (c) A document from the foster care, adoption agency, or social worker involved in the placement that confirms the placement;
 - (d) A document for the child issued by the United States Citizenship and Immigration Services; or
 - (e) Another document approved by the department for this purpose.
- (3) The verification required in sections (1) and (2) of this rule must show the following:
- (a) Claimant's first and last name as parent or guardian of the child after birth or placement of the child through foster care or adoption;
 - (b) If applying for Paid Leave Oregon benefits under section (1) of this rule, the date of the child's birth or the expected date of the child's birth;
 - (c) If applying for Paid Leave Oregon benefits under section (2) of this rule, the date of placement;
 - (d) Unless issued by a government entity, the document must also contain:
 - (A) The issuer's first and last name;
 - (B) The issuer's title or specialization;
 - (C) The issuer's contact information, such as mailing address or telephone number;
 - (D) The issuer's handwritten or electronic signature; and
 - (E) The date the document was signed or issued.
- (4) If any of the documents listed in sections (1) and (2) of this rule do not include the full name of the claimant or, if required by this rule, the full name of the claimant's child, or do not show the relationship of the child to the claimant, the claimant must submit one or more of the following documents to meet the verification requirements described in

this rule:

- (a) A legal marriage certificate;
- (b) A certified Declaration of Domestic Partnership;
- (c) A legal birth certificate;
- (d) A notarized Voluntary Acknowledgement of Paternity Affidavit (Form 45-21); or
- (e) One or more documents issued by an independent and verifiable third party that establishes the parent relationship to the child. The document must be issued within six months before the claimant's start of leave.

(f) One or more documents showing that the claimant is in an *in loco parentis* relationship with the child. The department may consider the following documents alone or in combination to determine whether the claimant has assumed an *in loco parentis* role with respect to the child:

- (A) A valid power of attorney granting the claimant authority to care for and make decisions for the child;
- (B) A court order establishing the claimant as custodian of the child;
- (C) Documentation showing that the claimant has assumed caregiving responsibilities in association with a legal parent's incarceration;
- (D) The claimant's most recent federal or state tax return listing the child as a dependent;
- (E) A letter from a childcare provider, school, or health care provider identifying the claimant as a primary caregiver for the child;
- (F) Documentation showing regular financial support to the child;
- (G) Health insurance documentation listing the child as a covered dependent under the claimant's policy; and
- (H) Other documentation approved by the department that demonstrates an *in loco parentis* relationship consistent with the factors listed in OAR 471-070-1000.

[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.]

[Stat. Auth.: ORS 657B.340; ORS 657B.090 Stats. Implemented: ORS 657B.090]

471-070-1120 – Benefits: Verification of a Serious Health Condition [Amended]

(1) A claimant applying for Paid Leave Oregon benefits for their own serious health condition or to care for a family member with a serious health condition must provide one of the following forms of verification:

- (a) The Paid Leave Oregon Verification of a Serious Health Condition Form;
- (b) The Oregon and Federal Family and Medical Leave Health Care Provider Certification issued by the Oregon Bureau of Labor and Industries (BOLI);
- (c) The Family and Medical Leave Act (FMLA) certification of health care provider for a serious health condition form issued by the U.S. Department of Labor;
- (d) A FMLA certification for a serious health condition form issued by an employer;

- (e) A document issued by ~~a~~the patient's health care provider; or
- (f) Another document approved by the department for this purpose.

(2) The forms of verification listed in section (1) of this rule must include:

- (a) The following information about the patient's health care provider's:
 - (A) First and last name;
 - (B) Type of medical practice/specialization;
 - (C) Contact information, such as mailing address and telephone number; and
 - (D) Handwritten or electronic signature. If issued before the start of leave, the verification document must be signed by the patient's health care provider within 60 calendar days before the claimant's leave start date;
- (b) The claimant's first and last name;
- (c) The ~~claimant's patient's~~ date of birth, if different from the claimant identified in section (2)(b) of this rule;
- (d) The patient's first and last name, if different from the claimant identified in section (2)(b) of this rule;
- (e) The approximate date on which the serious health condition commenced or when the serious health condition created the need for leave;
- (f) A reasonable estimate of the duration of the condition or recovery period for the patient;
- (g) A reasonable estimate of the frequency and duration of intermittent leave and estimated treatment schedule, if applicable; and
- (h) Other information as requested by the department to determine eligibility for the Paid Leave Oregon benefits, including:
 - (A) For medical leave, information sufficient to establish that the claimant has a serious health condition, including but not limited to a diagnosis or a description, including symptoms or required treatment of the serious health condition; or
 - (B) For family leave, information sufficient to establish that the claimant's family member has a serious health condition, including but not limited to a diagnosis or a description, including symptoms or required treatment of the serious health condition.

(3) If any of the documents listed in section (1) of this rule do not include the full name of the patient or the claimant, if different from the patient identified in section (2)(b) of this rule, or do not show the family relationship of the claimant and the patient, the claimant must submit at least one of the following documents to meet the verification requirements described in this rule:

- (a) A legal marriage certificate;
- (b) A certified Declaration of Domestic Partnership;
- (c) A legal birth certificate; or
- (d) One or more documents issued by an independent and verifiable third party that establishes marriage, domestic partnership, or a significant family relationship between claimant and patient. The document must be issued within six months before the claimant's start of leave.

[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.]

[Stat. Auth.: ORS 657B.340 & ORS 657B.090; Stats. Implemented: ORS 657B.090]

471-070-1130 - Benefits: Verification of Safe Leave [Amended]

(1) A claimant applying for Paid Leave Oregon benefits for safe leave must provide verification certifying the claimant or the claimant's child as defined in OAR 471-070-1000 is a survivor of domestic violence, harassment, sexual assault, bias, or stalking. Any of the following documents may be provided as verification:

- (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 was a survivor 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;
- (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, verifying 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;
- (d) The Paid Leave Oregon Safe Leave Verification Form; or
- (e) Another document approved by the department for this purpose.

(2) The documentation listed in section (1) of this rule must include:

- (a) The full name of the claimant, and/or
- (b) The full name of the child of the claimant, if the claimant is applying for safe leave because the claimant's child is a survivor of domestic violence, harassment, sexual assault, bias, or stalking.

(3) The documentation listed in section (1) of this rule must be dated no more than 12 months before the date the claimant applied for leave.

(4) If the documentation is dated earlier than 12 months before the date the claimant applied for leave, the claimant must provide a written statement in addition to documentation listed in section (1) of this rule that describes the current need for leave, along with any additional information requested by the department.

(5) 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, which includes a brief description of the purpose for taking 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.

(6) If the claimant is applying for safe leave because the claimant's child is a survivor of domestic violence, harassment, sexual assault, bias, or stalking, and the verification document provided in section (1) of this rule does not show the family relationship between the claimant and the child, the claimant must submit at least one of the following documents that establishes the relationship between the claimant and child;

(a) The child's government issued birth certificate;

(b) Court issued documents establishing paternity or guardianship;

(c) A Voluntary Acknowledgement of Paternity (form 45-31) signed and witnessed by a hospital representative;

(d) The Paid Leave Oregon Verification of Birth Form;-

(e) One or more documents issued by an independent and verifiable third party that establishes the relationship between the claimant and child; or

(f) One or more documents showing that the claimant is in an *in loco parentis* relationship with the child. The department may consider the following documents alone or in combination to determine whether the claimant has assumed an *in loco parentis* role with respect to the child:

(A) A valid power of attorney granting the claimant authority to care for and make decisions for the child;

(B) A court order establishing the claimant as a guardian or custodian of the child;

(C) Documentation showing that the claimant has assumed caregiving responsibilities in association with a legal parent's incarceration;

(D) The claimant's most recent federal or state tax return listing the child as a dependent;

(E) A letter from a childcare provider, school, or health care provider identifying the claimant as a primary caregiver for the child;

(F) Documentation showing regular financial support to the child;

(G) Health insurance documentation listing the child as a covered dependent under the claimant's policy; and

(H) Other documentation approved by the department that demonstrates the nature of the relationship consistent with the factors listed in OAR 471-070-1000.

[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.]

[Stat. Auth.: ORS 657B.340 & ORS 657B.090; Stats. Implemented: ORS 657B.090]

471-070-1250- Benefits: Claimant Designated Representative ~~and Representation of Incapacitated Claimants~~ [Amended]

(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 Leave Oregon program on behalf of the claimant as specified in section (2) of this rule. The Paid Leave Oregon program will recognize only one individual representative for a claimant at a given time.

(2) A claimant designated representative, or an individual ~~otherwise approved by the department to represent a claimant specified in section (7) of this rule~~, is authorized to do the following:

- (a) Receive information submitted to the Paid Leave Oregon program by the claimant;
- (b) Receive information about Paid Leave Oregon benefits that the claimant has received or will receive;
- (c) Receive information about pending or issued decisions made on the claimant's Paid Leave Oregon claim;
- (d) Provide information to the Paid Leave Oregon program on behalf of the claimant, including information required to complete a Paid Leave Oregon claim for benefits; ~~and~~
- (e) File a Paid Leave Oregon claim for benefits on behalf of the claimant; ~~and~~
- (f) Request a hearing to obtain review of a final decision of the director regarding any of the matters listed in ORS 657B.410-(1)(b) and appear in a hearing conducted before the Office of Administrative Hearings on behalf of the claimant, as described in OAR 471-070-8050.

(3) Except ~~as otherwise for individuals~~ specified in section (7) of this rule, to designate a representative, the claimant must complete and submit the department's 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, and telephone number;
- (c) Authorization beginning and end dates;
- (d) A dated attestation with a handwritten signature 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 dated attestation with a handwritten signature by the claimant designated representative declaring that they are acting in the best interest of the claimant.

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

(5) (a) The authorization to represent will automatically end on the last day of the claimant's current benefit year. In the event that the claimant dies before the end of the benefit year, the designation will end on the date of death.

(b) If no application for benefits is submitted within 30 days of the department approving the designation, the authorization will end 30 days after the department has issued an approval of the designation. If a claimant's

application for benefits is submitted more than 30 calendar days after the designation has been approved, the claimant must submit a new form to designate a representative.

(6) 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.

~~(7) If a claimant is incapacitated due to a serious health condition as defined in OAR 471-070-1000 and is physically or mentally unable to designate a representative by filling out the department's Designated Representative Form, an individual who has a family relationship to the claimant as defined in ORS 657B.010 may request to represent the claimant as described in section (8) of this rule to exchange information with the Paid Leave Oregon program on behalf of the claimant as specified in section (2) of this rule. For the purposes of this rule, 'incapacitated' has the meaning given that term in ORS 125.005.~~

~~(8) To request representation of a claimant who is incapacitated due to a serious health condition as provided in section (7) of this rule, the requesting individual must submit:~~

~~(a) The completed Designated Representative Form referenced in section (3) of this rule. At a minimum, the form must include:~~

~~(A) The information listed in section (3)(a) and (b) of this rule;~~

~~(B) An authorization beginning date;~~

~~(C) A dated certification with a handwritten signature from a health care provider as defined in OAR 471-070-1000 attesting, within the scope of their license, that the claimant is incapacitated and unable to complete the requirements for filing or providing information on a Paid Leave Oregon claim and unable to independently designate a representative; and~~

~~(D) A dated attestation with a handwritten signature from the individual requesting to represent the incapacitated claimant, declaring that they will:~~

~~(i) Act in the best interest of the claimant;~~

~~(ii) Maintain claimant confidentiality, as outlined in section (6) of this rule; and~~

~~(iii) Inform the department within three calendar days of learning that the claimant is no longer incapacitated;~~

~~(b) One or more of the following documents that show the individual's family relationship to the claimant:~~

~~(A) Certified Declaration of Domestic Partnership;~~

~~(B) Legal marriage certificate;~~

~~(C) Legal birth certificate; or~~

~~(D) At the discretion of the department, other documents issued by an independent and verifiable third party that establish marriage, domestic partnership, parenthood, or other family relationship between the individual and claimant; and~~

~~(c) Documentation approved by the department for this purpose that is sufficient to establish the identity of the claimant and the individual requesting approval to represent the claimant.~~

~~(9) The authorization referenced in section (7) of this rule will automatically end on the date the department is informed~~

that the claimant is no longer incapacitated, or on the last day of the claimant's current benefit year, whichever is earliest. The claimant may choose to continue the authorization by independently designating the representative as described in section (3) of this rule. If no application for benefits is submitted for the claimant, authorization will end 30 calendar days after the date the department has approved the individual to represent the incapacitated claimant.

~~(10)~~ In addition to individuals referenced in sections (1) and (7) of this rule, the following individuals are authorized to provide information to and receive information from the Paid Leave Oregon program as specified in section (2) of this rule:

~~(a)~~ An individual who was court-appointed as a claimant's legal guardian or conservator with the authority to make decisions on the claimant's behalf, if the authorized individual provides a copy of the guardianship or conservatorship documentation to the department; or

~~(b)~~ An ~~(7)~~ In addition to the individuals referenced in sections (1) of this rule, an individual ~~with~~ granted power of attorney by the claimant to act as the claimant's 'agent' or 'attorney-in-fact' with respect to the claimant's Paid Leave Oregon benefits or contributions, ~~if the~~ individual is authorized to provide information to and receive information from the department, if the individual with the power of attorney provides documentation satisfactory to the department to demonstrate that the individual has been granted authority to act on behalf of the claimant.

~~(11)~~ The documentation referenced in section ~~(10)~~ of this rule, at a minimum, must:

(a) Show that the individual has specific authority to act on behalf of the claimant for Paid Leave Oregon purposes;

(b) Provide dates that establish the period the individual has the authority to act on behalf of the claimant; and

(c) Include the name of the claimant and the name of the ~~claimant's legal guardian or conservator or the~~ individual with granted power of attorney.

~~(12)~~ Individuals listed in section ~~(10)~~ of this rule must also provide documentation approved by the department for this purpose that is sufficient to establish the identity of the claimant and the ~~identity of the court-appointed legal guardian or conservator or the~~ individual with the granted power of attorney.

~~(13)~~ If the claimant designated representative, ~~the representative of an incapacitated claimant, the claimant's court-appointed legal guardian or conservator,~~ or the individual ~~with~~ granted power of attorney by the claimant do not provide information required in this rule or provide inaccurate information to the department, the claimant is responsible for any resulting delay, denial, overpayment, or disqualification of Paid Leave Oregon benefits.

(11) If the claimant dies, the authority of the individual with a power of attorney with respect to the claimant's Paid Leave Oregon benefits or contributions will expire automatically on the claimant's date of death.

[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.]

[Stat. Auth.: ORS 125.025, ORS 127.002 - 127.045 & ORS 657B.400; Stats. Implemented: ORS 657B.400]

471-070-1260 – Benefits: Authorized Agent for an Incapacitated or Deceased Claimant [New]

1) The director may designate an individual as an authorized agent to act on behalf of an incapacitated claimant or on behalf of a deceased claimant as specified in ORS 657B.090(5). The Paid Leave Oregon program will recognize only one individual representative for a claimant at a given time. If multiple individuals request to become an authorized agent of a deceased claimant, and the decedent's estate does not have a personal representative or executor, or a person

otherwise authorized by a probate court, the department will follow the order of individuals in ORS 293.490 when approving the designation.

(2) If a claimant is incapacitated due to a serious health condition, as defined in OAR 471-070-1000, and is physically or mentally unable to designate a representative under OAR 471-070-1250; an individual who is a family member of the claimant, as defined in ORS 657B.010, may request to become an authorized agent of the incapacitated claimant.

(3) An individual family member who is seeking to be designated as an authorized agent of a claimant who is incapacitated due to a serious health condition must submit the form approved by the department for this purpose, electronically or by regular mail. At a minimum, the form must include:

(a) The claimant's 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) The authorized agent information:

(A) First and last name;

(B) Relationship to claimant; and

(C) Contact information, including mailing address, and telephone number;

(c) An authorization beginning date;

(d) A dated certification with a handwritten signature from a health care provider, as defined in OAR 471-070-1000, who is treating the claimant due to their incapacitation and attests that the claimant is incapacitated and unable to complete the requirements for filing or providing information on a Paid Leave Oregon claim and unable to independently designate a representative; and

(e) A dated attestation with a handwritten signature from the individual requesting to be designated as the authorized agent of the incapacitated claimant, declaring that they will:

(A) Act in the best interest of the claimant;

(B) Maintain claimant confidentiality; and

(C) Inform the department within three calendar days of learning that the claimant is no longer incapacitated;

(f) One or more of the following documents that show the individual's family relationship to the claimant:

(A) Certified Declaration of Domestic Partnership;

(B) Legal marriage certificate;

(C) Legal birth certificate; or

(D) At the discretion of the department, other documents issued by an independent and verifiable third party that establish marriage, domestic partnership, parenthood, or other family relationship between the individual and claimant.

(4) (a) The authorization referenced in section (2) of this rule will automatically end on the earlier of the following dates, as applicable: the date the department is informed that the claimant is no longer incapacitated, the last day of the claimant's current benefit year, or the claimant's date of death.

(b) If no application for benefits is submitted for the incapacitated claimant within 30 calendar days of the department approving the individual as the authorized agent for the incapacitated claimant, the authorization ends.

(5) In addition to family members referenced in section (2) of this rule, the following individuals may act on behalf of an incapacitated claimant:

(a) An individual who has been court-appointed as a claimant's legal guardian or conservator with the authority to make decisions on the claimant's behalf, if the authorized individual provides a copy of the guardianship or conservatorship documentation to the department; or

(b) An individual granted power of attorney by the claimant to act as the claimant's 'agent' or 'attorney-in-fact' with respect to the claimant's Paid Leave Oregon benefits or contributions, if the authorized individual provides documentation satisfactory to the department.

(6) The documentation referenced in section (5) of this rule, at a minimum, must:

(a) Show that the individual has specific authority to act on behalf of the claimant for Paid Leave Oregon purposes;

(b) Provide dates that establish the period during which the individual has the authority to act on behalf of the claimant;

(c) Include the name of the claimant and the name of the claimant's legal guardian or conservator or the individual granted power of attorney; and

(d) Include any other information the department specifies as necessary to establish the individual's authority to act on behalf of the claimant.

(7) If the authorized agent of an incapacitated claimant, a claimant's court-appointed legal guardian or conservator, or the individual granted power of attorney by a claimant do not provide the information required in this rule or provide inaccurate information to the department, the claimant is responsible for any resulting delay, denial, overpayment, or disqualification for Paid Leave Oregon benefits.

(8) If a claimant dies before submitting a claim for Paid Leave benefits or before a final decision is made regarding the claim, any if the individuals described in ORS 293.490(3) may request to become an authorized agent of a deceased claimant, or an executor or personal representative of the deceased claimant's estate or person otherwise authorized by a probate court may request to act on behalf of a deceased claimant.

(9) An individual seeking approval to be designated as an authorized agent for a deceased claimant, other than an executor or personal representative of the deceased claimant's estate or person otherwise authorized by a probate court, must submit:

(a) The form approved by the department for this purpose, electronically or by regular mail. At a minimum, the form must include:

(A) The information listed in section (3)(a) and (b) of this rule;

(B) The claimant's date of death;

(b) A death certificate or other documentation approved by the department that is sufficient to establish the date of death;-

(c) A dated attestation with a handwritten signature from the individual requesting to represent the deceased claimant, declaring that they will:

(A) Act in the best interest of the claimant's estate;

(B) Maintain claimant confidentiality; and

(d) One or more of the following documents that show the individual's relationship to the deceased claimant:

(A) Legal marriage certificate;

(B) Legal birth certificate; or

(C) At the discretion of the department, other documents issued by an independent and verifiable third party that establish marriage, parenthood, or other family relationship between the individual and claimant listed in ORS 293.490.

(10) The authority provided to the authorized agent of a deceased claimant automatically ends on the last day of the claimant's current benefit year. If no application for benefits is submitted for the deceased claimant within 30 calendar days of the department approving the individual as the authorized agent for the deceased claimant, the authorization ends.

(11) The individuals described in sections (2), (5) and (8) of this rule must:

(a) Provide documentation approved by the department that is sufficient to establish the identity of the claimant and the individual requesting seeking to be designated as an authorized agent of the incapacitated or deceased claimant.

[Stat. Auth.: ORS 293.490 & 657B.400; Stats. Implemented: ORS 657B.400 & Chapter 93, Oregon Laws 2025]

471-070-1300 - Benefits: Written Notice Poster to Employees of Rights and Duties [Amended]

(1) The director shall make available to employers a model Paid Leave Oregon notice poster that meets the requirements of ORS 657B.440.

(2)(a) Each employer must display the department's notice poster in each of the employer's buildings or worksites in an area that is accessible to and regularly frequented by employees; and

(b) An employer with employee(s) assigned to remote work must provide, by hand delivery, regular mail, or through an electronic delivery method, a copy of the department's notice poster to each employee assigned to remote work. The notice poster must be delivered or sent to each employee assigned to remote work upon the employee's hire or assignment to remote work.

(3)(a) For employers that have employee(s) working in buildings or worksites, the notice poster displayed under (2)(a) of this rule by the employer must be displayed in the language the employer typically uses to communicate with the employee. If the employer uses more than one language to communicate with employees assigned to a building or worksite, then the employer must display copies of the notice poster in each of the languages that the employer would typically use to communicate with the employees assigned to that building or worksite; and

(b) For employers that have employee(s) assigned to remote work, the notice poster provided under (2)(b) of

this rule by the employer must be provided in the language the employer typically uses to communicate with each employee assigned to remote work.

(4) (a) Each employer must update the displayed Paid Leave Oregon notice poster whenever a revised version is made available by the department.

(b) An employer with employee(s) assigned to remote work must provide a copy of the updated notice poster to each employee assigned to remote work in the manner described in section (2)(b) of this rule.

~~(4)~~ An employer offering an equivalent plan approved under ORS 657B.210 must follow the employer notice poster requirements specified in OAR 471-070-2330.

[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.]

[Stat. Auth.: ORS 657B.340 & 657B.440; Stats. Implemented: ORS 657B.070 & 657B.440]

471-070-1310 - Benefits: Employee Notice to Employers Prior to Commencing Leave [Amended]

(1) Except as provided in ORS 657B.040(5) for safe leave, an eligible employee must give notice to their employer when commencing a period of family, medical, or safe leave.

(2) If the leave is foreseeable, an eligible employee must give oral notice at least 30 calendar days before commencing leave and an employer may require an eligible employee to give written notice at least 30 calendar days before commencing leave. Examples of foreseeable leave include, but are not limited to, an expected birth, planned placement of a child, or a scheduled medical treatment for a serious health condition of the eligible employee or a family member of the eligible employee.

(3) If the leave is not foreseeable, an eligible employee may commence leave without 30 calendar days advance notice. However, the eligible employee or another person on behalf of the eligible employee taking leave must give oral notice to the employer within 24 hours of the commencement of the leave and must provide written notice within three days after the commencement of leave. Leave circumstances that are not foreseeable include, but are not limited to, an unexpected serious health condition of the eligible employee or a family member of the eligible employee, a premature birth, an unexpected adoption, an unexpected foster placement by or with the eligible employee, or for safe leave.

(4) An employer may require a written notice to include:

- (a) Employee's first and last name;
- (b) Type of leave;
- (c) Explanation of the need for leave; and
- (d) Actual or anticipated timing and duration of leave.

(5) Written notice includes, but is not limited to, handwritten or typed notices, and electronic communication such as text messages and email that is consistent with the employer's known, reasonable, and customary policies. ~~Whether leave is to be consecutive or is to be taken intermittently. Notice for consecutive leave only needs to be given one time prior to taking the consecutive leave, but the employee shall advise the employer as soon as practicable if the dates of any scheduled leave change, are extended, or were initially unknown. Notice for intermittent leave shall be given orally to the employer within 24 hours of the commencement of each work day taken or earlier if known.~~

(6) An employer that requires eligible employees to provide written notice before the eligible employee commences leave, must outline the requirements in the employer's written policy and procedures. A copy of the written policy and

procedure must be provided to all **eligible** employees at the time of hire and each time the policy and procedure changes and in the language that the employer typically uses to communicate with the employee. If the employer requires the employee to provide written notice, the policy and procedures must include a description of the benefit reduction under section (10) of this rule that may be imposed by the department for not complying with the employer's notice requirements.

(7) An employee does not need to expressly mention the Paid Leave Oregon program when giving their employer written or oral notice under this rule.

(8) The department will notify the employer pursuant to OAR 471-070-1320(1) when a claimant has applied for paid family, medical, or safe leave benefits. The employer may respond to the notice from the department within 10 calendar days from the date on the department's notice to report if the claimant did not provide the required notice under this rule. The employer may respond to the department's notice either online or by another method approved by the department.

(9) If the employer does not respond to the department's notice as described in section (8) of this rule within 10 calendar days from the date on the department's notice, the claimant's application for benefits shall be processed using the information available in the department's records.

(10) If the department determines that the claimant did not provide the required leave notice to the employer, the department may impose a benefit reduction by issuing a decision and reducing the first weekly benefit amount payable under ORS 657B.090 by 25 percent. The first benefit payment issued will be reduced by the entire amount of the reduction. If the first benefit payment issued is less than the entire amount of the reduction, the subsequent benefit payment(s) will be reduced until the entire reduction has been subtracted.

Example 1: Sanomi did not provide the required notice to their employer about taking consecutive family leave. Sanomi's weekly benefit amount is \$140. Sanomi is taking leave from work for family leave for all the work days within the first week. The 25 percent benefit reduction equals \$35 (\$140 weekly benefit amount x .25 reduction). Sanomi's first benefit payment would have been \$140, but will be reduced to \$105 (\$140 benefit payment - \$35 reduction). Because the first benefit payment is more than the amount of the reduction, the entire reduction is subtracted from the first benefit payment.

Example 2: Joy did not provide the employer with the required leave notice about taking intermittent medical leave. Joy normally works an average of six work days in a work week and is unable to work one of those days each week due to taking medical leave. Joy's weekly benefit amount is \$600, which is prorated to \$100 per work day of leave (\$600 weekly benefit amount / 6 days per week). The amount of the benefit reduction is \$150 (\$600 weekly benefit amount x .25 reduction). Joy's first benefit payment would have been \$100 because one day of leave from work during that week is taken. However, the first benefit payment is reduced to \$0 after the reduction amount is subtracted (\$100 first week benefit payment - \$150 reduction). The second benefit payment would have been \$100 but the second benefit payment is reduced to \$50 after the remaining reduction amount is subtracted (\$100 second week benefit payment - \$50 remaining reduction). The third benefit payment is not reduced as the entire amount of the reduction has already been subtracted from Joy's benefit.

(11) The claimant may appeal the imposition of the benefit reduction in accordance with ORS 657B.410 and applicable administrative rules.

(12) The employee may request a waiver of the benefit reduction for good cause. Good cause will be found when the employee establishes, by satisfactory evidence, that factors or circumstances beyond the employee's reasonable control

prevented the employee from providing the required notice to the employer. Good cause includes, but is not limited to, an incapacitating serious health condition or a situation related to safe leave, for which the employee provided notice to the employer as soon as was practicable.

(13) The department, in its discretion, may waive the imposition of the benefit reduction without a request for a waiver by the employee if the department determines that the employee had good cause for not providing notice to their employer(s) or applying the benefit reduction is against equity, good conscience, or administrative efficiency.

(14) If an employee receives their first weekly benefit payment, and the department subsequently determines that proper notice to the employer was not made by the employee, an amount equal to the 25 percent benefit reduction will be considered an erroneous overpayment, and that amount of the reduction may be collected from the employee in accordance with ORS 657B.332.

[Stat. Auth.: ORS 657B.340 & 657B.040; Stats. Implemented: ORS 657B.040]

471-070-1330 - Benefits: Job Protection [Repealed]

~~(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 Leave Oregon 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 Paid Leave Oregon 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 Paid Leave Oregon leave. The employee's former position is the position held by the employee at the time Paid Leave Oregon 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 Paid Leave Oregon 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 Paid Leave Oregon 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 Paid Leave Oregon leave had not been taken.~~

~~(5) Subject to section (6)(d) of this rule, if the position held by the employee at the time Paid Leave Oregon 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 Paid Leave Oregon 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 Paid Leave Oregon 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 Paid Leave Oregon 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 Paid Leave Oregon leave.

(7) During any Paid Leave Oregon 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 Paid Leave Oregon 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 Paid Leave Oregon 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 Paid Leave Oregon 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 Paid Leave Oregon 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 Paid Leave Oregon 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.~~

~~—[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.060, 675B.070 & Chapter 203, Oregon Laws 2023]~~

471-070-1350 – Benefits: Active Benefit Year and Benefit Draw Down [New]

(1) If the department determines that a claimant has been covered under at least one equivalent plan in the 12 months prior to their requested Paid Leave Oregon-covered leave start date, the department may request information as described in OAR 471-070-1320.

(2) If a claimant received benefits under an equivalent plan in the 12 months prior to their requested Paid Leave Oregon-covered leave start date, the start of the claimant's Paid Leave benefit year is the Sunday immediately prior to the claimant's leave start date under the equivalent plan.

(a) If the claimant received benefits under more than one equivalent plan during the prior 12 months, the start of the claimant's Paid Leave benefit year is the earliest equivalent plan benefit year start date.

(b) If a claimant received Paid Leave benefits and then later took leave under an equivalent plan before the Paid Leave benefit year ended, the claimant's Paid Leave benefit year start date does not change if the claimant applies for Paid Leave benefits again in the same benefit year.

(3) To ensure that a claimant does not receive more than the maximum leave and benefit amount allowed in a Paid Leave benefit year under ORS 657B.020, the department will reduce the remaining leave weeks and monetary benefits in the claimant's Paid Leave Oregon benefit year by the amount of leave a claimant took under an equivalent plan in the 12 months prior to their requested Paid Leave start date or, by the amount of leave the claimant took from an equivalent plan employer during the current Paid Leave benefit year, if the claimant only took leave under an equivalent plan, but not under Paid Leave Oregon.

(4) (a) The claimant and each equivalent plan employer or plan administrator must report the leave the claimant took under the equivalent plan in the 12 months prior the claimant's requested Paid Leave start date, if requested by the department.

(b) If the claimant took intermittent leave, the claimant and employer or administrator must report the total leave days for each week that occurred since the start of the claimant's equivalent plan benefit year, or since the date the department last requested this information about the claimant's leave, whichever is later.

(5) If the claimant or the equivalent plan employer or administrator fails to provide the requested information within the timeframe described in OAR 471-070-1320 and OAR 471-070-2230 the department may:

(a) Calculate the number of leave days the claimant took under each equivalent plan using the information available to the department; and

(b) Impose a penalty for employer violation of equivalent plan requirements and terminate the equivalent plan in accordance with ORS 657B.220, ORS 657B.925 and OAR 471-070-2450.

(6) If the claimant, employer or administrator provide additional information after the claimant's remaining Paid Leave benefits have been reduced that demonstrates the claimant is entitled to a different amount of leave, the department may recalculate the claimant's remaining leave.

(7) If the information provided by the claimant and the equivalent plan employer or administrator conflicts, the department may request additional information to establish facts relating to the claimant's leave under the equivalent plan.

(8) If the claimant took intermittent leave under an equivalent plan, any reduction of the remaining weeks of leave in the claimant's Paid Leave benefit year is calculated by adding the total number of reported leave days the claimant took under an equivalent plan and dividing that by the average number of work days the claimant works in a work week for all employers at the time the claimant applies for Paid Leave benefits. "Work day" and "work week" have the meaning provided in OAR 471-070-1000 and OAR 471-070-1040.

Example 1: Liam applies for Paid Leave benefits. At the time Liam applies for Paid Leave benefits, Liam works only for a state plan employer, but in the past 12 months Liam worked for an employer with an equivalent plan. Six months before applying for Paid Leave benefits, Liam took 10 days of intermittent leave under the equivalent plan. When Liam applies for Paid Leave benefits, Liam on average works 5 days per work week. The remaining weeks of leave in Liam's Paid Leave benefit year will therefore be reduced by two weeks (10 days of leave under the equivalent plan / 5 work days average worked per work week).

(a) The department will not reduce the amount of leave available to the claimant in a given week by more than the average number of work days the claimant works in a work week for all employers at the time the claimant applies for Paid Leave benefits.

Example 2: Maryam applies for Paid Leave benefits. Maryam has a state plan employer and two equivalent plan employers and on average works 7 days per work week for all employers. Three months before applying for Paid Leave benefits, Maryam received benefits under the two equivalent plans. In one work week, Maryam took 6 days of intermittent leave from one equivalent plan employer and 3 days of intermittent leave from the other employer, for a total of 9 days of leave. Maryam's remaining weeks of leave in the Paid Leave benefit year will be reduced by one week (7 days), because the total number of reported leave days under the equivalent plans exceeds the average number of work days Maryam works per work week for all employers (9 days of leave reported under an equivalent plan > 7 days average worked for all employers per work week).

(9) The department shall notify the claimant and each equivalent plan employer if the claimant's remaining weeks of leave in the Paid Leave benefit year were reduced based on the reported number of leave weeks or days taken under the equivalent plan.

[Stat. Auth.: 657B.340; Stats. Imp.: ORS 657B.020]

471-070-1450 - Benefits: Benefit Payment Methods [Amended]

- (1) Paid Leave Oregon benefits shall be paid by such method as the director may approve.
- (2) The department's primary payment method to any claimant approved to receive Paid Leave Oregon benefits shall be through direct deposit into a checking or savings account in a financial institution in the United States as an electronic funds transfer. "Electronic funds transfer" has the same meaning as provided in ORS 293.525.
- (3) Claimants who do not select direct deposit will be paid by a stored value card, ~~including but not limited to, ReliaCard Visa.~~
- (4) If the department determines that it is not feasible to issue payment to a claimant through direct deposit or a stored value card, then the department may issue a check to the claimant.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.060, 675B.070 & Chapter 203, Oregon Laws 2023]

471-070-1465 - Benefits: Payment Due to a Deceased Individual and Abandoned Payment [Amended]

- (1) In the event of the death of an individual to whom Paid Leave Oregon benefit payments totaling \$10,000 or less are owed and where the decedent's estate is not subject to probate, the department shall pay the benefits ~~to~~ an individual lawfully eligible to receive the payment per ORS 293.490 who must submit an acceptable affidavit to the department.
- (2) The affidavit submitted under section (1) of this rule must be submitted within two years from the decedent's date of death.
- (3) Benefit amounts not claimed within two years of the decedent's death will be considered abandoned and delivered to the State Treasurer per ORS 98.352.

[Stat. Auth.: ORS 657B.090 & 657B.340; Stats. Implemented: ORS 657B.090, ORS 98.336, 98.352, 293.490 & 293.495]

471-070-2210 - Equivalent Plans: Application Requirements and Effective Date [Amended]

- (1) An employer must submit a separate application and receive department approval for an employer administered equivalent plan or a fully insured equivalent plan for each Business Identification Number. The application must be submitted to the department online or by another method prescribed by the department. An incomplete application will not be reviewed by the department.
- (2) For an equivalent plan to be reviewed by the department, the equivalent plan application must include the following:
 - (a) Information about the employer applying for the equivalent plan, including:
 - (A) Business Identification Number and Federal Employer Identification Number;
 - (B) Business name;
 - (C) Business address; and
 - (D) Business contact's name and contact information;

- (b) A copy of the employer administered equivalent plan or in the case of a fully insured equivalent plan, a copy of the insurance policy or the insurance product and the selected variables the employer is choosing;
 - (c) A completed questionnaire attesting that the plan meets all requirements for equivalent plans; and
 - (d) Other information as required on the department's equivalent plan application form.
- (3) Employers must pay a nonrefundable \$250 application fee with every:
- (a) Application for approval of a new equivalent plan; or
 - (b) Application for reapproval or amendment of an equivalent plan that has substantive amendments to the equivalent plan that was originally approved by the department.
- (4) Employers must pay a nonrefundable \$150 application fee with every application for reapproval of an equivalent plan that has no changes or only non-substantive amendments to the equivalent plan that was originally approved by the department.
- (5) There is no fee for either of the following:
- (a) Application for amendment of an equivalent plan that has substantive or non-substantive amendments to the equivalent plan that were required by Oregon, local, or federal law changes or changes to the contribution rate and maximum wage amount as described in OAR 471-070-3010;
 - (b) Application for amendment of an equivalent plan that has non-substantive amendments to the equivalent plan that was originally approved by the department.
- (6) "Substantive amendments" to an equivalent plan that was originally approved by the department as used in sections (3), (5), and (11) of this rule include, but are not limited to, any of the following:
- (a) Changing from a fully insured equivalent plan to an employer administered equivalent plan;
 - (b) Changing from an employer administered equivalent plan to a fully insured equivalent plan;
 - (c) Changing the fully insured equivalent plan insurance policy to reduce benefits or leave types, regardless of whether the new plan is from the same insurance provider or another insurance provider;
 - (d) Changing the questionnaire answers for the equivalent plan; or
 - (e) Changing the employer administered equivalent plan to reduce benefits or leave types.
- (7) "Non-substantive amendments" as used in section (4), (5), and (11) of this rule include, but are not limited to, any of the following:
- (a) Updating solvency documents for employer administered plans;
 - (b) Updating the application for an equivalent plan that does not amend the equivalent plan, includes, but is not limited to, the following:
 - (A) Changing business or contact information, or
 - (B) Correcting typographical error
 - (c) Increasing benefits or leave types, regardless of whether the new plan is from the same insurance provider or another insurance provider.

- (8) Approved equivalent plans become effective:

(a) For new equivalent plans, on the first day of the calendar quarter immediately following the date of approval by the department; and

(b) For amendments to a previously approved equivalent plan, on the first day of the calendar quarter immediately following the date of approval of the amendment by the department. If approval of the amendment is denied, the employer must continue to follow the originally approved equivalent plan.

(9) An application for reapproval must be submitted by an employer annually for a three-year period following the original effective date of the plan. The application for reapproval is due 30 days prior to the anniversary of the original effective date of the approved equivalent plan. For equivalent plans with an effective date of September 3, 2023, the anniversary date will be October 1 for any subsequent calendar years, in accordance with section (8) of this rule.

Example: ABC Corporation submitted an equivalent plan application to the department on February 4, 2024. The department sent an approval letter for the equivalent plan that was dated March 5, 2024 and the equivalent plan becomes effective on April 1, 2024. The application for reapproval is due on March ~~1~~2 of 2025, 2026, and 2027; 30 days prior from the original anniversary of the effective date of April 1st.

(10) For the purposes of determining the reapproval requirement, the equivalent plan approval date and effective date are the first day of the calendar quarter immediately following the date of the original approval letter from the department.

(11) After the three-year period following the original effective date of the plan, an application for reapproval must be submitted anytime a substantive amendment occurs as described in section (9) of this rule. For a non-substantive amendment, a copy of the revised equivalent plan must be submitted to the department at the time the change becomes effective.

(12) The department may request any information necessary to establish facts relating to eligibility for an equivalent plan. Unless a timeframe is otherwise specified under statute or administrative rule or is specified by an authorized department representative, the employer must respond to all requests for information within the following time frames:

(a) 14 calendar days from the date of the request for information, if the request was sent by mail to the employer's last known address as shown in the department's records.

(b) 10 calendar days from the date of the request for information, if the request was sent by telephone, email, or other electronic means.

(13) When the response to the request for information is sent to the department by mail, the date of the response shall be the date of the postmark affixed by the United States Postal Service. In the absence of a postmarked date, the date of the response shall be the most probable date of mailing as determined by the department.

[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.]

[Stat. Auth.: 657B.340 & ORS 657B.210; Stats. Imp.: ORS 657B.210 & 657B.230]

471-070-2230 - Equivalent Plans: Reporting Requirements [Amended]

(1) Employers with an approved equivalent plan are required to file the Oregon Quarterly Tax Report detailing all Paid Leave Oregon subject wages and the employee count as defined in OAR 471-070-3150 and the Oregon Employee Detail report detailing Paid Leave Oregon 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 and may be submitted by the employer or plan administrator. 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~~ the increments of leave approved and the duration of leave approved; 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~~ reason for denying the application;
- (d) Number of appeals from denials and the outcome of the appeals, including how many denials were upheld and information relating to the specific reasons claims were denied;
- (e) Information relating to benefit payments paid to employees, including but not limited to:
 - (A) Total benefits paid;
 - (B) Average benefit payment amount;
 - (C) Qualifying leave purposes;
 - (C) Average number of days from the initial application being received until payment;
 - (D) Average number of days from the start of leave until the first payment; and
- (f) Demographic information for each employee with approved leave, including but not limited to:
 - (A) Employee age; and
 - (B) Income level.

(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.]

[Stat. Auth.: 657B.340; Stats. Imp.: ORS 657B.210 & 657B.250]

471-070-2330 - Equivalent Plans: Written Notice Poster to Employees of Rights and Duties [Amended]

(1) The director shall make available to all employers offering an approved equivalent plan, a Paid Leave Oregon notice poster template that meets the requirements under this rule.

(2) An employer that offers a plan approved under ORS 657B.210 shall provide a written notice poster to employees that includes:

(a) Information about benefits available under the approved plan, including the duration of leave;

(b) The process for filing a claim to receive benefits under the plan, including any employee notice requirements and penalties established by the employer in accordance with ORS 657B.040, if applicable;

(c) The process for an employee to appeal to the employer or administrator based on a decision made by their employer or administrator as described in OAR 471-070-2220(13);

(d) The process for employee deductions used to finance the cost of the plan, if any;

(e) An employee's right to dispute a benefit determination after the appeal with the employer or administrator in the manner determined by the director under ORS 657B.420 and OAR 471-070-2400;

(f) A statement that discrimination and retaliatory personnel actions against an employee for inquiring about the Paid Leave Oregon program established under ORS 657B.340, giving notification of leave under the program, taking leave under the program or claiming Paid Leave Oregon benefits are prohibited;

(g) The right to job protection and benefits continuation under ORS 657B.060;

(h) The right of an employee to bring a civil action or to file a complaint for violation of ORS 657B.060 or 657B.070; and

(i) A statement that any health information related to family leave, medical leave or safe leave provided to an employer or plan administrator by an employee is confidential and may not be released without the permission of the employee unless state or federal law or a court order permits or requires disclosure.

(3)(a) Each employer must display the notice poster in each of the employer's buildings or worksites in an area that is accessible to and regularly frequented by employees; and

(b) An employer with employee(s) assigned to remote work must additionally provide, by hand delivery, regular mail, or through an electronic delivery method, a copy of the notice poster to each employee assigned to remote work. The notice poster must be delivered or sent to each employee assigned to remote work upon the employee's hire or assignment to remote work.

(4)(a) For employers that have employee(s) working in buildings or worksites, the notice poster displayed under (3)(a) of this rule by the employer must be displayed in the language the employer typically uses to communicate with the employee. If the employer uses more than one language to communicate with employees assigned to a building or worksite, then the employer must display copies of the notice poster in each of the languages that the employer would typically use to communicate with the employees assigned to that building or worksite; and

(b) For employers that have employee(s) assigned to remote work, the notice poster provided under (3)(b) of this rule by the employer must be provided in the language the employer typically uses to communicate with each employee assigned to remote work.

(5) An employer with an equivalent plan that does not provide coverage on the employee's first day of employment must additionally provide written notice poster to newly hired employees as described in OAR 471-070-1300.

(6) If any of the department requirements pertaining to the notice poster change:

(a) An employer with an approved equivalent plan must update their notice poster to be consistent with the requirements.

(b) The department shall make available a revised model notice poster template and announce the availability of the revised template.

[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.]

[Stat. Auth.: 657B.340; Stats. Imp.: ORS 657B.210 & 657B.070]

471-070-2460 - Equivalent Plans: Employer Withdrawal [Amended]

(1) An employer may withdraw from an approved equivalent plan that has been in effect for at least one year by submitting a withdrawal form online, by phone, or in another method prescribed by the department.

(2) The employer must provide notice to the department by submitting a withdrawal form at least 30 calendar days prior to the effective date of withdrawal. The effective date of the withdrawal is the later of one of the following dates:

(a) The date that the equivalent plan has been in effect for one year; or

~~(ab)~~ A date that is at least 30 calendar days after the date the withdrawal form is sent to the department, ~~and that is the last day of the immediately following calendar quarter; or~~

(A) If the calendar quarter ends 30 calendar days or more after the employer submits the withdrawal request to the department, the effective date of withdrawal is the last day of the calendar quarter in which the request is submitted.

(B) If the calendar quarter ends less than 30 calendar days after the employer submits the withdrawal request to the department, the effective date of withdrawal is the last day of the ~~following~~ calendar quarter immediately following the quarter in which the request is submitted.

~~(b) The date that the equivalent plan has been in effect for one year.~~

(3) The employer or administrator must provide notice of the withdrawal from an equivalent plan to its employees at least 30 calendar days prior to the effective date of withdrawal. The notice, at a minimum, must include the effective date of the equivalent plan withdrawal and information about the state plan in accordance with ORS 657B.440.

(4) All equivalent plan requirements, including but not limited to those included in OAR 471-070-2220 and the equivalent plan reporting requirements, remain in effect until the effective date of the withdrawal, except as specified in section (5) of this rule.

(5) The employer or administrator must pay or continue to pay benefits under the terms of the equivalent plan to eligible employees who were approved or receiving benefits under the equivalent plan on the effective date of the withdrawal until the total amount of the benefit claim is paid, the duration of leave ends, or the benefit year ends, whichever occurs first. If the employer or administrator does not pay the benefits, the employee may file an appeal with the employer as described in OAR 471-070-2220(13) and then a dispute resolution request with the department as described in OAR 471-070-2400.

(6) Within 30 calendar days after the effective date of the withdrawal of an equivalent plan, the employer must send to the department all reporting requirement information on benefit claims paid, amounts of contributions collected or owing, and administrative expenses incurred as specified in OAR 471-070-2230 between the last report provided to the department under the equivalent plan reporting requirements and the date of the withdrawal.

Example: XYZ Partnership's equivalent plan became effective July 1, 2023. On January 31, 2024, XYZ Partnership provided the aggregate equivalent plan information from July 1, 2023, to December 31, 2023. XYZ Partnership requested a withdrawal from the equivalent plan with an effective date of November 1, 2024, as the partnership is no longer in business. By December 1, 2024, XYZ Partnership must send the aggregate equivalent plan information from January 1, 2024, to October 31, 2024.

(7) Once the department receives the report specified in section (6) of this rule, the department will provide an invoice of the contribution amounts due, if any. The contribution amount due is calculated based on any contributions withheld from employee's wages that remain in the possession of the employer upon the effective date of the withdrawal, minus an amount equal to the amount of any benefits due to be paid as required under section (5) of this rule and any anticipated administrative expenses. Once all required benefits are paid under section (5) of this rule, the employer must immediately send to the department the final report on any additional benefit claims paid or administrative expenses incurred after the date of the last report provided under section (6) of this rule. Once the department receives the report, the department will provide an invoice for any additional contribution amounts due. Any remaining contribution amounts due are deposited into the Paid Leave Oregon Trust Fund.

(a) Any contributions become due and payable on the effective date of the withdrawal.

(b) Interest on the amount due from the employer shall accrue from the date

(8) Upon the effective date of the withdrawal of an equivalent plan, the employer must begin paying employee and employer contributions, if required, in accordance with ORS 657B.150 and other applicable statutes and rules.

[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.]

[Stat. Auth.: 657B.340 & ORS 657B.240; Stats. Imp.: ORS 657B.240]

471-070-3010 - Contributions: Method for Determining Contribution Rate and Maximum Wage Amount [Amended]

(1) The department shall determine the Paid Leave Oregon contribution rate on an annual basis. Using current and actual data as well as projections, the factors the department considers in determining the rate include, but are not limited to:

- (a) Paid Leave Oregon Trust Fund balance on August 31 of each year;
- (b) Estimated number of Oregon employees and their estimated Paid Leave Oregon subject wages;
- (c) Estimated number of employers that employ on average 25 or more employees, as described in OAR 471-070-3160;
- (d) Estimated number of employers that employ on average fewer than 25 employees, as described in OAR 471-070-3160, and the estimated number of those employers that commit to pay the employer contributions in accordance with OAR 471-070-3750;
- (e) Estimated number of tribal governments electing coverage under ORS 657B.130(4) and the estimated number of employees employed by tribal governments that have elected coverage;
- (f) Estimated number of self-employed individuals electing coverage under ORS 657B.130;
- (g) Maximum wage amount;
- (h) Average weekly wage as defined in ORS 657B.010(2);
- (i) Estimated revenue that will be deposited into the Paid Leave Oregon Trust Fund through the end of the next calendar year, including projections of:
 - (A) Contributions paid;
 - (B) Penalties and interest paid;
 - (C) Equivalent plan application fees paid; and
 - (D) Interest accrued on the Paid Leave Oregon Trust Fund;
- (j) Estimated expenditures from the Paid Leave Oregon Trust Fund through the end of the next calendar year, including projections on:
 - (A) Benefits paid;
 - (B) Administrative costs;
 - (C) Assistance grants paid; and
 - (D) Amount reimbursed to the General Fund.

(2) For purposes of determining the contribution rate, estimates will include consideration of Paid Leave Oregon program data and other relevant data sources, including but not limited to, other Oregon state agencies, other states' agencies, and federal agencies.

~~(3) Beginning with calendar year 2024, the maximum wage amount will be adjusted by the annual percentage increase (if any) in the August Consumer Price Index for All Urban Consumers, West Region (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.~~

(43) The director shall announce the contribution rate and maximum wage amount by November 15 each year, effective for the following calendar year.

[Stat. Auth.: 657B.340; Stats. Imp.: ORS 657B.150]

471-070-3100 - Contributions: ~~Place of Performance~~ Localization of Work [Amended]

(1) The following definitions apply when determining where an employee's service is performed under ORS

~~657B.175: For purposes of this rule, “service not covered by a paid leave program in any other state or territory” means that the employee’s wages for service are not covered under an existing paid leave program in another state or, if the state or territory has no paid leave program, would not be covered if that other state or territory had a paid leave program similar to Oregon’s.~~

~~(2) For the purpose of implementing ORS 657B.175 and determining Paid Leave Oregon subject wages, an employee’s wages shall be used to make determinations under ORS chapter 657B and applicable rules if the employee’s wages are earned for service:~~

~~(a) Performed entirely within Oregon; or~~

~~(b) Performed within and outside Oregon, but the service performed outside of Oregon is incidental to the employee’s service performed within Oregon.~~

~~(3) An employee’s entire wages are Paid Leave Oregon subject wages if the wages are for employee performance of services within and outside of Oregon and the service performed outside of Oregon is incidental to the employee’s service performed in Oregon. Services performed outside of Oregon are incidental to the employee’s service performed in Oregon in the following sequence:~~

~~(a) “Incidental” service means service that is temporary or transitory in nature or consists of isolated transactions. If the majority of the employee’s service is performed within Oregon and the service outside of Oregon is temporary or transitory in nature or consists of isolated transactions and the employee’s service is not covered by a paid leave program in any other state or territory. Factors that the department may consider in determining whether an employee’s service is temporary or transitory in nature incidental include:~~

~~(A) Length. The length of service with the employer within Oregon compared to outside Oregon;~~

~~(B) Whether the service is an isolated situation or a regular part of the employee’s work;~~

~~(C) Whether the employee intends to will return to performing services in Oregon upon completion of the services performed outside of Oregon; and~~

~~(D) Whether the service performed outside of Oregon are is of the same nature as those that performed in Oregon.~~

~~(b) “Base of operations” means the place, or fixed center of more or less permanent nature, from which the employee starts work and to which the employee customarily returns to receive instructions from the employer, communicate with customers or others, replenish stocks and materials, repair equipment, or perform any other functions necessary to the employee’s trade or profession. The base of operations may be the employee’s business office, which may be located at their residence, or the contract of employment may specify a particular place where the employee is to receive direction and instructions.~~

~~(c) “Place from which the service is directed or controlled” means the location where the basic authority exists and from which the general direction and control originates. This is distinct from the location where a manager or foreman directly supervises the performance of services under general instructions.~~

~~(2) In determining whether an employee’s wages shall be used to make determinations under ORS chapter 657B, the localization factors described in ORS 657B.175 shall be applied in the following sequence:~~

~~(a) First, determine whether the employee’s service is localized in Oregon or in another state.~~

~~(b) Second, if the service is not localized within any state, determine whether some of the service is performed in Oregon and whether the employee’s base of operations is in Oregon.~~

(c) Third, if the service is not localized within any state and the employee has no base of operations or the base of operations is not in any state in which some part of the service is performed, but some of the service is performed in Oregon, determine whether the place from which the service is directed or controlled is in Oregon.

(d) Fourth, if the service is not localized within any state and the place from which the service is directed or controlled is not in Oregon or any other state in which some part of the service is performed, but some of the service is performed in Oregon, then determine whether the employee's residence is in Oregon.

~~(b) If subsection (3)(a) of this rule does not apply, the employee's service is not covered by a paid leave program in any other state or territory, and the employee's base of operations is in Oregon. Base of operations is an established location from where the employee starts work and customarily returns to perform services under the terms of the contract with the employer.~~

~~(c) If neither subsections (3)(a) or (b) of this rule apply, the employee's service is not covered by a paid leave program in another state or territory, and the place from which the service is directed or controlled is in Oregon. Direction and control means basic authority and overall control rather than immediate supervision by a manager or foreman.~~

~~(d) If neither subsection (3)(a), (b), or (c) of this rule apply, the employee's service is not covered by a paid leave program in another state or territory, and the employee's residence is in Oregon.~~

Example 1: Robert lives in Vancouver, WA, but rides a motorcycle to work at a company in Southeast Portland. Because Robert's service is performed entirely within Oregon, all wages earned are considered performed in Oregon and are Paid Leave Oregon subject wages for Oregon. The fact that Robert resides in Washington does not matter.

Example 2: A storm hits Idaho. An employer in Oregon dispatches Rick who typically lives and works in Oregon to help with repair work. Rick works on an isolated project in Idaho for the employer for two weeks, and then returns to work in Oregon. Rick's employment is considered performed in Oregon and all wages earned for work in both Oregon and Idaho are Paid Leave Oregon subject wages for Oregon.

Example 3: Shannon works for an employer located in Oregon but works remotely on a permanent basis from a home office in California. Shannon never performs any service in Oregon. Even though the work is directed from Oregon, the service is performed entirely at Shannon's home in California. Therefore, the wages earned by Shannon are considered performed in California and are not Paid Leave Oregon subject wages for Oregon.

Example 4: Kaitlynn works for an employer located in Illinois but works remotely on a permanent basis from a home office in Oregon. Kaitlynn never performs any service in Illinois other than attending eight days of meetings a year, which is very temporary in nature. Even though the work is directed from Illinois, the service is performed entirely at Kaitlynn's home office in Oregon. Therefore, all of the wages earned by Kaitlynn while in Oregon and Illinois are considered performed in Oregon and are Paid Leave Oregon subject wages for Oregon.

Example 5: Ganesh is a foreman in Oregon for an Oregon business for several years. Ganesh was moved from the Oregon job to a Texas job where Ganesh worked for seven months until the job was complete, at which time Ganesh returned to Oregon to continue work for the same Oregon employer. Although Ganesh was in Texas for seven months, the employee's regular work is in Oregon, and the Texas work was temporary in nature and incidental to the work performed in Oregon. Therefore, the place of performance is considered Oregon and all of Ganesh's wages earned for work in both Oregon and Texas are Paid Leave Oregon subject wages for Oregon.

Example 6: Luis is a resident of Nevada and was hired by an Oregon business to work as a foreman on a Nevada

job only. After the seven months of employment in Nevada, the work ends. Luis moves to Oregon and continues to work for the Oregon business on jobs throughout Oregon. While Luis was working entirely in Nevada, the wages were considered performed in Nevada and are not Paid Leave Oregon subject wages. When Luis moved to Oregon and started performing work in Oregon as permanent employment, the place of performance switched to Oregon and all wages earned after the move become Paid Leave Oregon subject wages for Oregon.

Example 7: Xann works for a major airline as a flight attendant and is based out of Portland, Oregon. Because Xann's work begins and ends in Oregon and the work outside of Oregon is incidental (temporary or transitory in nature) to the work within Oregon, Xann's place of performance is considered Oregon and all of the wages earned are Paid Leave Oregon subject wages for Oregon.

Example 8: Ryan is a truck driver who leaves each week in an eighteen wheeler from their home base in Dillard, Oregon, picks up supplies in Northern California and delivers the supplies to Tacoma, Washington. Ryan performs some service in Oregon; driving up and down I-5, changing the oil in the eighteen wheeler and performing maintenance, as well as performing service in California and Washington. Ryan's base of operation is Dillard, Oregon, as the place they leave from and return to, and Ryan's wages are not covered under a paid leave program in Washington or California; therefore, the place of performance is considered Oregon. All of Ryan's wages earned in Oregon, California, and Washington are Paid Leave Oregon subject wages for Oregon.

Example 9: Cameron is a salesperson who lives in Klamath Falls, Oregon and sells products in Oregon, California, and Nevada and whose employer is located in New York. Cameron works from the home in Klamath Falls where Cameron receives instruction from the employer and communicates with customers. Once a year Cameron travels to New York for a two-week sales meeting. Cameron's base of operations is in Oregon and service is performed in Oregon, California, and Nevada. Because Cameron performs service in the base of operation state, which is Oregon, all of Cameron's wages earned in Oregon, California, and Nevada are Paid Leave Oregon subject wages for Oregon.

Example 10: Lois works for an Oregon employer that has retail stores in both Oregon and Washington. Lois works at both locations for an equal amount of time during the year. Lois's wages are not covered under Washington's paid leave program and Lois's work is directed from the Oregon headquarters. Therefore, all the wages earned by Lois in Oregon and Washington are considered Paid Leave Oregon subject wages for Oregon as Lois's work is considered performed in Oregon where the work is directed or controlled.

Example 11: Kelley is a contractor whose main office is located in Idaho and is regularly engaged in road construction work in Oregon and Washington. All operations are under direction of a general superintendent whose office is also in La Grande, Oregon. Work in Oregon and Washington is directly supervised by field supervisors working from field offices located in each of the two states. Each field supervisor has the power to hire and fire personnel; however, all requests for additional staff must be cleared through the central office in La Grande. Kelley works regularly in Oregon and Washington. Because Kelley's work is not considered performed in another state, the base of operation is not in a state where Kelley works, but the direction and control comes from the central office in La Grande, Oregon, all the wages earned by Kelley in Oregon and Washington are considered performed in Oregon and are Paid Leave Oregon subject wages for Oregon.

Example 12: Bre is a computer designer who works two days a week from home in Beaverton, Oregon and three days a week in the office in Vancouver, Washington. All of Bre's work is directed from the headquarters in Vancouver, Washington and Bre's wages are thus covered under Washington's paid leave program. All the wages earned by Bre teleworking in Oregon and in-person work in the Washington office are considered Washington wages and are not Paid Leave Oregon subject wages for Oregon.

~~Example 13: Andrew works for a Washington employer that dispatches Andrew, who lives in Medford, Oregon, on calls to repair furnaces throughout Oregon, Idaho, and California. Andrew doesn't know where the work will be performed from day to day or each week. Andrew's work is directed from Washington, but no service is performed in Washington. The services performed in Idaho and California would be considered incidental to Andrew's service in Oregon. Since Andrew's residence is in Oregon, all of Andrew's wages earned in Oregon, Idaho, and California are considered Oregon wages and are Paid Leave Oregon subject wages for Oregon.~~

~~Example 14: Theresa lives in Bandon, Oregon and is a member of a traveling circus that performs in Oregon, California, and Arizona. The circus is directed and controlled from Florida. Theresa performed only in Oregon and Arizona before getting a new job. There is no base of operation or direction or control in Oregon and Arizona where the work was performed. Because Theresa performed some service in Oregon where lived, and resides in Oregon, all of the wages earned in Oregon and Arizona are considered performed in Oregon and are Paid Leave Oregon subject wages for Oregon.~~

[Stat. Auth.: 657B.340; Stats. Imp.: ORS 657B.175]

471-070-8000 – Appeals: Department Representation in Hearing [Amended]

(1) ~~Subject to the approval of the Attorney General, In accordance with ORS 657B.410,~~ an officer or employee of the Oregon Employment Department is authorized to appear on behalf of the department in the following types of hearings conducted before the Office of Administrative Hearings:

- (a) Administrative decisions related to Paid Family and Medical Leave Insurance (PFMLI) benefits under ORS ~~657B.040~~, 657B.100, ~~657B.332~~ and 657B.~~120~~335 and applicable rules.
- (b) Administrative decisions related to PFMLI elective coverage and contributions under ORS 657B.130 to 657B.175 or 657B.370 and applicable rules.
- (c) Administrative decisions related to Paid Leave Oregon penalties imposed under ORS 657B.910 or 657B.920 and applicable rules.
- (d) Administrative decisions related to Paid Leave Oregon employer assistance grants under ORS 657B.200 and applicable rules.
- (e) Administrative decisions related to PFMLI equivalent plans under ORS 657B.210 and applicable rules.

~~(2) The agency representative may not make legal argument on behalf of the agency.~~

~~(a) "Legal argument" includes arguments on:~~

- ~~(A) The jurisdiction of the agency to hear the contested case;~~
- ~~(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and~~
- ~~(C) The application of court precedent to the facts of the particular contested case proceeding.~~

~~(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:~~

- ~~(A) The application of the statutes or rules to the facts in the contested case;~~
- ~~(B) Comparison of prior actions of the agency in handling similar situations;~~
- ~~(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;~~

~~(D) The admissibility of evidence;~~

~~(E) The correctness of procedures being followed in the contested case hearing.~~

[Stat. Auth.: 657B.340 & ~~ORS 183.452~~657B.410; Stats. Imp.: ORS 657B.410~~175~~]

471-070-8025 – Appeals: Late Request for Hearing [Amended]

~~(1) A person who files a late hearing request for hearing shall set forth the reasons for filing a late request for hearing in a written statement. A party who files a late request for hearing shall set forth the reasons for filing a late request for hearing in a written statement to the department. The Office of Administrative Hearings (OAH) shall consider the statement in determining whether good cause exists for late filing, and whether the request was filed within seven calendar days after the circumstances that prevented a timely filing ceased to exist.~~

(2) “Good cause” exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an interested party’s reasonable control.

(a) Good cause includes but is not limited to:

(A) Failure to receive a document because the department or Office of Administrative Hearings (OAH) mailed it to an incorrect address despite having the correct address; or

(B) Incapacity.

(b) Good cause does not include:

(A) Failure to receive a document due to not notifying the department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal; or

(B) Not understanding the implications of a decision or notice when it is received.

(3) Notwithstanding section (2) of this rule, good cause for failing to file a timely request for hearing shall exist when a party provides satisfactory evidence that the department failed to follow its own policies with respect to providing service to:

(a) a non-English-speaking person, including the failure to communicate orally or in writing in a language that could be understood by the non-English-speaking person upon gaining knowledge that the person needed or was entitled to such assistance; or

(b) an individual with a disability who cannot readily understand because of deafness or a physical hearing impairment, cannot communicate because of a physical speaking impairment, or cannot read because of a vision impairment, including the failure to communicate orally or in writing in a manner that could be understood by the individual with a disability upon gaining knowledge that the person needed or was entitled to such assistance.

~~(4) The party shall set forth the reason(s) for filing a late request for hearing in a written statement, which the OAH shall consider in determining whether good cause exists for the late filing, and whether the request was filed within seven days after the circumstances that prevented a timely filing ceased to exist.~~

~~(5) Nothing in this rule prevents the OAH from scheduling a hearing if, in the sole judgment of the OAH, testimony is required.~~

(54) The administrative law judge may dismiss a request for hearing as described in OAR 471-070-8070 if the party did not sufficiently demonstrate good cause for a late hearing request.

[Stat. Auth.: 657B.340; Stats. Imp.: ORS 657B.410]

471-070-8050 – Appeals: The Hearing [Amended]

(1) The purpose of the hearing is to inquire fully into the matters at issue and to make a decision on the basis of the evidence shown at the hearing.

(2) No administrative law judge shall ~~conduct~~~~participate in~~ a hearing if the administrative law judge has any private interest in the outcome of the hearing or holds any bias or prejudice which would impair a fair and impartial hearing. All testimony at any hearing before an administrative law judge shall be under oath or affirmation.

(3) The Office of Administrative Hearings shall make an audio, video or stenographic record of the hearing.

(4) The administrative law judge shall conduct and control the hearing. The administrative law judge shall determine the order of the presentation of evidence, administer oaths, examine any witnesses, and may, either on the administrative law judge's own motion or a party's ~~or the department's~~ request, exclude witnesses from the hearing room. ~~Parties~~ ~~Participants,~~ or their authorized representatives, shall have the right ~~to give testimony and~~ to call and examine witnesses. ~~For purposes of this rule, "participant" includes any party and the department.~~

(5) Hearings are not open to the public and are closed to non-participants in the hearing. The administrative law judge may exclude witnesses from the hearing, except for a party, a party's authorized representative, expert witnesses, the agency representative, one agency officer or employee, and any persons authorized below to attend.

(a) An officer or employee of the department may represent the department in a hearing requested under OAR 471-070-8005, ~~in accordance with ORS 657B.410 and OAR 471-070-8000 when authorized by the Attorney General in accordance with ORS 183.452 and applicable administrative rules.~~

(b) ~~In accordance with ORS 657B.410, a party~~ ~~Individuals~~ may appear on their own behalf or may be represented by legal counsel or by any other representative that the person authorizes to represent the person, including a claimant designated representative as described under OAR 471-070-1250. The administrative law judge may require representatives other than legal counsel, when appearing without the person, to provide written authorization to appear for such person. ~~an attorney, paralegal worker, legal assistant, union representative, or person otherwise qualified by experience or training.~~ When a ~~party~~ person makes a general appearance at a hearing, defects in notice are waived.

(c) A representative authorized to represent a participant in a contested case is expected to follow the following code of conduct:

~~(c) Parties that are corporations, partnerships, limited liability companies, unincorporated associations, trusts, or government entities may be represented by an authorized officer, authorized employee, or an attorney.~~

(A) The representative is expected to act professionally, with integrity, and in an ethical manner, in accordance with the statute and rules of the department. The representative is expected to treat all persons in a proceeding and administrative law judges and their staff courteously and fairly. The representative may not offer compensation or anything of value to the administrative law judge or agency decisionmaker in an attempt to influence the decision in a case. These standards of conduct apply at every stage of a contested case.

(B) The representative may not suppress any evidence that the representative has a legal obligation to reveal or produce. The representative may present evidence; question witnesses, address legal issues to the extent permitted by law, and perform other functions that foster development of a full and fair record in the proceeding so that the agency can take the correct action.

(C) The representative must observe the limits placed by statutes and rules on his or her authority and conduct. If the representative is not an attorney authorized to practice in Oregon, they may not give legal advice to a party or other person in the proceeding. The representative must communicate proposed offers of settlement to the person.

(D) The representative should be competent to represent the person in the proceeding, and knowledgeable of the facts of the case and statutes and rules that apply to the case. The representative should know the agency rules of procedure applicable to the case. The representative should be adequately prepared for the hearing and attend to matters in a timely manner, including submission of evidence and providing discovery to other participants.

(E) The representative may not communicate directly on the subject of the representation with a person that the representative knows to be represented by a lawyer on that subject unless the representative has the prior consent of the lawyer or is authorized by law to do so. A representative who is not an attorney must not give legal advice to a person who is not represented, other than the advice to secure representation. The representative may not discourage a person from seeking legal advice or representation, or from exercising the right to a hearing. The representative communicating with another participant or representative in the hearing must disclose who the representative is representing.

(F) If a representative communicates in writing with an administrative law judge before whom a contested case proceeding is pending about the proceeding, the representative must immediately send a copy of the written communication to all participants in the proceeding or their representatives. A representative must give advance notice to all participants or their representatives of any oral communications with an administrative law judge regarding a contested case proceeding. The other participants in the proceeding must be given the opportunity to participate in the communication. This does not include requests for hearing postponements.

(d) Notwithstanding any other law, legal counsel shall not charge or receive more than a reasonable fee for legal services they provide for a party in the proceeding as described in Oregon Professional Rules of Conduct 1.5.

(e) Authorized representatives, who are not legal counsel shall not charge or receive an amount in excess of \$150 per hour, not exceeding \$1500 in total, for the services they provide for a party in the proceeding.

(f) When a party is not represented at the hearing by an attorney, paralegal worker, legal assistant, union representative, or person otherwise qualified by experience or training, the administrative law judge shall explain the issues involved in the hearing and the matters that the unrepresented party must either prove or disprove. The administrative law judge shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the administrative law judge in the hearing.

(6) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude the administrative law judge from entering a decision unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of serious

affairs shall be admissible. If a question of privilege arises, the administrative law judge shall fully and clearly inform the party of any rights as to such privilege and deal with procedural problems created by the existence of such issue in a way which protects the party's person's right to a fair hearing. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(7) All evidence shall be offered and made a part of the record in the case and, except for matters stipulated to and for notice taken, no other factual information or evidence shall be considered by the administrative law judge in making the decision. The experience, technical competence, and specialized knowledge of the administrative law judge may be utilized in the evaluation of the evidence presented. The administrative law judge may receive evidence deemed relevant and essential by the administrative law judge to a fair disposition of the issues.

(8) The administrative law judge may take official notice of judicially cognizable facts. The administrative law judge may take notice of general, technical, or scientific facts within the administrative law judge's specialized knowledge and may take notice of documents, records, and forms retained within the department's files. The administrative law judge shall notify the ~~participants~~ parties of any official notice taken during the hearing or in the decision prior to such decision becoming final. ~~Parties~~ Participants shall be afforded an opportunity to contest the material so noticed during the hearing or prior to the administrative law judge's decision becoming final.

(9) The administrative law judge shall render a decision on the issue and law involved as stated in the notice of hearing. The administrative law judge's jurisdiction and authority is confined solely to the issue(s) arising under the Paid Leave Oregon laws in ORS chapter 657B.

[Stat. Auth.: ~~ORS~~ 657B.340, 183.630(2) & ~~183.452~~657B.410; Stats. Imp.: ORS 657B.410 & ~~183.452~~]