

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

**Date:** July 25, 2023

**To:** David Gerstenfeld, Acting Director

**From:** Anne Friend, Rules Coordinator for Paid Leave Oregon

**Subject:** Presiding Officer's Report on Rulemaking Hearing - Paid Leave Oregon Batch 7 Rules

**Public Hearings and Public Comment Period**

<b>Meeting Type</b>	<b>Hearing Date and Time</b>	<b>Hearing Location</b>
<b>Public Hearing</b>	June 22, 2023, 2-4 p.m.	Virtual via Zoom
<b>Public Hearing</b>	June 26, 2023, 9-11 a.m.	Virtual via Zoom
<b>Public Hearing</b>	June 28, 2023, 4-6 p.m.	Virtual via Zoom
<b>Public Comment Period</b>	June 1, 2023 to June 30, 2023, at 11:59 p.m. PST	Submitted in writing via email

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

<b>Notice Title for Filing</b>	<b>Rule Numbers</b>
<b>Benefits &amp; Assistance Grants</b>	471-070-1000, 471-070-1010, 471-070-1100, 471-070-1120, 471-070-1200, 471-070-1210, 471-070-1310, 471-070-1420, 471-070-1440, 471-070-1510, 471-070-3710, 471-070-1015, 471-070-1205, 471-070-1430, 471-070-1445, 471-070-1450, 471-070-1460, 471-070-1465, 471-070-1470, 471-070-1480
<b>Contributions, Recovery, &amp; Self-employed</b>	471-070-0470, 471-070-5200, 471-070-5210, 471-070-0010, 471-070-2010, 471-070-2030, 471-070-3000, 471-070-3040, 471-070-8520, 471-070-8530, 471-070-8540, 471-070-3310
<b>Equivalent Plans</b>	471-070-2200, 471-070-2210, 471-070-2220, 471-070-2270, 471-070-2400, 471-070-2450, 471-070-2455, 471-070-2460

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### Hearings Report Summary

There were three rulemaking hearings held on the proposed administrative rules for the Paid Leave Oregon Division's Batch 7 administrative rules related to assistance grants, benefits, contributions, equivalent plans, self-employed, and recovery. The three separate Notices of Proposed Rulemaking were filed with the Secretary of State's Office on May 30, 2023. The different topics were divided into three filings. All hearings were held virtually via the Zoom platform and recorded for the official record.

Below is a summary of each hearing and a summary of any comments or questions received on the Batch 7 proposed administrative rules. The public comment period for this rulemaking effort opened on June 1, 2023, and closed at 11:59 p.m. pacific standard time (PST) on June 30, 2023. This report covers only those comments related to the 40 proposed administrative rules and not general program or rule comments.

### Public Hearing #1 – June 22, 2023

The first public hearing for the proposed administrative rules took place on Thursday, June 22, from 2 – 4 p.m. PST. The hearing occurred through Zoom and was recorded as part of the official record. There were 137 individuals registered to attend and 108 attended the hearing. Of the attendees, four attendees provided testimony or asked questions during the hearing on the proposed administrative rules. There were 21 different general questions asked about the program or administrative rules that were not specific to the proposed administrative rules and those questions are not included in this report.

### Public Hearing #2 – June 26, 2023

The second public hearing for the proposed administrative rules took place on Monday, June 26, from 9 – 11 a.m. PST. The hearing occurred through Zoom and was recorded as part of the official record. There were 151 individuals registered to attend and 107 attended the hearing. Of the attendees, two attendees provided testimony during the hearing on the proposed administrative rules. There were 78 different general questions asked about the program or administrative rules that were not specific to the proposed administrative rules and those questions are not included in this report.

### Public Hearing #3 – June 28, 2023

The third public hearing for the proposed administrative rules took place on Wednesday, June 28, from 4 – 6 p.m. PST. The hearing occurred through Zoom and was recorded as part of the official record. There were 84 individuals registered to attend and 47 attended the hearing. Of the attendees, one attendee provided testimony during the hearing on the proposed administrative rules. There were 12 different general questions asked about the program or administrative rules that were not specific to the proposed administrative rules and those questions are not included in this report.

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

The three separate Notices of Proposed Rulemaking including Statement of Need and Fiscal Impact filing for the Batch 7 proposed administrative rules was published in the Oregon Bulletin on June 1, 2023. Between June 1 and 11:59 p.m. PST on June 30, 2023, the public comment period was open for the public, interested parties and groups, to submit comments on the

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proposed administrative rules. Oregon Legislators’ comment period was open between June 1 and 11:59 p.m. PST on July 20, 2023. Comments and questions were primarily received via the [Rules@employ.oregon.gov](mailto:Rules@employ.oregon.gov) email box. Any comments received regarding the Paid Leave Oregon Batch 7 administrative rules in other email boxes were subsequently forwarded to the Rules email box and recorded.

During the public comment period, the Department received written testimony from 17 different individuals or groups that was received through the [Rules@employ.oregon.gov](mailto:Rules@employ.oregon.gov) email inbox. Summary of the testimony received specifically regarding Paid Leave Oregon Batch 7 administrative rules related to assistance grants, benefits, contributions, equivalent plans, self-employed, and recovery can be found in the table below under the rule number the testimony was provided for, the exact comments can be found in the attached exhibits. There were a total of 213 comments or questions asked during the public hearings and via email.

Summary of Comments Received and Responses for Paid Leave Oregon  
Batch 7 Administrative Rules

Rule Number	Name & Affiliation	Exhibit Number	Comment Summary	Responses	Rule Change – Yes/No
<b>471-070-0010-Definitions</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
<b>471-070-0470 Wages: Paid Leave Oregon Benefits</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
<b>471-070-1000 Benefits: Definitions</b>	Lena Forrester, The Standard	03	(9) - Oppose as confused why the words were changed from self-employed to self-work.	Believe the change was read incorrectly, as it says “self-employed work” not “self-work”.	No
	Lisa Kwon, Time to Care Oregon	07	(9) – Support for administrative rule as written as it helps avoid potential confusion about whether a worker must be unable to perform the functions of their job.	Support for administrative rule as written, no changes needed.	No
	Chelsi Reno, Clackamas Education Service District	02	(14) – Oppose allowing intermittent family leave will be difficult for schools to manage and	ORS 657B.090 requires the leave to be taken in work day increments but allows for leave to	No

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			creates instability for students	be taken concurrently or intermittently.	
Lena Forrester, The Standard	03	(14) - Oppose as the wording previously worked fine. Confirm that when intermittent leave occurs, it can be taken with only one of multiple employers as don't understand the impact to equivalent plan employers.	If intermittent leave is needed for only one employer, that is allowed as long as not working for the other employer the same day. For the state plan, if more than one leave type is being taken at a time, the claimant needs to file a weekly claim to let the department know which leave type is being taken.	No	
Shawnee Halligan, Lake Oswego School District	04, 06	(14) – Oppose as would like additional intermittent leave requirements for school teachers like OFLA (839-009-0290) that has to be with the employer's approval for intermittent leave.	Paid Leave Oregon does not have special rules for teachers in statute like OFLA; therefore, there cannot be a different treatment for intermittent leave for school teachers.	No	
Lisa Kwon, Time to Care Oregon	07	(14) – Oppose as “intermittent leave” is not used in statute.	The statute uses nonconsecutive leave but the Paid Leave Oregon program felt using a term that is used in OFLA would provide less confusion for employers and employees.	No	
Lisa Kwon, Time to Care Oregon	07	(14) – Oppose as should eliminate from the definition “leave is taken for two or more leave types simultaneously”.	If a claimant is taking more than one leave type simultaneously, they need to let the Paid Leave Oregon	No	

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				program know which leave type they are taking and for what days. A claimant cannot take both leave types on the same day so by definition both leaves are intermittently taken (not for consecutive periods of time).	
	Breanna Scott, New York Life; Sarah Montgomery, ACLI	04, 05; 14	(15) – Oppose as suggest removing “equal to an amount owed to the department” as child support could be an offset.	Agree with suggestion.	Yes
<b>471-070-1010 Benefits: Eligibility and Qualification for Benefits</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
	Kenneth Roland Ballew-Renfro	13	Oppose as Paid Leave Oregon benefits should be in addition to OFLA/FMLA time.	Per ORS 657B.020 and 657B.025, OFLA and FMLA need to run concurrently with Paid Leave Oregon and not in addition to.	No
	Breanna Scott, New York Life; Sarah Montgomery, ACLI	04; 05; 14	(1)(e) - Oppose the word “scheduled” employment as substitutes may not have "scheduled" employment.	Agree that word “scheduled” provides confusion.	Yes
<b>471-070-1015 Benefits: Leave from Work</b>	Derek Sangston, Oregon Business and Industry	04	Support for administrative rule as appreciates the added clarity and finds the additional example helpful.	Support for administrative rule as written, no changes needed.	No
	Lena Forrester, The Standard; Breanna Scott, New York Life;	03; 05; 08;	(2) - Oppose as the business operations should be for a week or more.	Agree that one holiday here or there should not be expected to be	Yes

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	Daris Freeman, Unum			available for work if less than a week.	
	Lisa Kwon, Time to Care Oregon; Odalis Aguilar Aguilar, AFSCME; Catie Theisen, OR AFL-CIO; Ryan Nielsen, LIUNA; Ira Cuello-Martinez, PCUN; Julie Samples, Oregon Law Center	07; 09; 11; 12; 15; 16	(2) – Oppose as excludes significant number of workers who work non-traditional hours and schedules. Legislative intent was to include all workers regardless of the employer size, type of industry work, and multiple jobs. This rule disproportionately impacts many of the most vulnerable among the workforces.	The text and context of ORS chapter 657B would not, without changes, permit Paid Leave Oregon benefits to be paid to individuals when they are not taking leave from work. Ongoing work is being done to explore whether there are ways to mitigate this impact on the most vulnerable workers; however, such changes could not be implemented before the ‘go live’ of the program, and most changes to address this issue would require legislative changes.	No
<b>471-070-1100 Benefits: Application for Benefits</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
	Lena Forrester, The Standard	03	(1)(h) – Oppose as recommend removing reference to the year lookback. Also, we understand the additional 2 weeks is also permitted for lactation which some women may be continuing through the 12-month mark.	The additional two weeks are tied to the pregnancy and can only be claimed once and the Paid Leave Oregon program, in most circumstances, gives the additional two weeks at the beginning; therefore, would not be able to claim it again years	Yes

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				later. Added additional language in OAR 471-070-1010.	
<b>471-070-1120 Benefits: Verification of a Serious Health Condition</b>	Brie Caffey, Public Member	04	(7) – Oppose as suggest expanding “not limited to a diagnosis” to determine benefits to reduce fraud.	Diagnosis is not required as sometimes individuals will not have a diagnosis yet.	No
	Deborah Herron, Walmart	18	(7) – Oppose as suggest replacing “diagnosis” with “medical facts”.	Some Paid Leave states state diagnostic code and others state medical facts. The Paid Leave Oregon division will monitor and reevaluate after go-live to see if a change is necessary.	No
	Rebecca Vales, Public Member	04	(7) Question: the addition of the diagnosis as information requested on the health certification, does this align with HIPPA regulations?	To our knowledge it is not in violation of HIPPA and can request a diagnostics code	No
<b>471-070-1200 Benefits: Claim Processing; Additional Information</b>	Lena Forrester, The Standard	03	(2) – Oppose as Equivalent Plan employers would like the option to use fax and therefore would not like it removed from the rule.	Equivalent plan employers may use means other than what is in the state plan rules to receive information for claimants; however, the Paid Leave Oregon program is not going to use fax.	No
<b>471-070-1205 Benefits: Weekly Claims</b>	Leslie, Public Member	04	Question: Weekly intermittent claims will be paid weekly, after the week is finished or a period of time? When will continuous block of leave be paid?	Weekly claim payments will be sent after the weekly claim is completed (as can submit the intermittent claims a month at a time). Continuous leave will be paid out weekly.	No

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	Lisa Kwon, Time to Care Oregon; Catie Theisen, OR AFL-CIO; Ryan Nielsen, LIUNA	07; 11; 12	(1) – Oppose as recommend eliminating the requirement that workers file weekly leave claims.	Intermittent leave needs can change; therefore, the Paid Leave Oregon program feels having weekly leave claims for intermittent leave would eliminate a lot of overpaid benefits. The Paid Leave Oregon program is also allowing weekly claims to be filed at four weeks at a time; therefore, eliminating the need to sign in each week if that is not possible for the claimant.	No
	Lena Forrester, The Standard	03	(4) – Oppose as doesn't specify how far back look to establish the average number of work days for irregular schedules.	OAR 471-070- 1000(25) states for irregular schedules, the average is determined by looking at the preceding 12 work weeks.	No
<b>471-070-1210 Benefits: Updates to a Claim for Leave</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
<b>471-070-1310 Benefits: Employee Notice to Employers Prior to Commencing Leave</b>	Lisa Kwon, Time to Care Oregon	07	(2) – Oppose the additional language of giving oral notice to employers at least 30 days before commencing foreseeable leave as the statute does not include this requirement.	ORS 657B.040 discusses 30-day timeframe so we incorporated the oral and written notice timeframe as the same. If an employee doesn't provide written notice, they still need to give notice to their employer so	No



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				that is why put oral notice language in.	
	Lisa Kwon, Time to Care Oregon	07	(3) – Support for allowing another person to give notice to the employer.	Support for administrative rule as written, no changes needed.	No
	Lena Forrester, The Standard; Sarah Montgomery, ACLI	03; 14	(4)(d) – Oppose as suggest including actual dates instead of anticipated so only require one notice when unforeseeable.	Changed rule to add actual or anticipated timing and duration of leave to allow for one notice if the employee knows the actual days off.	Yes
	Breanna Scott, New York Life	05	(5) – Oppose as there is no penalty after the initial claim if the employee does not provide sufficient notice of intermittent leave.	No, there is nothing in statute that allows for a penalty after the initial claim of not providing notice.	No
	Lisa Kwon, Time to Care Oregon	07	(5) – Oppose as suggest removing last sentence that requires employees to give notice to employers within 24 hrs. of taking intermittent leave.	Employers need to know that the employee is out for Paid Leave Oregon reasons as soon as possible to plan for employees leave.	No
	Deborah Herron, Walmart	18	(9) – Oppose as change to business days instead of calendar days.	All other timeframes in the administrative rules are calendar days. Leaving to keep consistent.	No
	Lisa Kwon, Time to Care Oregon	07	(10) – Oppose as the reduction can only be for the first benefit payment and not future benefit payments.	ORS 657B.040(4)(a) allows for a reduction of the “first weekly benefit amount”; therefore, the Paid Leave Oregon Division feels the first weekly benefit amount can be reduced by 25% even if it takes more than a week to pay the first weeks payment.	No

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	Lisa Kwon, Time to Care Oregon	07	(13) – Supports new language for waiver of benefit reduction for good cause.	Support for administrative rule as written, no changes needed.	No
<b>471-070-1420 Benefits: Leave Periods and Increments</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
<b>471-070-1430 Benefits: Simultaneous Qualifying Purpose</b>	Lisa Kwon, Time to Care Oregon	07	(4) – Oppose as need to eliminate the weekly claim if leave for more than one purpose is taken.	Intermittent leave needs can change; therefore, the Paid Leave Oregon program feels having weekly leave claims for intermittent leave would eliminate a lot of overpaid benefits. The Paid Leave Oregon program is also allowing weekly claims to be filed at four weeks at a time; therefore, eliminating the need to sign in each week if that is not possible for the claimant.	No
	Lena Forrester, The Standard	03	Oppose as isn't clear if the simultaneous leave is within the same benefit year.	Added language to clarify it is in the benefit year.	Yes
<b>471-070-1440 Benefits: Weekly Benefit Proration</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
	Lena Forrester, The Standard	03	(3) – Oppose as don't need the rounding as industry can pay up to two decimal points.	Rounding is needed as the benefit amount per work day could calculate to more than two decimal points.	No
<b>471-070-1445 Benefits: Self- Employed</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written.	Support for administrative rule	No

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<b>Benefit Calculation</b>				as written, no changes needed.	
	Hannah Nylin	04	Question: For self-employed workers who have been paying contributions for less than a year, how is the reduced benefit amount calculated?	Your net income from self-employment is divided evenly among the four quarters; so, if you have only paid two quarters of contributions, you would only have two quarters of income for benefits as well.	No
<b>471-070-1450 Benefits: Benefit Payment Methods</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as it aligns with Unemployment Insurance.	Support for administrative rule as written, no changes needed.	No
<b>471-070-1460 Benefits: Lost, Stolen, Destroyed, or Forged Benefit Checks</b>	Lisa Kwon, Time to Care Oregon	07	Oppose as use benefit payment in lieu of benefit check.	It is a different process if a direct deposit or ReliaCard payment is lost, stolen, or destroyed, as in those cases the department paid the money to another institution. Where if a check is lost, stolen, or destroyed, the department still has the money in their bank account; therefore, the rule has not been changed to be more general.	No
<b>471-070-1465 Benefits: Payment Due to a Deceased Individual and Abandoned Payment</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and glad to see.	Support for administrative rule as written, no changes needed.	No
	Brie Caffey, Public Member	04	Question: Does the death have to be due to the serious health condition for which the claim was filed, or any death that	It can be for any death and not related to the serious health condition. Any payment that is due	No

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			occurs while a payment is determined approved?	to the claimant if they applied and died before they received it.	
<b>471-070-1470</b> <b>Benefits:</b> <b>Benefit</b> <b>Payment</b> <b>Offsets</b>	Lena Forrester, The Standard	03	Oppose as need to specify this rule is only for the state plan.	The intention of this rule was to provide clarification for overpayments for the state plan. Equivalent plans may have different processes.	No
	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
<b>471-070-1480</b> <b>Benefits:</b> <b>Federal and</b> <b>State</b> <b>Voluntary Tax</b> <b>Withholding</b>	Lisa Kwon, Time to Care Oregon	07	Oppose as suggest only allowing for claimants to elect to withhold applicable federal taxes and recommend department request a ruling for the IRS.	Other Paid Leave states have asked the IRS for a ruling on taxability of Paid Leave and it is still waiting for an answer. In the meantime, Paid Leave Oregon received guidance from the Oregon Department of Revenue and they stated Paid Leave benefits are taxable to Oregon; therefore at this time the program believes offering voluntary withholding for Oregon is appropriate.	No
	Lena Forrester, The Standard	03	(3) – Oppose as clarification is needed if the amount is exactly halfway for how the rounding shall occur.	Included language that if five or greater to round up, otherwise round down.	Yes
<b>471-070-1490</b> <b>Benefits: Child</b> <b>Support</b>	Lisa Kwon, Time to Care Oregon	07	Question - What is the purpose of striking this rule? Is the agency not	The Paid Leave Oregon program still plans to withhold	No

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<b>Withholding Obligations</b>			going to withhold child support?	child support from benefit payments as an offset as described in OAR 471-070-1470. This rule is not needed as the authority is through the Division of Child Support.	
<b>471-070-1510 Benefits: Repayment of Overpaid Benefits; Interest</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
<b>471-070-2010 Self-employed: Election Requirements</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
	Hannah Nylin, Public Member	04	(3) Question: Can you retroactively pay contributions (and late-payment penalty) based on 2023 income once the 2023 tax return is filed?	There is no retroactive. Have to wait for the 2023 tax return to be filed and then can elect in to the program.	No
<b>471-070-2030 Self-employed: Contribution Payments and Reporting Requirements</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
<b>471-070-2200 Equivalent Plans: Definitions</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the additional timeframe to appeal.	Support for administrative rule as written, no changes needed.	No
<b>471-070-2210 Equivalent Plans: Application Requirements and Effective Date</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
	Sarah Montgomery, ACLI	14	(7) – Oppose as suggest adding another non-substantive amendment for an equivalent plan application to be any amendment to conform to changing law.	Included in section (5) of the rule allows for no fee for Oregon, local, or federal law changes.	No

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	Sarah Montgomery, ACLI	14	(12) – Oppose as would like to specify the information is requested from the employer.	The Paid Leave Oregon program would like to request information from the employer or administrator, depending on what additional information is needed.	No
<b>471-070-2220</b> <b>Equivalent Plans: Plan Requirements</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the extended appeal timeframe.	Support for administrative rule as written, no changes needed.	No
<b>471-070-2270</b> <b>Equivalent Plans: Proration of Benefit Amounts for Simultaneous Coverage</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
	Lena Forrester, The Standard	03	(3) – Oppose as need to clarify how the rounding will occur for a number in the middle.	Included language that if five or greater to round up, otherwise round down.	Yes
	Lena Forrester, The Standard	03	Example 1 & 2 – Oppose as the work day rate is equal for both employers regardless of what is earned with either employer which could result in higher benefits then earned as doesn't account for the different wages earned.	The Paid Leave Oregon Division explored many different ways to prorate benefits. The wages are from the base year, not the current employer so employees may have worked for different employer(s) during the base year and would not be able to prorate based on the current proportion of wages. There is not a proration option that works for everyone; however, proration on the number of days currently worked at each job is the policy decision	No

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				decided on at this time. The Division will continue to monitor.	
<b>471-070-2400 Equivalent Plans: Disputes between an Equivalent Plan Employer and Employee, Request for Hearing</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the extended appeal timeframe.	Support for administrative rule as written, no changes needed.	No
<b>471-070-2450 Equivalent Plans: Termination by the Departments</b>	Lisa Kwon, Time to Care Oregon	07	(1) - Support allowing the department to terminate an equivalent plan when the business is closed.	Support for administrative rule as written, no changes needed.	No
	Lena Forrester, The Standard	03	(2) – Oppose as title of rule is termination by the department so it is confusing to include termination by the plan administrator.	One of the reasons the department can terminate is if the plan administrator terminates the plan. If that is the case, needed directions for how the plan administrator should tell the department about the termination.	No
	Lisa Kwon, Time to Care Oregon	07	(8) – Support the change to require employers to submit amounts of contributions collected and owing within 30 days.	Support for administrative rule as written, no changes needed.	No
<b>471-070-2455 Equivalent Plans: Termination and Withdrawal by Successor in Interest</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No

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<b>471-070-2460 Equivalent Plans: Employer Withdrawal</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
<b>471-070-3000 Contributions: Definitions</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
<b>471-070-3040 Contributions: Withholding of Employee Contributions</b>	Beth Lewis, Northwest Drilling and Boring	01	Oppose, as would like for employees to receive contributions back in a tax refund if is not used.	Paid Leave Oregon statute does not allow for a refund of contributions if benefits are not used.	No
	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
	Lena Forrester, The Standard	03	(2) – Oppose as systems use actual numbers so if have to round, suggest rounding down to the nearest whole cent if number is in the middle.	Included language that if five or greater to round up, otherwise round down.	Yes
<b>471-070-3310 Contributions: Application of Payments</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
<b>471-070-3710 Assistance Grants: Application Requirements</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
<b>471-070-5200 Due Dates for Balances Owed to the Department</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
<b>471-070-5210 Application of Payments</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
<b>471-070-8520 One-Percent Penalty</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as	Support for administrative rule	No



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			written and the changes incorporated.	as written, no changes needed.	
	Lena Forrester, The Standard	03	Oppose as 30 days is a short period of time before assessing a penalty. Provide more notice.	Per ORS 657B.910 the department will send notice by June 30 <sup>th</sup> that reported were not filed. More than 30 days is given before the penalty is imposed.	No
	Sonia Wendelschafer, Columbia River PUD	10	(3) – Oppose as is the 20 days calendar or business days?	Added calendar to specify it is calendar days.	Yes
<b>471-070-8530 Good Cause for Failure to File Reports or Pay Contributions</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No
<b>471-070-8540 Penalty Amount When Employer Fails to File Report</b>	Lisa Kwon, Time to Care Oregon	07	Support for administrative rule as written and the changes incorporated.	Support for administrative rule as written, no changes needed.	No

**FRIEND Anne \* OED**

---

**From:** Beth Lewis <accounts@nwdrillingandboring.com>  
**Sent:** Thursday, June 1, 2023 10:58 AM  
**To:** OED\_RULES \* OED  
**Subject:** Paid Leave comment

If employees do not use what they contributed, they should receive their contribution back via a tax refund.

--

Beth Lewis  
503-851-4681



**FRIEND Anne \* OED**

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**From:** Chelsi Reno <creno@clackesd.k12.or.us>  
**Sent:** Monday, June 12, 2023 11:21 AM  
**To:** OED\_RULES \* OED  
**Subject:** Batch 7 - Paid Leave Oregon

You don't often get email from creno@clackesd.k12.or.us. [Learn why this is important](#)

To Whom This May Concern:

On behalf of the Clackamas County HR Advisory Group, I am writing to share our collective input regarding allowing intermittent, non-consecutive family leave under Paid Leave Oregon. Allowing this type of leave will not only be very difficult for schools to manage, but it significantly impacts the stability for student learning with staff not being consistently at work.

Thank you for your consideration.

Clackamas County Human Resources Advisory Group

--



**Chelsi Reno**  
*(she/her)*  
*Chief of Human Resources*  
*Human Resources*  
[CReno@clackesd.k12.or.us](mailto:CReno@clackesd.k12.or.us)  
(503)675-4015  
**Clackamas Education Service District**  
[13455 SE 97th Avenue, Clackamas, OR 97015](#)  
Find us online: [Web](#) | [Facebook](#) | [Twitter](#)



**FRIEND Anne \* OED**

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**From:** Lena Forrester <Lena.Forrester@standard.com>  
**Sent:** Wednesday, June 28, 2023 4:26 PM  
**To:** OED\_RULES \* OED  
**Subject:** Comments on Batch 7  
**Attachments:** Batch 7\_Equivalent Plans\_Comparison RAC to Final 6-28-23.docx; Batch 7  
\_Contributions.Recovery\_Comparison RAC to Final 6-28-23.docx; Batch 7\_Benefits\_Grants\_Comparison  
RAC to Final 6-28-23.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

**Categories:** Anne

Thank you for the opportunity to comment. We have embedded comments directly into each rule.

Thank you. Lena

**Lena Forrester | Compliance Consultant**

The Standard  
900 SW 5<sup>th</sup> Avenue  
Portland, Oregon 97204  
971.321.7824

**BENEFITS & ASSISTANCE GRANTS**

~~ORS 657B.010 through ORS 657B.120 establishes benefit claim administration for~~ **AMEND: 471-070-1000**  
**RULE SUMMARY:** Amends the administrative rule to define several terms in the Paid Leave Oregon. ~~The below~~  
program's rules governing program benefits. Add definitions that clarify the meaning of "consecutive leave", "intermittent  
leave", and "self-employed individual's average weekly income" to provide further *details on aspects of benefits,*  
*such as weekly claims, child support offsets,* distinction and clarification when benefits *to a deceased individual,*  
*and self-employed benefits.*

~~ORS 657B.200 establishes assistance grants for employers with fewer than 25 employees for when an  
employee takes Paid Leave. The assistance grant rule expands the application to include federal  
employer identification number. All administrative rules may be expanded, reorganized, or deleted  
before formal rulemaking. If an administrative rule is being amended, the amended changes are show  
in red below~~ **AMEND:**

**CHANGES TO RULE:**

~~471-070-1000—~~

~~Benefits: Definitions~~ **[Amended]**

- (1) ~~"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.
- (2) ~~"Average weekly wage"~~ means the amount calculated by the department as the state average weekly covered wage under ORS 657.150-(4)(e) as determined not more than once per year. The average weekly wage is:
  - (a) Set for each fiscal year beginning July 1 and ending June 30 of the following year;
  - (b) Applied for the calculation of weekly benefit amounts starting the first full week following July 1;
  - (c) Applied for the entire benefit year after a new benefit year is established, even if the average weekly wage amount changes when the new fiscal year begins.
- (3) ~~"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.~~

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A claimant may only have one valid benefit year at a time.

(4) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30,

September 30, or December 31.

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

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

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

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

(a) Under the age of 18; or

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

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

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

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

(10) ~~"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.~~

~~(101) "101" 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.~~

~~(112) "112" 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.~~

~~(123) "123" Health care provider" means:~~

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

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

(B) ~~A dentist;~~

(C) ~~A direct entry midwife;~~

(D) ~~A naturopath;~~

(E) ~~A nurse practitioner;~~

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

(G) ~~An optometrist;~~

(H) ~~A physician;~~

(I) ~~A physician's assistant;~~

(J) ~~A psychologist;~~

(K) ~~A registered nurse; or~~

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Commented [LF1]: Unsure the meaning of this change from self-employed to self-work.

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

(14) "Intermittent" leave means leave taken periodically in separate blocks of time or when leave is taken for two or more leaves types simultaneously for an entire work day or work week from all employer 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.

(15) "Leave from work" means a claimant's approved absence from employment during the claimant's typically scheduled work day or work week.

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**Commented [LF2]:** Confirming that this change means that when intermittent leave occurs, it can be taken with only one of multiple employers. I'm not sure what problem this is trying to solve. Is there a scenario to help explain? We do not understand the impact to private plans. It seemed to work fine as previously written.

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(15) "Offset" means the withholding of an amount equal to an amount owed to the department from a benefit payment which would otherwise be payable to a claimant. ¶

(16) "Self-employed individual's individual's average weekly income" means the amount calculated by the department by dividing adding the combined total of an individual's individual's taxable income from self-employed 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. ¶

(17) (1317) "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; ¶

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(k) Involves any period of disability due to pregnancy, childbirth, miscarriage or stillbirth, or period of absence for prenatal care; for Family and Medical Leave Insurance

(i) Involves any period of absence from work for the donation of a body part, organ, or tissue, including March 24, preoperative or diagnostic services, surgery, post-operative treatment, and recovery;

(1418) "148" 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;

(1519) "159" 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;

(1620) "Subject Wages" means PFMLI wages that are paid and reported for an employee, as defined in ORS 657B.010(13), or an employee of a tribal government who has elected coverage under ORS 657B.130;

(1721) "217" Willful, and "willfully" means a knowing and intentional act or omission;

(1822) "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;

(1923) "Willful failure to report a material fact" means any occurrence where:

(a) A claimant or employer omit 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;

(2024) "204" Work day, means any day on which an employee performs any work for an employer and is an increment of a work week. The number of work days in a work week is based on the average number of work days worked by an employee at all employment. There are a maximum of seven work days in a work week. If a work day spans two calendar days, such as a shift beginning on day one at 10 p.m. and ending on the next day at 5 a.m., the work day will count on the calendar day in which the shift began.

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~~(2-25) "Will count on the calendar day in which the shift began."~~  
~~(2-5) "Work week" means a seven day period, beginning on a Sunday at 12:01 a.m. and ending on the following Saturday at midnight. If a claimant works a variable or irregular schedule, the number of work days in a work week is determined by counting the total number of work days worked in the preceding 12 work weeks and dividing the total by 12 and rounding down to the nearest whole number. If the employee has not been employed by the employer for at least 12 weeks, the number of weeks the employee has been employed from the date of hire to the first day of leave shall replace 12 in the calculation.~~

~~{Stat. Auth.: Statutory/Other Authority: ORS 657B.090, 34090, ORS 657B.120, 09120, 657B.340; Stats: Statutes/Other Implemented: ORS 657B.010, 0910, ORS 657B.090, 190, 657B.120}~~

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March 24,

~~AMEND: 471-070-1010~~

~~RULE SUMMARY: Amends the administrative rule to tie to the new administrative rule clarifying taking leave from work.~~

~~CHANGES TO RULE:~~

~~471-070-1010~~

~~Benefits: Eligibility and Qualification for Benefits ~~[Amended]~~~~

~~(1) For an individual to be eligible to receive Paid Family and Medical Leave Insurance (PFMLI) 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 PFMLI 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 scheduled Oregon employment or self-employment for from which they are requesting request taking leave from work;~~

~~(A) For an individual to be considered as requesting leave from work, the individual must:~~

~~(i) Be expected to work a typical work day or week;~~

~~(ii) Be unable to perform services for their employment due to a qualifying purpose under ORS 657B.020; and~~

~~(iii) Not receive some or all of their wages or taxable income from self-employment while unable to perform services for their employment due to a qualifying purpose.~~

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(B) An individual may not be considered requesting leave from work if they are unable to perform services for their employment regardless of the qualifying purpose.

(e) Example 1: Rory is a seasonal employee for a vegetable farm described in the Willamette Valley between February and November. Rory is not expected to work at the farm in December and January but is still an employee of the vegetable farm and does not have other paid employment during this time. Rory does not qualify for PFMLI benefits in December and January because Rory is not requesting leave from work as Rory is not expected to work and perform services at the vegetable farm and does not miss any wages during that time. OAR 471-070-1015; ¶

Example 2: Selena is an instructor at Oregon State University with a 9-month contract that begins in September and ends in June. Selena also teaches summer courses at the University of Oregon on Monday, Tuesday, and Thursday between June and September. Oregon State University does not expect Selena to teach during summer break, but the University of Oregon does. Selena qualifies for PFMLI benefits for a qualifying purpose on Mondays, Tuesdays, and Thursdays during summer break because Selena is requesting leave from work as Selena is expected to work at the University of Oregon on these days and would not receive wages while unable to perform services.

Example 3: Fiona works at a restaurant as a server and is typically expected to work a five-day work week Monday through Friday. Monday and Tuesday Fiona is serving an adult in custody sentence and on Thursday and Friday Fiona needs to take care of their father who has a serious health condition. Fiona qualifies for PFMLI benefits on Thursday and Friday as Fiona is requesting leave from work and is expected to work on these days and would not receive wages while unable to perform services due to a qualifying purpose. Fiona does not qualify for PFMLI benefits on Monday and Tuesday, even if they have a qualifying purpose, because Fiona is not requesting leave from work as Fiona is unable to perform services regardless of the qualifying purpose.

Example 4: Jack works as a store manager for a clothing store and is typically expected to work a five-day work week from Tuesday through Saturday. Jack was approved for four weeks of PFMLI benefits to bond with a child after birth. After two weeks of bonding leave, Jack starts a six-month adult in custody sentence. Jack does not qualify for PFMLI benefits during the remaining two weeks of leave because Jack is not requesting leave from work during adult in custody time as Jack is unable to perform services for their employment regardless of the qualifying purpose. Once Jack completes the adult in custody sentence and resumes employment, Jack may again qualify for PFMLI benefits for a qualifying purpose.

(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' Workers'~~ Compensation under ORS chapter 656, or Unemployment Insurance benefits under ORS chapter 657; or ¶

(B) A director determination under ORS 657B.120 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, regardless if a new benefit year starts during the first year following birth or initial placement. ¶

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State of Oregon

Example 40: 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 5, 2023. After returning from this leave, Juan has five weeks of leave remaining in the balance of their benefit year. In March 2024, 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 2, 2024 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 29: Julie files an application for benefits and is approved for leave for their own serious health condition and begins a benefit year on September 17, 2023. Julie takes two weeks of leave to recover from the serious health condition and then returns to work. In June 2024, 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 14, 2024 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.

{Stat. Auth.: Statutory/Other Authority; ORS 657B.340-  
Stats: Statutes/Other Implemented; ORS 657B.015,  
657B.020}

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ADOPT: 471-070-1015

March 24,

RULE SUMMARY: Creates a new administrative rule to clarify the requirements for considering if an individual is taking leave from work to qualify for Paid Leave Oregon benefits. Individual will not be considered taking leave from work if they would not be performing their employment duties for reasons other than Paid Leave.

CHANGES TO RULE:471-070-1015Benefits: Leave from Work

(1) For an individual to be considered as taking leave from work, the individual must: ¶

(a) Be otherwise scheduled to work a work day or week; and¶

(b) Be unable to perform their employment duties due to a qualifying purpose under ORS 657B.020.¶

(2) An individual may not be considered as taking leave from work if they would not be performing their employment duties for reasons other than PFMLI qualifying purposes described in ORS 657B.020, including but not limited to, circumstances related to:¶

(a) An employer's business operations, such as:¶

(A) A lapse in seasonal operations;¶

(B) School break periods; or¶

(C) Other suspensions or cessations of an employer's business operations.¶

(b) A period of incarceration, in which an individual is unable to perform their employment duties as a result of being an adult in custody.¶

Example 1: Rory is a seasonal employee for a vegetable farm in the Willamette Valley. Rory does not work at the farm in December and January but is still considered an employee of the vegetable farm and does not have other paid employment during this time. Rory does not qualify for PFMLI benefits in December and January because Rory is not taking leave from work, as Rory is not scheduled to work and does not perform employment duties at the vegetable farm during these months. ¶

Example 2: Selena is an instructor at Oregon State University with a 9-month contract that begins in September and ends in June. Selena also teaches summer courses at the University of Oregon between June and September. Selena qualifies for PFMLI benefits for a qualifying purpose during the summer break at Oregon State University because Selena is taking leave from work, as Selena is scheduled to work and perform employment duties at the University of Oregon between June and September. ¶

Example 3: Fiona works at a restaurant as a server and is scheduled to work a five-day work week Monday through Friday. On Monday and Tuesday Fiona is serving an adult in custody sentence. On Thursday and Friday of the same week, Fiona needs to take care of their father who has a serious health condition. Fiona qualifies for PFMLI benefits on Thursday and Friday because Fiona is taking leave from work on these days as Fiona is scheduled to work to work and is unable to perform employment duties on these days due to a PFMLI qualifying purpose. Fiona does not qualify for PFMLI benefits on Monday and Tuesday, even if they have a PFMLI qualifying purpose, because Fiona is unable to perform duties for their employer for reasons other than a PFMLI qualifying purpose. ¶

Example 4: Jack works as a store manager for a clothing store and was approved for four weeks of PFMLI benefits to bond with a child after birth. After two weeks of bonding leave, Jack starts a six-month period of incarceration. Jack does not qualify for PFMLI benefits during the remaining two weeks of leave, because during the time Jack is an adult in custody, they are unable to perform their employment duties for reasons other than a PFMLI qualifying purpose. Once Jack completes the period of incarceration and resumes paid employment, Jack may again be eligible for PFMLI benefits for a qualifying purpose. ¶

Example 5: Joelle is a high school teacher with a nine-month contract that begins in September and ends in June. Joelle is not expected to teach during the school break periods and does not have other paid employment during that time. Joelle does not qualify for PFMLI benefits during school break periods, because Joelle is not taking leave from work, as they are not scheduled to work during those times and would not perform their employment duties during break times.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.010, ORS 657B.015

Last revised: 3/30/2023 3:18

Page 11 of 44

**Commented [LF3]: The Standards' proposed revision to: 471-070-1015**

**Benefits: Leave from Work**

(1) For an individual to be considered as taking leave from work, the individual must:

(a) Be otherwise scheduled to work a work day or week; and

(b) Be unable to perform their employment duties due to a qualifying purpose under [ORS 657B.020](#).

(3) An individual may not be considered as taking leave from work if they would not be performing their employment duties for a week or more (with the exception of (b) which may be for less than a week) for reasons other than PFMLI qualifying purposes described in [ORS 657B.020](#), including but not limited to, circumstances related to:

(a) An employer's business operations which are a week or more, such as:

(A) A lapse in seasonal operations;

(B) School break periods; or

(C) Other suspensions or cessations of an employer's business operations.

(b) A period of incarceration, in which an individual is unable to perform their employment duties as a result of being an adult in custody.

Same 5 examples below...



March 24,

AMEND: 471-070-1100

RULE SUMMARY: Amends the administrative rule to define several terms in the Paid Leave Oregon program's rules governing program benefits. Add definitions that clarify the meaning of "consecutive leave", "intermittent leave", and "self-employed individual's average weekly income" to provide further distinction and clarification when benefits are taken.

CHANGES TO RULE:

471-070-1100--

Benefits: Application for Benefits ~~Amended~~

(1) To request Paid Family and Medical Leave Insurance (PFMLI) benefits provided under the state plan established in ORS 657B.340, a claimant must submit an application for benefits. An application must be submitted online or by another method approved by the department. For the application to be approved by the department, the application must be complete and must include, but is not limited to, the following: 1.

- (a) Claimant information, including: 1.
  - (A) First and last name; 1.
  - (B) Date of birth; 1.
  - (C) Social Security Number or Individual Taxpayer Identification Number; and 1.
  - (D) Contact information, including mailing address and telephone number; 1.
- (b) Documentation verifying or other information sufficient to establish the claimant's claimant's identity; 1.
- (c) Information about the claimant's claimant's current employment or self-employment for which they are requesting leave from work; 1.
  - (A) Business name(s) and dates of employment or self-employment; 1.
  - (B) Business address and contact information for all employers or self-employed businesses; 1.
  - (C) Average number of work days worked per work week; and 1.
  - (D) Any current breaks from work or anticipated future breaks from work that are unrelated to PFMLI leave; 1.
  - (d) Information about the notice given to any employers under ORS 657B.040 and OAR 471-070-1310, if applicable, and the date(s) any notice was given; 1.

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March 24,

~~(4) of this timeframe, either early or late, will be denied, except in cases where a claimant can demonstrate an application was submitted late for reasons that constitute good cause under section (65) of this rule.~~

~~(5) In cases where In Good cause exists when a claimant demonstrates good cause for the late submission of an application, the department may accept the application up to one year after the start of leave. Good cause exists when a claimant demonstrates establishes the establishes, by satisfactory~~

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(5) evidence submitted to the department that factors or circumstances beyond the claimant's control prevented the claimant from submitting a completed application up to one year after the start of leave. ¶  
March 24,  
within the required timeframe under section (4) of this rule.

(6) Good cause for the late submission of an application is determined at the discretion of the department and includes, but is not limited to, the following: ¶

(a) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents an individual from timely filing an application; or ¶

(b) A demonstrated inability to reasonably access a means to file an application in a timely manner, such as an inability to file an application due to a natural disaster or a significant and prolonged department system outage. ¶

(6) If the department determines the claimant demonstrated good cause for late submission of an application, the department may accept the application up to one year after the 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.]

[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.: Statutory/Other Authority: ORS 657B.090, 657B.100, 657B.340; Stats. 09340 Statutes/Other Implemented: ORS 657B.090, 657B.100, 657B.340]

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AMENDED 4/1/2023  
Paid Family and Medical Leave Insurance (PFMLI) Administrative rule for the verification of a serious health condition includes, but is not limited to, a diagnosis in order to determine eligibility for benefits. March 24,

CHANGES TO RULE:

471-070-1120

Benefits: Verification of a Serious Health Condition [Amended]

A claimant applying for Paid Family and Medical Leave Insurance (PFMLI) benefits for their own serious health condition or to care for a family member with a serious health condition must submit verification of the serious health condition from a health care provider that includes:¶

- (1) The health care provider's first and last name, type of medical practice/specialization, and their contact information, including mailing address and telephone number;¶
- (2) The patient's first and last name;¶
- (3) The claimant's first and last name, when different from the patient identified in section (2) of this rule;¶
- (4) The approximate date on which the serious health condition commenced or when the serious health condition created the need for leave;¶
- (5) A reasonable estimate of the duration of the condition or recovery period for the patient;¶
- (6) A reasonable estimate of the frequency and duration of intermittent leave and estimated treatment schedule, if applicable; and¶
- (7) Other information as requested by the department to determine eligibility for the PFMLI benefits; including:¶
  - (a) For medical leave, information sufficient, including a diagnosis, to establish that the claimant has a serious health condition, including, but not limited to a diagnosis; or¶
  - (b) For family leave, information sufficient, including a diagnosis, to establish that the claimant's family member has a serious health condition, including but not limited to a diagnosis.

[Stat. Auth.: Statutory/Other Authority: ORS 657B.340,

ORS 657B.090, 657B.340; Stats: Statutes/Other,

Implemented; ORS 657B.090]

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AMENDED: OAR 471-070-1200

Paid Family and Medical  
RULE SUMMARY: Amended administrative rule to remove the reference to "fax" and change the incorrect OAR from March 24, OAR 471-070-1430 to OAR 471-070-1205

CHANGES TO RULE:

471-070-1200

Benefits: Claim Processing: Additional Information [Amended]

In addition to the information required from a claimant under OAR 471-070-1100 and OAR 471-070-1430~~1205~~~~1430205~~, the department may request that a claimant provide additional information necessary to establish facts relating to eligibility or qualification for benefits. Unless a time frame is otherwise defined under statute or rule or is specified by an authorized department representative, the claimant must respond to all requests for information within the following time frames: 1

(1) 14 calendar days from the date of the request for information, if the request was sent by mail to the claimant's claimant's last known address as shown in the department's department's records. 1

(2) 10 calendar days from the date of the request for information, if the request was sent by telephone message, fax, email, or other electronic means. 1

(3) 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. 1

(4) The time frames specified in sections (1) and (2) of this rule may be extended at the department's department's discretion when a claimant can demonstrate they failed to provide a timely response for good cause. Good cause exists when the claimant responds to the department as soon as practicable and establishes by satisfactory evidence that circumstances beyond the claimant's claimant's control prevented the claimant from providing a timely response, including, but not limited to, an incapacitating serious health condition or a situation related to safe leave.

[Stat. Auth.: Statutory/Other Authority: ORS 657B.090;

657B.340; Stats., ORS 657B.090 Statutes/Other;

Implemented: ORS 657B.090]

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Commented [LF5]: We would like to have the option to utilize fax. We have some concerns with removing fax as a means for information to be provided. Physicians offices often fax documentation completed to carriers - whether that be through an actual fax machine or an online fax tool.

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March 24,

~~ADOPT: 471-070-1205—~~

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~~RULE SUMMARY: Requires a weekly claim to be filed to receive weekly benefits for claimants who are taking intermittent leave or are taking leave for more than one qualify purpose at a time. The weekly claim must be submitted after the work week has ended and no later than 30 calendar days following the end of the work week unless there is good cause.~~

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~~CHANGES TO RULE:~~

~~471-070-1205~~

~~Benefits: Weekly Claims~~

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~~(1) A claimant taking Paid Family and Medical Leave Insurance (PFMLI) benefits on an intermittent leave schedule or for more than one qualifying purpose as described in OAR 471-070-1430, must file a weekly claim in order to receive PFMLI benefits for that week.¶~~

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~~(2) For a weekly claim to be approved, the weekly claim must be complete and include, but is not limited to, the following information:¶~~

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~~(a) The dates of the work week being claimed;¶~~

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~~(b) The number of work days of leave taken for each leave type specified under 657B.020;¶~~

~~(c) The number of days worked during the work week;¶~~

~~(d) Claimant's Claimant's eligibility to receive Workers' Workers' Compensation under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657 for the work week;¶~~

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~~(e) Any changes to current employment, including any new employment or employment that has ended since the benefit application or last weekly claim; and¶~~

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~~(f) A written or electronically signed statement declaring under oath that the information provided in support of the weekly claim is true and correct to the best of the claimant's claimant's knowledge.¶~~

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~~(3) The weekly claim must be submitted only after that work week has ended and no later than 30 calendar days following the end of the work week in which the family, medical, or safe leave was taken. Weekly claims submitted after~~

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~~(3) 30 calendar days will be denied, except in cases where a claimant can demonstrate a weekly claim was submitted late for reasons that constitute good cause under section (5) of this rule.~~

~~(4) For claimants receiving intermittent leave benefits, the sum of the number of work days worked during a week, combined with the number of days of leave taken eligible in the work week on the weekly claim report shall not exceed the average number of work days that the claimant would typically work in their workweek per week, as reported on the application for benefits provided under ORS 471-070-1100(1)(c)(C) or OAR 471-070- 1210(2), minus the number of days actually worked during the work week.~~

~~Example: Eddie submits an application for benefits that states their typical average work week consists of four work days. The weekly benefit amount is \$875.00. Eddie submits their first weekly claim report and reports three days worked and three days of leave, for a total combination of six days of work and leave reported. Because the weekly benefit amount is based on the typical work week provided on Eddie's initial application for benefits, Eddie will only be paid for one of the three days of leave reported on the weekly claim report as Eddie worked three days out of a typical four day work week; therefore, the sum of the days worked and the days of leave cannot be more than four days. The benefit amount paid for the first week of leave to Eddie is \$218.75 [(\$875.00 weekly benefit amount divided by 4 work days) x 1 day of payable leave].~~

~~(5) Good cause exists when a claimant establishes by satisfactory evidence submitted to the department that factors or circumstances beyond the claimant's claimant's control prevented the claimant from submitting a weekly claim within the required timeframe under section (3) of this rule. Good cause for the late submission of a weekly claim is determined at the discretion of the department and includes, but is not limited to, the following:~~

~~(a) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents a claimant from timely filing a weekly claim; or~~

~~(b) A demonstrated inability to reasonably access a means to file a weekly claim in a timely manner, such as an inability to file a weekly claim due to a natural disaster or a significant and prolonged department system outage.~~

~~(6) If the department determines the claimant demonstrated good cause for late submission of a weekly claim, the department may accept the weekly claim up to one year after the leave was taken.~~

~~Stat. Auth.: Statutory/Other Authority: ORS 657B.340~~

~~Stats: Statutes/Other Implemented: ORS 657B.020, 657B.090~~

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March 24,

AMEND: 471-070-1210—

RULE SUMMARY: Amends the administrative rule to clarify and require that the claimant may not change their average work schedule throughout the entire claim unless has current employment or self-employment changes or applied for additional qualifying purposes. This will alleviate administrative burden and provide consistency in calculations for benefit payments.

CHANGES TO RULE:

471-070-1210

Benefits: Updates to a Claim for Leave ~~[Amended]~~

(1) After submitting an application for benefits as specified in OAR 471-070-1100, a claimant must notify the department within 10 calendar days of any changes to the information provided on their application and provide additional information as provided in OAR 471-070-1200, if applicable, including, but not limited to, changes to the claimant's claimant's:

- (a) First and last name;
- (b) Mailing address;
- (c) Telephone number;
- (d) Current employment or self-employment;
- (e) Average number of work days worked per work week;
- (f) Leave schedule;

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~~(1) Eligibility to receive Workers' Compensation under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657.~~

~~(a) (b) Eligibility to receive Workers' Compensation under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657.~~  
~~During an open claim, the claimant's (2) (a) A claimant may change their average number of work days worked per work week will stay throughout the entire claim unless the claimant has a current employment or self-employment change or adds a new type of leave taken. Any such change shall affect only those that they provided on the application for benefits payable for dates after only under the date on following circumstances in which the department receives notice of such change as described in OAR 471-070-1210, claimant: ¶~~  
~~(A) Added one or more new employer since applying for benefits;¶~~  
~~(B) Left one or more employer since applying for benefits; or the effective date of the leave if later, if the change is-¶~~

~~(C) Applied for benefits for an additional qualifying purpose.¶~~  
~~(2) (b) Any approved change to the average number of work days worked per work week shall take effect beginning on the Sunday of the first week after the claimant experienced a change in employment or started an additional qualifying purpose for benefits. ¶~~

~~(3) Failure to notify the department of any changes to the information provided on an application for benefits as specified in section (1) of this rule may result in a delay, denial, overpayment, or disqualification of weekly benefits. ¶~~

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

~~[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.: Statutory/Other Authority: ORS 657B.340, ORS 657B.090, 657B.340; Stats: Statutes/Other, Implemented: ORS 657B.090, 657B.100]~~

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March 24,

AMEND: 471-070-1310—

RULE SUMMARY: Amends the administrative rule to clarify an eligible employee is required to give notice to their employer when commencing family, medical, or safe leave. Also change "continuous" to "consecutive" and to clarify the 25 percent benefit reduction and clarify how the benefit payments will be reduced. The department may waive the imposition of the benefit reduction.

CHANGES TO RULE:

471-070-1310

Benefits: Employee Notice to Employers Prior to Commencing Leave ~~[Amended]~~

~~(1) Except as provided in ORS 657B.040(5), when advance notice to the employer is not feasible 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 employer may require an eligible employee must to give oral/written/oral notice at least 30 calendar days before commencing leave a period of paid family, medical, or safe leave and an employer may require an eligible employee to give written notice at least 30 calendar days before commencing a period of paid family, medical, or safe 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/Employee's first and last name;~~
- ~~(b) Type of leave;~~
- ~~(c) Explanation of the need for leave; and~~
- ~~(d) 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/employer's known, reasonable, and customary policies. Whether leave is to be continuous consecutive continuousconsecutive or is to be taken intermittently, notice need only be given one time 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.~~

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(65) ~~An employer that requires eligible employees to provide a 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 a written notice, the policy and procedures must include a description of the penalties benefit reduction under section (910) of this rule that may be imposed by the department for not complying with the employer's notice requirements.~~

(67) ~~An employee does not need to expressly mention the Paid Family and Medical Leave Insurance program when giving their employer written or oral notice under this rule.~~

(78) ~~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.~~

(89) ~~If the employer does not respond to the department's notice as described in section (78) 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.~~

(910) ~~If the department determines that the claimant did not provide the required leave notice to the employer, the department may impose a penalty benefit reduction by issuing a decision and reducing the first weekly benefit amount payable under ORS 657B.090 by 25 percent. The first penalty will be a 25 percent reduction, except whfirst benefit payment issuedit wouldissued will be reduced by the weekly benefit amount below the minimum benefit amount~~

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~~provided in ORS 657B.050(2)(b). The claimant may appeal the imposition of the penalty in accordance with ORS 657B.410 and applicable administrative rules. 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 applied. The penalty will be a 25 percent reduction, except when it would reduce the weekly benefit amount below the minimum benefit amount subtracted. ¶ provided in ORS 657B.050(2)(b), The claimant may appeal the imposition of the penalty in accordance with ORS 657B.410 and applicable administrative rules.~~

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~~Example 1: Sanomi did not provide the required notice to their employer about taking consecutive family leave. Sanomi's weekly benefit amount is \$140. A 25 percent reduction of their benefit amount in the first week equals \$35 (\$140 x .25), so the first Sanomi is taking leave from work for family leave for all the work days within the first week. The 25 percent benefit reduction of their benefit amount in the first week equals \$35 (\$140 weekly benefit amount x .25 reduction). so Sanomi's first benefit payment would have been \$140, but will the first weekly benefit amount would 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 applied to the first benefit payment. \$35). However, the minimum weekly benefit amount is \$120 (x .25 reduction). Sanomi's first benefit payment would have been \$1240, so Sanomi's but will the first weekly benefit payment amount would be \$120 instead. ¶~~

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~~(10) (10) For leave taken in increments of less than a full work week, the total penalty amount shall be divided by the number of work day increments contained in a work week and deducted from benefits paid for that number of work days. 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. ¶~~

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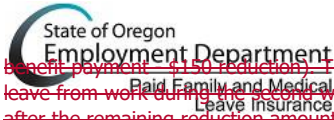
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~~Example 2: Joy did not provide the employer with the required leave notice about taking intermittent medical leave. Joy normally works an average of four six work days in a work week and was unable to work the entire week one of those days each week due to taking medical leave. Joy's weekly benefit amount is \$400 which is prorated to \$100 per work day of leave because Joy only works an average of four days in a work week. The penalty amount is \$25 per work day ((\$600 weekly benefit amount / 6 days per week). The penalty amount of the benefit reduction is \$25150 per work day (\$100600150 (\$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 applied (\$100 first week subtracted (\$100 first week benefit payment - \$1050 x .25). Joy's benefit amount is reduced to \$75 (\$100 per work day minus \$25 penalty per work day) for each of the first four work days of leave taken, as four days equals one work week 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. ¶~~

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Benefit payment - \$150 reduction). The second benefit payment would have been \$100 because one day of leave from work during the second week is taken. However, the second benefit payment is reduced to \$50 after the remaining reduction amount is applied - amount is reduced to \$75 (\$100 second week benefit payment - \$50 remaining reduction). per work day minus \$25 penalty per work day) for each of the first four work days of leave taken, as four days equals one work week. The third benefit payment is not reduced as the entire amount of the reduction has been applied.

March 24

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

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~~(11)(12) The employee may request a waiver of the benefit reduction penalty 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. ¶~~

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~~(12)(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. ¶~~

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~~(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 penalty will be considered an erroneous overpayment, and that penalty amount amount amount of the reduction may be collected from the employee in accordance with ORS 657B.120.~~

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AMENDED: 471-070-1420  
Paid Family and Medical  
RULE SUMMARY: Amended administrative rule to change "nonconsecutive" to "intermittent" to align with the rest of the administrative rules.

CHANGES TO RULE:

471-070-1420

Benefits: Leave Periods and Increments [Amended]

(1) A claimant may request family, medical, or safe leave provided under ORS chapter 657B in either consecutive, or nonconsecutive, intermittent periods of leave.

(2) Leave may be taken and benefits may be claimed in increments that are equivalent to one work day or one work week, as defined in OAR 471-070-1000. When claiming an increment of less than a full work week, the number of work days that can be reported during a week is established by the average number of work days typically worked per week by the claimant.

(3) When benefits are claimed in an increment that is equivalent to one work day or one work week, leave must be taken from all employers and from all self-employed work for the entirety of that period to receive benefits.

(3) Example 1: Kelsey is taking family leave and is currently an employee at a university and an architecture firm. Kelsey works for the university in the morning of her work day and the architecture firm in the evenings on the same work day. Kelsey must take leave from both places of employment for the work day in order to claim benefits for the work day. If Kelsey only missed work from the university due to the family leave for that one work day, it would not qualify for benefits.

Example 2: Chloe is taking medical leave and is currently an employee at a department store and a self-employed delivery driver. Chloe works four work days total per work week; Monday and Tuesday at the department store and Wednesday and Saturday as a self-employed delivery driver. Chloe must take leave for all four work days from both jobs in order to claim a full work week of benefits. If Chloe only missed work on Monday and Saturday due to medical leave, Chloe would qualify for benefits for two work days instead of a work week.

[Stat. Auth.: Statutory/Other Authority: ORS 657B.340;

Stats: Statutes/Other Implemented: ORS 657B.020090,

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ADOPTED: 4/10/2023  
Paid Family and Medical Leave Insurance  
RULE SUMMARY: Describe how a claimant may take Paid Leave Oregon benefits for more than one qualifying purpose, during the same week as long as separate applications are submitted and weekly claims are filed.

CHANGES TO RULE:

471-070-1430

Benefits: Simultaneous Qualifying Purposes

(1) A claimant may take Paid Family and Medical Leave Insurance (PFMLI) for more than one qualifying purpose under ORS 657B.020 during the same week, provided the claimant submits a separate and complete application as described in 471-070-1100 for each qualifying purpose, is for a different qualifying event/reason, and is approved to take leave for each qualifying purpose.

(2) The multiple qualifying events/reasons taken within the same week can be for the same type of qualifying purpose; for example, a claimant may take family leave for two different family members, each with their own serious health condition.

(3) A claimant shall not receive a PFMLI benefit payment for more than one type of qualifying purpose taken on a single work day.

(4) For any week in which a claimant takes leave for more than one qualifying purpose, that claimant must file a weekly claim, as described in OAR 471-070-1205, to receive PFMLI benefits.

Stat. Auth.: Statutory/Other Authority: ORS 657B.340

Stats. Statutes/Other Implemented: ORS 657B.020

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AMENDED: 471-070-1440 Paid Family and Medical  
RULE SUMMARY: Amended administrative rule to make minor corrections in order to increase clarity.

March 24,

CHANGES TO RULE:

471-070-1440

Benefits: Weekly Benefit Proration ~~[Amended]~~

(1) A claimant who takes leave in work day increments, as described in OAR 471-070-1000, shall be paid a prorated benefit amount based on the number of work days of leave taken in the work week. ~~1~~

(2) The benefit amount paid for a work day is calculated by dividing the claimant's weekly benefit amount by the average number of work days that the claimant would typically work in their ~~their~~ ~~per~~ work week. ~~1~~

(3) The total benefit amount paid for leave taken in work day increments is calculated by multiplying the benefit amount paid for a work day, rounded to the nearest whole cent, by the number of work days of leave taken for the work week, rounded to the nearest whole cent, and not to exceed the weekly benefit amount. ~~1~~

Example 1: Allison submits an application for benefits that states their ~~typical~~ ~~average~~ work week consists of five work days. The weekly benefit amount is \$1,000.00. Allison states on the application that they will take leave for three of the five days that Allison typically worked in the work week for six weeks. The weekly benefit amount paid to Allison for ~~the six~~ each weeks is \$600 [(\$1,000.00 weekly benefit amount divided by 5 work days) x 3 days on leave in the work week]. Assuming nothing changes, Allison will receive a total benefit amount of \$3,600 [(\$600 weekly benefit amount paid) x 6 weeks]. ~~1~~

Example 2: Lamar submits an application for benefits that states their ~~typical~~ ~~average~~ work week consists of three work days and they will take leave for one of the three days in each of the four weeks. The weekly benefit amount is \$400.00. The weekly benefit amount paid for each week to Lamar is \$133.33 [(\$400.00 weekly benefit amount divided by 3 work days) x 1 day on leave in the work week]. Assuming nothing changes, Lamar will receive a total benefit amount of \$533.32 [(\$133.33 weekly benefit amount paid) x 4 weeks]. ~~1~~

~~[Stat. Auth.: Statutory/Other Authority; ORS 657B.090, 657B.340; Stats., ORS 657B.090 Statutes/Other, Implemented: ORS 657B.090]~~

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March 24,

~~ADOPT: 471-070-1445~~

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~~RULE SUMMARY: Describes how Paid Leave Oregon benefits are calculated for self-employed individuals who elect coverage and submit a benefit application. This rule aligns with how benefits are calculated for employees in ORS 657B.050.~~

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~~CHANGES TO RULE:~~

~~471-070-1445~~

~~Benefits: Self-Employed Benefit Calculation~~

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~~(1) For any self-employed individual who elects Paid Family and Medical Leave Insurance (PFMLI) coverage under OAR 471-070-2010 and pays contributions as provided in OAR 471-070-2030, the weekly benefit amount that an individual may qualify for is determined as follows: 1. \_\_\_\_\_~~

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- (c) If the self-employed individual's average weekly income is equal to or less than 65 percent of the average weekly wage, the individual's weekly benefit amount shall be 100 percent of the self-employed individual's average weekly income. **March 24,**
  - (b) If the self-employed individual's average weekly income is greater than 65 percent of the average weekly wage, the individual's weekly benefit amount is the sum of:
    - (A) 65 percent of the average weekly wage; and
    - (B) 50 percent of the self-employed individual's average weekly income that is greater than 65 percent of the average weekly wage.
  - (2) Notwithstanding section (1) of this rule:
    - (a) The maximum weekly benefit amount is 120 percent of the average weekly wage.
    - (b) The minimum weekly benefit amount is five percent of the average weekly wage.
  - (3) If a self-employed individual is taking less than a full week of leave, the department will prorate the weekly benefit amount as specified in OAR 471-070-1440.
- ~~{Stat. Auth.: Statutory/Other Authority: ORS 657B.340;  
Stats: Statutes/Other Implemented: ORS 657B.050}~~

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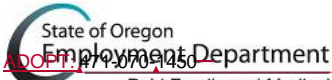
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ADOPTED: 471-070-1450  
Paid Family and Medical Leave  
RULE SUMMARY: Describe the primary payment method for Paid Leave Oregon benefit payments will direct deposit, March 24, If the claimant doesn't apply for direct deposit, then the payment will be issued on a ReliaCard Visa. If the department determines that is not feasible, then the department may issue a check to the claimant.

CHANGES TO RULE:

471-070-1450

Benefits: Benefit Payment Methods

- (1) ~~Paid Family and Medical Leave Insurance (PFMLI) 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 PFMLI 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 apply for select direct deposit will be paid by a stored value card, including but not limited to,~~
  - (4) ~~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.: Statutory/Other Authority: ORS 293.525, 657B.340, Stats: Statutes/Other Implemented: ORS 293.525, 657B.050}~~

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March 24,

~~ADOPT: 471-070-1460~~

~~RULE SUMMARY: Describes the process to request a new benefit check if the claimant's benefit check was lost, stolen, destroyed, or forged.~~

~~CHANGES TO RULE:~~

~~471-070-1460~~

~~Benefits: Lost, Stolen, or Destroyed, or Forged Benefit Checks~~

~~(1) When a benefit check has been lost, stolen, or destroyed, or forged and for purposes of this rule:~~

~~(a) A benefit check is "lost" if the claimant never received an issued check, and the check's whereabouts is unknown or it was received and cannot be found.~~

~~(a) A benefit check is "stolen" if the claimant never received an issued check, or it was received and but was not cashed and now cannot be found.~~

~~(b) A benefit check is "stolen" if the check was taken or cashed by another without the authorization of the payee, whether or not the other person's identity is known.~~

~~(c) A benefit check is "destroyed" if an issued check has not been cashed and has been rendered nonnegotiable.~~

~~(d) "Forgery" of a benefit check has the same meaning as provided in ORS 165.007 and further defined in 165.002.~~

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~~(1) If a benefit check has been issued but not cashed and the claimant completes a written sworn statement that the benefit check was lost, stolen, or destroyed, the check will be reissued in compliance accordance with ORS 293.475 if at least ten calendar days from the date the original check was issued has elapsed. If the original check and replacement check are both received and cashed by the claimant, the claimant shall be liable for repayment of the overpayment to the department.~~

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~~(3) If the benefit check has been issued and cashed and it is alleged that the check was not signed by the claimant or the claimant's authorized agent, a determination will be made on the validity of the endorsement;~~

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~~(a) If the endorsement is determined to be the claimant's or the claimant's authorized agent's, the director will notify the claimant by letter and no replacement check will be issued;~~

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~~(b) In the case of forgery, or any unauthorized, non-valid, or lack cashing of endorsement a benefit check, a replacement check will be issued if the claimant is due benefits, unless the claimant participated in forgery, received any portion of the benefits, or otherwise benefited from the funds.~~

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~~(e) The department will advise the State Treasurer of the forged check.~~

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~~(c) Stat. Auth.: or unauthorized cashing of the check. Statutory/Other Authority: ORS 657B.340;~~

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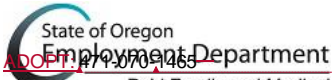
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ADOPTED: 4/10/2023

**PAID FAMILY AND MEDICAL LEAVE INSURANCE**  
**RULE SUMMARY:** Describes the process to request benefit payments due in the event of the death of a claimant that has an approved application for benefits but the benefits are still due. This allows for claimant's survivors to receive payment of any unpaid benefits the claimant had already claimed prior to death. Payments not claimed within two years will be considered abandoned and sent to the State Treasurer.

**CHANGES TO RULE:**

471-070-1465

**Benefits: Payment of Benefits Due to a Deceased Individual and Abandoned Payment**

~~(1) In the event of the death of a claimant an individual to whom a Paid Family and Medical Leave Insurance (PFMLI) benefit application was received by payments totaling \$10,000 or less are owed and where the decedent's estate is not subject to probate, the department in accordance with OAR 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.~~

~~(1)(2) The affidavit submitted 471-070-1100 and PFMLI benefits are due under this chapter, but the benefits remain unpaid, in whole or in part, such benefits may be paid to any individual designated in section (4) of this rule by submitting a written request to the department must be submitted within two years from the decedent's date of death.~~

~~(3) When the estate is Benefit amounts not in probate claimed within two years of the decedent's death will be considered abandoned and the claimant is entitled delivered to the State Treasurer per ORS 98.352.~~

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

~~Statutes/Other Implemented: ORS 657B.090, ORS 98.336, 98.352, 293.490, 293.495~~

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March 24,

ADOPT: 471-070-1470

~~(2) RULE SUMMARY: Explains the priority order of offsets that can occur from Paid Leave Oregon benefit payments that the sum is not in excess of \$10,000, benefit payments may be made to survivors by classes described in section (4) of this rule upon filing a written request as described in section (3) of this rule.~~

~~(3) A written request to. It also explains the department must include, but is not limited to, the following information:~~

- ~~(a) Claimant's first and last name;~~
- ~~(b) Claimant's Social Security Number or Individual Taxpayer Identification Number;~~
- ~~(c) Claimant's Paid Leave ID number, if known;~~
- ~~(d) Date of Death;~~
- ~~(e) Survivor's first and last name;~~
- ~~(f) Survivor's contact information, including mailing address and telephone number;~~
- ~~(g) Relationship to claimant;~~
- ~~(h) Evidence of authority;
 
  - ~~(A) Next of kin (spouse, child, or parent);~~
  - ~~(B) Court order granting appointment of administrator; or~~
  - ~~(C) Executor of will.~~~~

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March 24,

(i) Documentation to establish survivor identification; and

(j) Proof of claimant's death.

(4) If the department receives more than one written request for the minimum benefit payment due to a deceased individual, the unpaid benefit payment amount that will be issued in the following order of precedence if the sum of the benefit payments is no less than \$10,000:

(a) Surviving spouse;

(b) Trustee of a revocable inter vivos trust created by the decedent;

(c) Children;

(d) Parents;

(e) Brothers and sisters;

(f) Nephews and nieces.

(5) When the estate is in probate and the claimant is entitled to benefit payments or the sum of the benefit payments is in excess of \$10,000, the estate has to go through probate before the benefit payments can be dispersed by the department.

(6) Request for unpaid PFMLI benefits must be submitted within six (6) months from the claimant's date of death. If the request is submitted outside of this timeframe, the request will be denied, except in cases where a survivor can demonstrate the request was submitted late for reasons that constitute good cause under section (7) and (8) of this rule.

(7) Good cause for the late submission of a request for benefits is determined at the discretion of the department and includes, but is not limited to, the following:

(a) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents a survivor from timely submitting a written request for benefits;

(b) A demonstrated inability to reasonably access a means to file a request for the survivor benefits in a timely manner, such as an inability to file the written request for benefits due to a natural disaster or a significant and prolonged department system outage;

(c) Determination of survivorship was in litigation; or

(d) The estate was in probate.

(8) If the department determines the survivor has submitted proper evidence of authority for good cause as described in section (7) of this rule, the department may accept the request for reissue of benefits due up to one year from the claimant's date of death.

(9) No benefit checks will be reissued to survivors other than those listed in sections (1) through (4) of this rule. In the absence of a valid request for reissue of benefit payments due, the benefit check(s) will be canceled and the monies permanently returned to the PFMLI Trust Fund.

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

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March 24,

Benefits: Benefit Payment Offsets

~~(1) After the calculations described in OAR 471-070-1440 and 471-070-2270 occur, the~~After any benefit  
~~reduction under ORS 657B.040, a claimant's weekly benefit payment is further~~may be reduced, as  
~~applicable, by according to the priorities stated~~priorities in section (2) of this rule before the department issues  
~~the weekly benefit payment to the claimant.¶~~  
~~(2) The priority of additional offsets to the weekly benefit payment are:¶~~

- ~~(a) The benefit reduction described under ORS 657B.040 and OAR 471-070-1310.~~
- ~~(b) Federal personal income tax withholdings described under OAR 471-070-1480.~~
- ~~(c) State personal income tax withholdings described under OAR 471-070-1480.~~
- ~~(d) Child support orders described under OAR 471-070-1490.~~
- ~~(e) Funds due to entities that serve a garnishment or levy on the Oregon Employment Department:~~
  - ~~(#)(a) Paid Family and Medical Leave Insurance benefit overpayments described under ORS 657B.120 and OAR 471-070-1510.¶~~
  - ~~(b) Federal personal income tax withholdings described under OAR 471-070-1480.¶~~
  - ~~(c) State personal income tax withholdings described under OAR 471-070-1480.¶~~
  - ~~(d) Child support orders described under OAR 471-070-1490.¶~~
  - ~~(e) Funds due to entities that serve a garnishment or levy on the Oregon Employment Department.¶~~

~~(3) Weekly benefit payments of less than \$1.00, after all offsets, will not be issued to the claimant.~~

~~(3) [Stat. Auth.: Statutory/Other Authority: ORS 657B.340; Stats: Statutes/Other Implemented: ORS 657B.050]~~

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March 24,

ADOPT: 471-070-1480—

RULE SUMMARY: Clarifies the withholding rate for voluntary federal and state personal income tax to be withheld from Paid Leave Oregon benefit payments. Federal personal income tax withholding will be 10 percent and Oregon personal income tax withholding will be eight percent.

CHANGES TO RULE:

471-070-1480

Benefits: Federal and State Voluntary Tax Withholding

(1) A claimant receiving Paid Family and Medical Leave Insurance (PFMLI) benefits can elect to voluntarily have federal or state personal income tax withholding. To elect voluntary withholding, the claimant must notify the department on an approved method.

(2) When the department receives the claimants notification requesting withholding, the department will:

(a) Withhold at a rate of 10 percent for federal personal income taxes pursuant to IRC section 3402 (p) and applicable regulations for future benefit payments issued.

(b) Withhold at a rate of eight percent for Oregon personal income taxes for future benefit payment issued.

(3) The amount of voluntary withholding from a claimant benefit payment will be rounded to the nearest cent.

(4) The amount of voluntarily withheld from a claimant benefit payment will be held in the PFMLI Trust fund trust and:

(a) Transferred to the Internal Revenue Service in the time and manner required for withholdings under IRC section 3402.

(b) Transferred to the Department of Revenue in the time and manner provided by the Department of Revenue under ORS chapter 316 and rule.

(5) The election will remain in effect until the claimant submits to the department an authorization for tax withholding form indicating instructing the department to stop withholding. The withholding will stop with the next benefit payment issued, whenever administratively feasible, after the authorization instruction to stop is received by the department.

(6) The PFMLI program shall provide information to a claimant about the total federal and state personal income tax withheld for the calendar year from PFMLI benefit payments on the Form 1099 no later than January 31st following the calendar year.

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~~State Statutes Department~~ ~~Other Authority: ORS 657B.340-~~

~~State Statutes/Other Implemented: ORS 657B.050~~

~~Paid Family and Medical~~

~~Leave Insurance~~

~~471-070-1490 - Benefits: Child Support Withholding Obligations~~

~~The Director of~~

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AMEND: 471-070-1510

(1) RULE SUMMARY: Amends the Employment Department may enter into an interagency agreement with the Division of Child Support administrative rule to clarify the amount and timing of the Department of Justice to withhold from the Paid Family and Medical Leave Insurance (PFMLI) reduction of future benefits due the claimant the amount of child support due.

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(2) If the department determines a claimant is qualified to pay for PFMLI benefits and finds the claimant owes child support obligations, the department shall deduct and withhold an amount from PFMLI benefits prior benefit overpayments. Removes language about the application of payments as determined by the Division of Child Support.

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(3) Any amount deducted and withheld under section (2) of this rule shall for all purposes be treated as if it were paid to the claimant as PFMLI benefits.

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(4) The amount deducted and withheld will be submitted on behalf of the claimant to the Division of Child Support for distribution to the recipient.

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(5) A claimant who has had child support withheld, shall have appeal rights for the withholding. However, the appeal is limited to the issue of the authority of the Employment Department to deduct and withhold and the accuracy of the amount so deducted and withheld.

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(6) The appeal for the child support withheld must be filed as described in made part of a new rule (OAR 471-070-8005 no later than 60 calendar days after the delivery date of the affected benefit payment and is confined to the issues provided in section (5) of this rule.5210).

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[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.400]

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CHANGES TO RULE:

471-070-1510

Benefits: Repayment of Overpaid Benefits; Interest [Amended]

(1) The director may issue an assessment to a claimant for an overpayment each time a claimant receives Paid Family and Medical Leave Insurance (PFMLI) benefits to which the claimant was not entitled.

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(2) If the director determines that a claimant has received benefits to which the claimant was not entitled:

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(a) The claimant may be required to repay the amount of benefits that the claimant was overpaid;

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(b) The claimant may be required to repay the amount of penalty and interest (if applicable); and

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(c) The director may secure the repayment of the overpaid benefits through the deduction from future benefits otherwise payable to the claimant under ORS 657B.100; and

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(e) The director may deduct all or any part of the claimant's claimant's future weekly benefits up to the amount of the prior overpayment.

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(a) (3)(a) If the department determines that a claimant is at fault for an overpayment, due to the claimant's claimant's error, false statement, or failure to report a material fact, then the claimant may be liable for interest on the overpayment amount. Interest that the claimant is liable for shall be paid and collected at the same time repayment of benefits is made by the individual, at the rate of one percent per month or fraction of a month. Interest will accrue, beginning on the first day of the month that begins 60 calendar days after the administrative decision establishing the overpayment becomes final.

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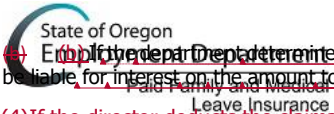
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~~(4) If the department determines that a claimant is not at fault for an overpayment, then the claimant shall not be liable for interest on the amount to be repaid as a result of the overpayment.~~

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~~(4) If the director deducts the claimant's future weekly benefits under section (2)(b) of this rule, the deduction shall be from the claimant's future weekly benefits up to the amount of the prior overpayment. The deduction will begin with the first benefit payment issued after the overpayment becomes final.~~

March 24,

~~(5) If there are multiple benefit overpayment segments, the deduction described in section (4) of this rule will apply to the oldest warranted debt first. Once all warranted debt is paid, the deduction will apply to the oldest non-warranted debt.~~

~~(6)(a) Deductions from PFMLI benefits under section (2)(b) of this rule shall be applied solely to the amount of overpaid benefits for which the claimant is liable. If the director deducts the claimant's future weekly benefits under section (2)(b) of this rule, the deduction shall be from the claimant's future weekly benefits up to the amount of the prior overpayment, penalty, and interest (if applicable). The deduction will begin with the first benefit payment issued after the department's decision regarding the overpayment becomes final.~~

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~~(b) Amounts collected through other means shall be applied first to penalties, then interest, and then to the overpaid benefit amount. If there are multiple benefit overpayments, the deduction described in section (4) of this rule will apply to the oldest unwarranted debt first. Once all unwarranted debt is paid, the deduction will apply to the most recent warranted debt.~~

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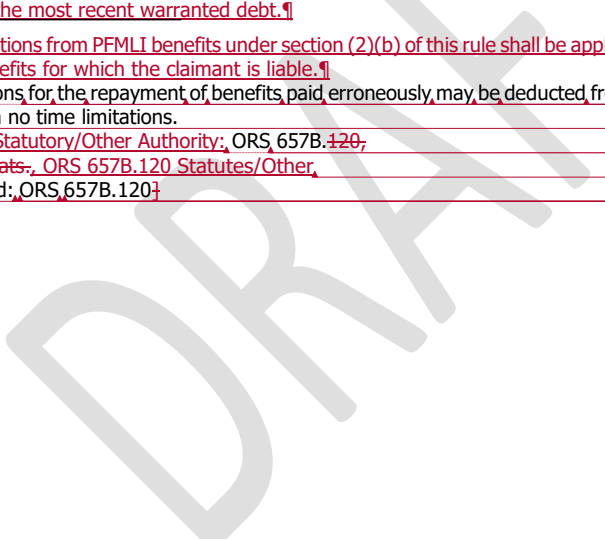
~~(6) Deductions from PFMLI benefits under section (2)(b) of this rule shall be applied solely to the amount of overpaid benefits for which the claimant is liable.~~

~~(5) Deductions for the repayment of benefits paid erroneously may be deducted from benefits due to the claimant with no time limitations.~~

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~~Stat. Auth.: Statutory/Other Authority: ORS 657B.120, 657B.340; Stats., ORS 657B.120 Statutes/Other, Implemented: ORS 657B.120~~

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AMEND: 471-070-3710—

RULE SUMMARY: Amends the administrative rule to include the use of a federal employer identification number (FEIN) on the assistance grant application and changes claim identification number to social security number or individual taxpayer identification number.

CHANGES TO RULE:

471-070-3710

Assistance Grants: Application Requirements [Amended]

(1) An employer may apply for an assistance grant only:¶

(a) After an eligible employee has been approved by the department for family leave, medical leave or safe leave; and ¶

(b) Prior to the end of the fourth month following the last day of the eligible employee's period of leave.¶

(2) An application for a grant must be submitted online or by another method approved by the department. The grant application must be complete and include the following:¶

(a) Information about the employer applying for the grant, including:¶

(A) Business Identification Number or Federal Employer Identification Number;¶

(B) Business name;¶

(C) Business address; and¶

(D) Business contact person's name and contact information;¶

(b) Information about the eligible employee taking leave for which the employer is requesting the grant, including but not limited to:¶

(A) First and last name;¶

(B) Claim identification number;

(C) Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN);¶

(D) Start date of the leave; and¶

(E) End date or expected leave end date;¶

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(C) Information about the grant being requested, including: 1.

(A) Type of grant requested; and 1.

(B) Grant amount requested, when applicable; 1.

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(d) Written documentation demonstrating that the employer: 1.

(A) Hired a replacement worker to replace an eligible employee on family leave, medical leave or safe leave, including the replacement worker's name, start date, and Social Security Number or Individual Taxpayer Identification Number; or 1.

(B) Incurred significant additional wage-related costs due to an eligible employee's use of leave and the amount, including, but not limited to, receipts, personnel or payroll records, or sworn statements; and 1.

(e) Acknowledgement that: 1.

(A) The employer is required to pay the employer contribution for a period of eight calendar quarters in accordance with OAR 471-070-3750; and 1.

(B) The employer could be required to repay an assistance grant if employer is later deemed to be ineligible in accordance with OAR 471-070-3850; 1.

(3) An employer that receives a grant under ORS 657B.200(1)(b) may submit a revised grant application requesting an additional grant under ORS 657B.200(2). 1.

(a) The revised grant application must contain: 1.

(A) A revised leave end date or revised expected leave end date showing an extension of the initial period of leave requested; and 1.

(B) Written documentation demonstrating that a replacement worker was hired to replace an eligible employee on family leave, medical leave or safe leave including the replacement worker's name, start date, and Social Security Number or Individual Taxpayer Identification Number. 1.

(b) The revised SN or ITIN. 1.

(b) The additional grant application submitted under this section will not count against an employer's application limit under ORS 657B.200(3). 1.

(4) An incomplete application will not be reviewed by the department until and unless it is completed and will not count against an employer's application limit under ORS 657B.200(3). 1.

(5) The department may deny an application for a grant for reasons that include, but are not limited to, the employer's failure to demonstrate that: 1.

(a) The employer hired a replacement worker or incurred significant additional wage-related costs; or 1.

(b) The replacement worker hired or significant additional wage-related costs incurred was due to an employee's use of family leave, medical leave or safe leave. 1.

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**CONTRIBUTIONS & RECOVERY**

*ORS 657B.150 establishes wage reporting and contributions payment requirements for employers and employees and ORS 657B.190, 657B.320, 657B.370, 657B.910, 657B.920, and others establish consequences for employers that fail to report and make payments. This section of the administrative rules expand on recovery and how withholding of contributions occur. All definition sections may be expanded and reorganized before formal rulemaking. If an administrative rule is being amended, the amended changes are show in red below.*

471-070-0010 — Definitions [Amended]

(1) "Final" means a decision made under this chapter is in effect as of the end of the timeframe to request a hearing as described in OAR 471-070-8005 unless the individual files a request for a hearing with the department regarding the decision within the allowed timeframe.

"Paid Leave Oregon" AMEND: 471-070-0010

RULE SUMMARY: Amends the administrative rule to define a "volunteer" for purposes of who would not be considered an employee for Paid Leave Oregon purposes

CHANGES TO RULE:

471-070-0010

Definitions

~~(2)(1) "Paid Leave Oregon", means the Paid Family and Medical Leave Insurance program as described under ORS chapter 657B., 1.~~

~~(2) "Volunteer" as used in ORS 657B.010(13)(b)(E), means an individual who performs services for a public agency or private non-profit organizations for civic, charitable, or humanitarian reasons, without promise, expectations or receipt of compensation for services rendered, during the hours worked.~~

~~{Stat. Auth.: Statutory/Other Authority: ORS~~

~~657B.340; Stats. Statutes/Other Implemented: ORS~~

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**Style Definition**

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~~ADOPT: 471-070-0470 — Wages: Paid Leave Oregon Benefits~~

~~RULE SUMMARY: Clarifies that Paid Leave Oregon benefits issued by the Employment Department, employer or administrator through an approved equivalent plan, are not considered wages for Paid Leave Oregon contribution purposes.~~

~~CHANGES TO RULE:~~

~~471-070-0470~~

~~Wages: Paid Leave Oregon Benefits~~

~~{Stat. Auth.: Paid Leave Oregon benefits issued by the Employment Department, employer or administrator through an approved equivalent plan, are not wages. Statutory/Other Authority: ORS 657B.340; Stats. Statutes/Other Implemented: ORS 657B.010}~~

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AMEND: 471-070-2010

RULE SUMMARY: Amends the administrative rule to clarify which year of the tax return needs to be submitted with the election application.

CHANGES TO RULE:

471-070-2010

Self-employed: Election Requirements and Effective Date

(1) An eligible self-employed individual may apply to elect coverage under the Paid Family and Medical Leave Insurance program at any time. ¶

(2) A notice to elect must be in writing and submitted online or in another method approved by the department. To be reviewed, the notice must be complete and include: ¶

(a) Information about the individual applying for elective coverage, including:¶

(A) First and last name;¶

(B) Social Security Number or Individual Taxpayer Identification Number; and¶

(C) Address and contact information.¶

(b) Information on the individual's business, when applicable, including:¶

(A) Business Identification Number;¶

(B) Business name; and¶

(C) Business address and contact information.¶

(c) The individual's total taxable income from self-employment for the preceding a prior tax year, as applicable under ~~year~~; section (3) of this rule;¶

(d) Documentation verifying:¶

(A) The individual's identity and¶

(B) The individual's taxable income from self-employment, including but not limited to, income reported to Oregon on the personal income tax return from the preceding a prior tax year, as applicable under ~~year~~section (3) of this rule.¶

(e) An agreement to:¶

(A) Pay contributions for a period of not less than three years;¶

(B) Provide any information and documentation on the individual's taxable income from self-employment that the department deems necessary for the administration of the elective coverage, including but not limited to, a copy of the Oregon personal income tax return annually; and¶

(C) Provide additional information to confirm eligibility for elective coverage, if requested by the department; ¶

(f) Acknowledgement of the conditions for termination of self-employed elective coverage established in OAR 471-070-2170, including, but not limited to, the condition that coverage cannot be terminated until coverage has been in effect for at least three years.¶

(3) If the eligible self-employed individual elects coverage:¶

(a) In the first quarter of the calendar year (January through March), the individual must provide the tax return required to be filed with the Oregon Department of Revenue for the tax year immediately prior to the last tax year.¶

(b) In quarters two through four of the calendar year (April through December), the individual must provide the tax return required to be filed with the Oregon Department of Revenue for the last tax year.¶

Example 1: Kaja elects to have self-employment coverage in February of 2024. Kaja must provide a copy of their 2022 Oregon personal income tax return because it is within the first quarter of the calendar year.¶

Example 2: Jackie elects to have self-employment coverage in June of 2024. Jackie must provide a copy of their 2023 Oregon personal income tax return because it is after the first quarter of the calendar year.¶

(4) The department may deny a notice to elect if:¶

(a) The notice does not include the required information and documentation in accordance with this rule or¶

(b) The self-employed individual does not meet the eligibility requirements in OAR 471-070-2005 or other applicable law.¶

(45) Approved elective coverage becomes effective on the date the complete notice to elect was received with 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.]

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.130

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AMEND: 471-070-2030RULE SUMMARY: Amends the administrative rule to clarify which year of the tax return is needed.CHANGES TO RULE:471-070-2030Self-employed: Contribution Payments and Reporting Requirements(1) A self-employed individual who elects coverage under ORS 657B.130 must contribute to the Paid Family Medical Leave Insurance (PFMLI) Trust Fund in an amount that is equal to 60 percent of the total contribution rate described in OAR 471-070-3010 up to the annual taxable income from self-employment that is equal to the calendar year maximum wage amount described in OAR 471-070-3010. ¶(2) Total contribution payments will be based on the individual's total taxable income from self-employment from the tax return required to be filed in the previous calendar year for a prior tax year, per OAR 471-070-2010 and generally shall be divided into four quarterly contribution payments. The contribution payments will begin in the quarter the self-employed election is made and continue through the first quarter of the next year. If a contribution is due for only part of a quarter, the contribution amount shall be prorated based on the number of calendar days that the elective coverage is in effect. ¶Example 1: Grace: Sally, a self-employed individual, elects PFMLI coverage on May 1, 2024. Grace Sally earned \$80,000 in taxable income from self-employment in 2023. Assuming a total contribution rate of one percent, Grace Sally's four quarterly contribution amounts due are calculated as follows: ¶The first ¶First quarterly payment, period of May 1 through June 30 (second quarter for calendar year 2024), will be \$80.44 [(\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters) x 61/91 calendar days in the quarter]. ¶The second quarterly payment, period of July 1 through September 30 (third quarter for calendar year 2024), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters). ¶The third quarterly payment, period of October 1 through December 31 (fourth quarter for calendar year 2024), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters). ¶The fourth quarterly payment, period of January 1 through March 30 (first quarter for calendar year 2025), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters). ¶Example 2: Bert, a self-employed individual, elects PFMLI coverage on August 22, 2024. Bert earned \$40,000 in taxable income from self-employment in 2023. Because Bert's election is made during the third quarter of 2024, Bert only has three quarterly payments (third quarter of 2023, fourth quarter of 2023, and first quarter of 2024) until a new quarterly amount is determined. Assuming a total contribution rate of one percent, Bert's three quarterly contribution amounts due are calculated as follows: ¶The first payment period of July 1 through September 30 (third quarter for calendar year 2024), will be \$26.09 [(\$40,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters) x 40/92 calendar days in the quarter]. ¶The second payment period of October 1 through December 31 (fourth quarter for calendar year 2024), will be \$60 (\$40,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters). ¶The third payment period of January 1 through March 30 (first quarter for calendar year 2025), will be \$60 (\$40,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters). ¶Bert's next payment will be based on the taxable income from self-employment in 2024. ¶(3) Quarterly contributions shall be due and payable in accordance with OAR 471-070-303(3) Quarterly contributions shall be due and payable in accordance with OAR 471-070-3030. ¶(4) A self-employed individual who fails to timely pay contributions as required by sections (1) through (3) of this rule is delinquent. Any individual found to be delinquent in the payment of contributions is subject to the penalties as specified in ORS 657B.320 and also may be assessed an additional penalty as provided in ORS 657B.910. ¶(45) The date of receipt of contributions transmitted through the mail or private express carrier shall be determined as provided in ORS 293.660. The date of receipt shall be used in the calculation of interest charges, delinquencies, penalties or other sanctions provided by law. ¶(56) The self-employed individual must annually report information and provide documentation provided in subsection (a) and (b) of this section the department deems necessary for the administrative of elective coverage. Failure to provide the information by December 31 will result in termination of the self-employed individual's

election of PFMLI coverage.¶

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

(b) If a self-employed individual fails to provides their Oregon personal income tax return on extension, the department will use the information on the individual's last tax return filed and provided to calculate quarterly contribution payments that begin in the second quarter. The department will adjust the quarterly contribution payment amounts due, if appropriate, due when the prior year's tax return is filed and provided to the department on or before December 31 of each year.¶

Example 3: Tobi, a self-employed individual, elects PFMLI coverage on June 5, 2023 and provides his 2022 Oregon personal income tax return showing \$40,000 of taxable income from self-employment. Assuming a total contribution rate of one percent, Tobi's quarterly contribution amounts due are \$60 ( $\$40,000 \text{ taxable income from self-employment} \times 0.01 \text{ total contribution rate} \times 0.6 \text{ self-employed contribution percentage} / \text{four quarters}$ ).¶

By April 30, 2024, Tobi needs to provide to the department their 2023 Oregon personal income tax return; however, Tobi is filing an extension for their 2023 Oregon personal income tax return and therefore does not have a tax return to provide to the department. Since the department does not have an extension is filed and provided to the department. The self-employed individual must report to the department the prior year's taxable income from Tobi's self-employment, the department calculates Tobi's contribution amount for 2024 based on their 2022 Oregon personal income tax return on file. Tobi will continue to pay \$60 each quarter until the 2023 Oregon personal income tax return is received.¶

Tobi provides to the departmented filed on extension and provide their 2023 Oregon personal income tax on September 22, 2024 which shows Tobi's taxable income from self-employment for 2023 was actually \$50,000. Assuming a total contribution rate of one percent, Tobi's quarterly contribution amounts that should have been paid starting with the second quarter of 2024 was \$75 ( $\$50,000 \text{ taxable income from self-employment} \times 0.01 \text{ total contribution rate} \times 0.6 \text{ self-employed contribution percentage} / \text{four quarters}$ ). By September 22, 2024, Tobi has only made the first quarterly payment (period of April 1 through June 30) of \$60. The department adjusts the amount Tobi should have paid for contributions by \$15 ( $\$75 \text{ assessed minus the } \$60 \text{ paid}$ ) and bills Tobi for the difference. The department updates Tobi's contribution amount for the remaining quarters to \$75 return on or before October 31 of each year.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.130, 293.66293.660, 657B.130, 657B.150

~~AMEND: 471-070-3000~~

~~RULE SUMMARY: Amends the administrative rule to remove the definition of "legal fees" as this will now be included in OAR 471-070-3010 and will no longer be limited to contributions only.~~

~~CHANGES TO RULE:~~

~~471-070--3000~~

~~Contributions: Definitions [Amended]~~

~~(1) "Legal Fees" means fees attributed to the recording or processing of a Distraintdistraint warrant on behalf of the department for the purposes of collecting Paid Family and Medical Leave Insurance (PFMLI) contributions pursuant to ORS 657B.300, and search fees attributed to garnishments issued to financial institutions pursuant to ORS 18.790-1.~~

~~(2) "Maximum wage amount" means the maximum employee wages per employer subject to PFMLI. "Maximum wage amount" means the maximum employee wages per employer subject to Paid Family and Medical Leave Insurance (PFMLI) contributions per calendar year.~~

~~[Stat. Auth.: Statutory/Other Authority: ORS 657B.340- Stats: Statutes/Other Implemented: ORS 657B.150- 657B.300]~~

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AMEND: 471-070-3040

RULE SUMMARY: Amends the administrative rule to clarify when the rounding shall occur when calculating the Paid Leave Oregon employer and employee contributions.

CHANGES TO RULE:

471-070-3040

Contributions: Withholding of Employee Contributions [Amended]

(1) An employer may not deduct from the employee's subject wages more than the maximum allowable amount of 60 percent of the total contribution rate described in OAR 471-070-3010 for a pay period rounded to the nearest cent.

(2) When performing the calculation described in section (1) of this rule, the intermediate steps shall not be rounded, only the final step shall be rounded to the nearest cent.

Example: On February 2, 2023, Jennifer earned \$1,769.89 in subject wages for the pay period. The employer calculates Jennifer's contributions by multiplying the subject wages by the total contribution rate of 1% (not rounded) by the employee contribution rate of 60% (rounded to the nearest cent). The total potential contribution is \$17.6989 (\$1,769.89 x 0.01 = \$17.6989, not rounded). Jennifer's employee portion of the potential contribution is \$10.62

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~~(\$17,6989 x 0.40 = \$7.07956, rounded to the nearest cent is \$7.08).~~ The ~~employer's~~ employer's contribution (if a large employer) is \$7.08 (~~\$17,6989 x 0.40 = \$7.07956, rounded to the nearest cent is \$7.08~~).

~~(3)(32)~~ If an employer fails to deduct the maximum allowable employee share of the contribution rate for a pay period, the employer is considered to have elected to pay that portion of the ~~employee's~~ employee's contribution that the employer failed to deduct, and the employer is liable to pay that portion of the employee share under ORS 657B.150(5) or ORS 657B.210(5) for that pay period if not corrected within the quarter. The employer may deduct from the ~~employee's~~ employee's subject wages the amount they failed to deduct within the quarter.

~~(43)(34)~~ An employer may elect to pay the ~~employee's~~ employee's contribution, in whole or in part, and must provide a written notice, policy, or procedure to the employee or enter into a collective bargaining agreement with the employee specifying that the employer is electing to pay the employee contribution, making the employer liable for that portion of the employee contribution. The employer must give written notice of an update to its notice, policy, or procedure or ~~amendment~~ amendments to its collective bargaining agreement to the employee at least one pay period prior to any reduction by the employer of the ~~elected~~ employee contribution amount that the employer previously elected to pay.

~~(5445)~~ If an employer has elected to pay, in whole or in part, the employee portion of contributions as stated in section

~~(43)(34)~~ of this rule, the employer may not deduct the amount the employer elected to pay from a future paycheck of the employee.

~~{Stat. Auth.:~~ Statutory/Other Authority: ORS 657B.340; ~~Stats. Statutes/Other~~ Implemented: ORS 657B.150, 657B.210

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March 24,

~~REPEAL: 471-070-3310~~

~~RULE SUMMARY: Repealing this rule as the content will be added to a new administrative rule relating to all debts owing under ORS chapter 657B and not just contribution debt.~~

~~CHANGES TO RULE:~~

~~471-070-3310~~

~~Contributions: Application of Payments [Repeal]~~

~~(1) "Designated payments" are payments received by the department specifying a specific quarter(s) or Distraintdistraint warrant.¶~~

~~(2) "Undesignated payments" are payments received by the department that are not specified for a specific quarter(s) or Distraintdistraint warrant.¶~~

~~(3) Except as otherwise provided by statute, or as directed by a court of competent jurisdiction, payments made to the department by or on behalf of an employer for Paid Family and Medical Leave Insurance (PFMLI) contributions, and legal fees (as defined in OAR 471-070-3000), penalties and interest related to those PFMLI contributions, in accordance with the provisions of ORS chapter 657B shall be identified by the department as either "Designated Payments" or "Undesignated Payments" and will be credited to the employer's employer's account in the following order of priority:¶~~

~~(a) (a) Undesignated Payments:¶~~

~~(A) To the oldest unwarranted unpaid quarter balance in the following order:¶~~

~~(i) Penalties;¶~~

~~(ii) Interest; and then¶~~

~~(iii) PFMLI Contributions.¶~~

~~(B) After the payment amounts under subsection (a)(A) of this rule have been applied, any remaining amounts shall then be credited to the most recent unpaid Distraintdistraint warrant in the following order:¶~~

~~(i) Legal Fees;¶~~

~~(ii) Penalties;¶~~

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~~(1) Interest and then~~ Department

~~(iv) PFMLI Contributions and Medical Leave Insurance~~

~~(b) (b) Designated Payments;~~

~~(A) (A) Legal Fees;~~

~~(B) (B) Penalties;~~

~~(C) (C) Interest; and then~~

~~(D) (D) PFMLI Contributions;~~

~~(4) The department may identify categories of indebtedness for internal accounting procedures and may retire each category separately in the order of priority set forth in section (3) of this rule.~~

~~(5) Nothing in this rule shall be construed in any way as abridging or limiting the authority or powers of the director granted under ORS chapter 657B.~~

~~(6) The employees listed in OAR 471-070-0550 may act on behalf of the director for purposes of sections (1) and (5)~~

~~(6)(5) of this rule.~~

~~(7) Notwithstanding any instructions to the contrary by or on behalf of the employer, payments will be applied in the manner specified in this rule.~~

~~(8) Credit balances will be treated as payments for purposes of this rule.~~

~~(9) [Stat. Auth.: Statutory/Other Authority: ORS 657B.340; Stats. Statutes/Other Implemented: ORS 657B.150, 657B.120, 657B.150, 657B.320, 657B.430, 657B.910]~~

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~~ADOPT: 471-070-5200~~

~~RULE SUMMARY: Explains that unless otherwise specified by law, balances owed to Paid Leave Oregon are due as of the date the decision causing the balance owed becomes final. Defines "final" which means a decision made by the department is final unless an individual files an appeal within the allowed appeal timeframe.~~

~~CHANGES TO RULE:~~

~~471-070-5200~~

~~Due Dates for Balances Owed to the Department~~

~~(1) Unless otherwise specified in statute or administrative rule, balances owed to the department under ORS chapter 657B are considered due and delinquent payable as of the date the decision causing the balance due owing becomes final, as defined in OAR 471-070-0010.1.~~

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(2) 471-070-5010 Final Medical decision made under this chapter for which the timeframe to request a hearing as described in ORR 471-070-8005 has expired, unless a timely request for a hearing with the department regarding the decision has been filed in which case "final" means when the decision issued following the hearing, or any appeal of the hearing, has been issued and the time period to further appeal that decision has passed without a timely appeal being filed.  
 Statutory/Other Authority: Application of Payments

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~~Implemented: ORS 657B.340~~  
Paid Family and Medical  
Leave Insurance

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ADOPT: 471-070-5210

RULE SUMMARY: Clarifies the order in which payments are applied to all outstanding debts under ORS chapter 657B. Similar language for contribution debts was previously listed in OAR 471-070-3310; however, that rule is being repealed so the order applies to all outstanding debts.

CHANGES TO RULE:

471-070-5210

Application of Payments

(1) "As used in this administrative rule:"

(a) "Designated payments" are payments received by the department specifying a specific debt, distraint warrant, or quarter(s) in the case of contributions.

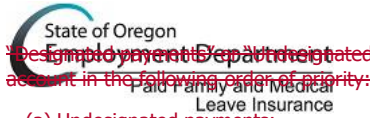
(b) "Legal fees" means fees attributed to the recording or processing of a distraint warrant on behalf of the department for the purpose of collecting amounts owed under ORS chapter 657B pursuant to ORS 657B.300 and search fees attributed to garnishments issued to financial institutions pursuant to ORS 18.790.

(c) "Principal" means any balance owing under ORS chapter 657B, excluding legal fees, penalties, and interest.

(d) "Undesignated payments" are payments received by the department that are not specified for a debt, distraint warrant, or quarter(s) in the case of contributions.

(2) Except as otherwise provided by statute, or as directed by a court of competent jurisdiction, payments made to the department by or on behalf of an individual or employer for amounts owed under ORS chapter 657B; legal fees, and related penalties; in accordance with the provisions of ORS chapter 657B shall be identified by the department as either "Designated payments" or "Undesignated payments" and will be credited to the individual's or employer's account in the following order of priority:

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State of Oregon Employment Department  
"Designated payments" and will be credited to the individual's or employer's account in the following order of priority:

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(a) Undesignated payments:  
(a) Undesignated payments:

(A) To the oldest unwarranted unpaid balance in the following order:

(i) Interest; and then

(iii) Principle.

(iii) Principal.

(B) After the payment amounts under subsection (a)(A) of this rule have been applied, any remaining amounts shall then be credited to the most recent unpaid warranted balance in the following order:

(i) Legal Fees;

(ii) Penalties;

(iii) Interest; and then

(iv) Principle.

(iv) (b) Principal.

(b) Designated payments:

(A) Legal Fees;

(B) Penalties;

(C) Interest; and then

(D) Principle.

(3) The department may identify categories of indebtedness for internal accounting procedures and may retire each category separately in the order of priority set forth in section (4) of this rule.

(4) Nothing in this rule shall be construed in any way as abridging or limiting the authority or powers of the director granted under ORS chapter 657B.

(5) The employees listed in OAR 471-070-0550 may act on behalf of the director for purposes of section (5) and (6) of this rule.

(4) of this rule.

(6) Notwithstanding any instructions to the contrary by or on behalf of the individual or employer, payments will be applied in the manner specified in this rule.

(9) Credit balances will be treated as payments for purposes of this rule.

(7) Stat. Auth.: Statutory/Other Authority: ORS 657B.340; Stats.

Statutes/Other Implemented: ORS 657B.040, 657B.120, 657B.150, 657B.240, 657B.300, 657B.320, 657B.330, 657B.370, 657B.430, 657B.910, 657B.920

(i) Penalties;

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AMENDS ~~471-070-8520~~  
 Paid Family and Medical Leave Insurance

**CHANGES TO RULE:**

**471-070-8520**

**One-Percent Penalty**

- (1) If an employer has failed to file or complete all required reports or pay all required contributions for the calendar year as described in 471-070-3030, the department shall assess the penalty authorized by ORS 657B.910 on the Paid Family and Medical Leave Insurance (PFML) subject wages. The department shall send notice of the assessment of such penalty to the employer's last known address or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records on or before October 20 of the year. The penalty shall become final due on November 10 immediately following the assessment.¶
- (2) On or after the date of the assessment, but prior to November 10 immediately following the assessment, the employer may request waiver of the penalty based on good cause as defined in OAR 471-070-8530—.
- (3) If an employer makes a request for waiver of the penalty within the time prescribed in section (2) of this rule, the department shall make a decision, either granting or denying the waiver, and mail notice of the decision to the employer's last known address or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records. If, prior to November 10 immediately following the assessment, the department determines that the employer had good cause for the failure to file all reports or pay all contributions due by September 1, the department shall grant the request for waiver and remove the penalty from the employer's account. If the employer fails to establish good cause prior to November 10 immediately following the assessment, the department shall deny the request for waiver. If the request for waiver is denied, the department shall notify the employer that a request for a contested case hearing may be filed within 20 days after the date that the penalty waiver decision is sent to the employer.¶
- (4) Hearings held and administrative law judge decisions issued pursuant to section (3) of this rule shall be in accordance with the provisions of chapter 137, division 3 of the Oregon Administrative Rules that have been adopted for the PFML program.¶
- (5) Judicial review of administrative law judge decisions issued pursuant to this rule shall be as provided for review of orders in contested cases under ORS 183.310 through 183.550. The director is designated as a party for purposes of hearings under this rule.¶
- (6) Upon motion of the director or upon application of an interested employer, the director may reconsider a penalty imposed under ORS 657B.910 irrespective of whether it has become final:¶
- (a) Such reconsideration shall be restricted to penalties resulting from clerical errors or errors of computation and may include a new decision upon any grounds or issues not previously ruled upon or new facts not previously known to the director:¶
- (b) A new decision issued after reconsideration shall be subject to hearing and judicial review in accordance with this rule.¶
- (7) A request for waiver of the penalty for good cause must be in writing. The date of any request for waiver under this rule shall be:¶
- (a) The postmarked date on the request, if mailed; ¶
- (b) The date specified in OAR 471-070-0850, if electronically filed; or ¶
- (c) In the absence of a postmark, submittal date or machine imprinted date, the most probable date of mailing as determined by the director.¶
- (8) The employees listed in OAR 471-070-0550 may act on behalf of the director for the purposes of sections (1), (2) and (3) of this rule.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.910

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March 24,

AMEND: 471-070-8530

RULE SUMMARY: Amends the administrative rule to expand when Paid Leave Oregon will find an employer had "good cause" for failure to file combined payroll reports or pay paid leave contributions to include payments and reports incorrectly filed with another jurisdiction.

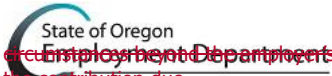
CHANGES TO RULE:

471-070-8530

Good Cause for Failure to File Reports or Pay Contributions (Amended)

(1) As used in ORS 657B.910 and 657B.920 and OAR 471-070-8520, good cause for failure to file all required reports or to pay all contributions due will be found when the employer establishes, by satisfactory evidence, that factors or circumstances beyond the employer's reasonable control caused the delay in filing the required report or paying the contribution due.

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~~circumstances beyond the employer's reasonable control caused the delay in filing the required report or paying the contribution due.~~

~~(2) In determining good cause under section (1) of this rule, the director may consider all circumstances that the director require at a minimum, that the employer:~~

~~(a) Prior to the date the report or contributions were due, gave notice to the department, when reasonably possible, of the factors or circumstances which ultimately caused the delay;~~

~~(b) Filed the required report or paid the contributions due within no later than seven calendar days after the date determined by the director to be the date the factors or circumstances causing the delay ceased to exist;~~

~~(c) Made a diligent effort to remove the cause of the delay and to prevent its recurrence; and~~

~~(d) Provided an official police report, or other documentation acceptable to the director or an authorized representative, that was made within 20 calendar days of a criminal act, or discovery of the act, if the delay was due to a criminal act by any party; and~~

~~(e) Provided copies of timely filed reports and proof of all related payments to another jurisdiction, if the delay was due to making contributions to the incorrect jurisdiction. Good cause will be considered if, within 30 calendar days of the date the department or employer determines the contributions are due to the Paid Family and Medical Leave Insurance Trust Fund instead of another jurisdiction, the employer filed the required report and paid the contributions due.~~

~~(3) In applying sections (1) and (2) of this rule, a lack of funds on the part of the employer shall not constitute good cause.~~

~~(4) In applying sections (1) and (2) of this rule, failure to notify the department of an updated mailing address shall not constitute good cause.~~

~~{Stat. Auth.: Statutory/Other Authority: ORS 657B.340; Stats. Statutes/Other Implemented: ORS 657B.910, ORS 657B.920}~~

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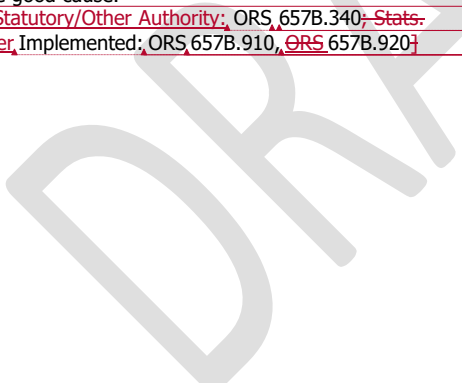
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March 24,

~~AMEND: 471-070-8540~~

~~RULE SUMMARY: Amends the administrative rule to specify the penalty is determined final within 20 calendar days from the date the department assessed the late filing penalty, unless the employer requests a timely hearing before the 20 calendar days.~~

~~CHANGES TO RULE:~~

~~471-070-8540~~

~~Penalty Amount When Employer Fails to File Report (Amended)~~

~~(1) If an employer fails to file all required reports within the time period described in ORS 657B.920(2), the department may assess a late filing penalty in addition to any other amounts due.~~

~~(2) The penalty shall be 0.02 percent of the employer's employees total Paid Family and Medical Leave Insurance (PFMLI) subject wages for the late report rounded to the nearest \$100. If the penalty is calculated to be less than \$100, the amount will be the minimum \$100.~~

~~Example: Athena's Athena's Yoga and Piyo Studio has 20 employees with total PFMLI subject wages for first quarter of 2024 of~~

~~\$120,000. Athena does not file the 2024 Oregon Quarterly Tax Report for the first quarter. The department sends a written notice warning on May 10, 2024, to Athena's Athena's Yoga and Piyo Studio, but they do not correct the deficiency by filing the needed report. A penalty of \$24 (0.0002 x \$120,000 PFMLI subject wages) is calculated by the department. But since the minimum penalty is \$100, the penalty imposed by the department is \$100.~~

~~(3) The penalty assessment becomes final 20 calendar days from the date on which the department assessed the late filing penalty, unless the employer files a timely request for hearing as described in OAR 471-070-8005.~~

~~Statutory/Other Authority: ORS 657B.340~~

~~[Stat. Auth.: ORS 657B.340; Stats. Statutes/Other Implemented: ORS 657B.920]~~

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March 24,

## EQUIVALENT PLANS

~~ORS 657B.210 to 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 the application process, provision of benefit, and withdrawal and termination of an equivalent plan. Further details are provided in the rules in this section to describe the timeframe the equivalent plan employers have to respond to the department's letters and when the final payments are due if the equivalent plan is withdrawn or terminated. All administrative rules may be expanded, reorganized, or deleted before formal rulemaking. If an administrative rule is being amended, the amended changes are show in red below.~~

**Commented [LF3]:** We are unclear as to why this text is deleted, but assume it has been moved to another section of the rules. These terms are still necessary for private plan administration.

### 471-070-2200—Equivalent Plans: Definitions [Amended]

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

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

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

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

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

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

~~(7) "Successor in interest" means an employer who is transferred or otherwise acquires all or substantially all of the components parts of a business, including the employees necessary to carry on day-to-day operations and essential business functions in the same manner and for the same purposes as carried on prior to the acquisition or transfer successor to another's interest in property, organization, trade, or business that is carried on and controlled substantially as it was before the transfer in which there is a complete transfer to the successor of the organization, trade, or business, and substantially all of its assets.~~

~~(8) "Substantial reduction in personnel," as used in ORS 657B.260 and applicable administrative rules, means a situation in which the number of employees employed by the predecessor of the organization, trade, or business is reduced by at least 33 percent by the successor in interest.~~



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~~{Stat. Auth.: ORS 657B.340; Stats. Implemented: 657B.210, 657B.260, 657B.340}~~



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~~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;~~



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~~(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 errors; or~~

~~(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~~

~~*Example:* ABC Corporation submitted an equivalent plan application to the department on February 4, 2023. The department sent an approval letter for the equivalent plan that was dated March 5, 2023 and the equivalent plan becomes effective on April 1, 2023. The application for reapproval is due on March 1 of 2024, 2025, and 2026; 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. When a substantive amendment occurs after the three-year period, a reapproval application must be submitted by an employer as described in section (9) of this rule. For a non-substantive amendments, a copy of the revised equivalent plan must be submitted to the department at the time the change becomes effective.~~

~~(12) In addition to the information required in this rule, the department may request additional information~~



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~~necessary to establish facts relating to eligibility for an equivalent plan. Unless a timeframe is otherwise defined under statute or~~





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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.: ORS 657B.220210, 657B.340; Stats. Implemented: ORS 657B.210, 657B.220, 657B.230]

471-070-2220—Equivalent Plans: Plan Requirements [Amended]

In order for an equivalent plan to be approved by the department, the plan must at a minimum:

- (1) Cover all Oregon employees who have been continuously employed with the employer for at least 30 calendar days, regardless of hours worked, including full time, part time, temporary workers hired by the employer, and replacement employees hired to temporarily replace eligible employees during PFMLI leave. Any employees who were eligible for benefits under their previous Oregon employer's equivalent plan, who begin working for a new employer with an approved equivalent plan must be automatically covered for benefits under the equivalent plan offered by the new employer as described in ORS 657B.250;
- (2) Provide family leave as described in ORS 657B.010(17) and applicable administrative rules;
- (3) Provide medical leave as described in ORS 657B.010(19) and applicable administrative rules;
- (4) Provide safe leave as described in ORS 657B.010(21) and applicable administrative rules;
- (5) Allow eligible employees to take family leave, medical leave, or safe leave in a benefit year for periods of time equal to or longer than the duration of leave provided under ORS 657B.020;
- (6) Provide eligible employees weekly benefit amounts equal to or greater than benefits provided under ORS 657B.050;
- (7) Allow family leave, medical leave, or safe leave to be taken in increments or nonconsecutive periods as provided under ORS 657B.090;
- (8) Impose no additional conditions or restrictions on the use of family leave, medical leave, or safe leave beyond those explicitly authorized by ORS chapter 657B and applicable administrative rules;
- (9) Provide that the employee contributions withheld by an equivalent plan shall not be greater than the employee contributions that would be charged to employees under ORS 657B.150 and determined annually under OAR 471-070-3010;
- (10) Ensure employee contributions that are received or retained under an equivalent plan are used solely for equivalent plan expenses, are not considered part of an employer's assets for any purpose, and are held

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~~separately from all other employer funds;~~

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- ~~(11) Meet all equivalent plan requirements provided in ORS 657B.210 and applicable administrative rules;~~
- ~~(12) Provide for decisions on benefit claims, to be in writing, either in hard copy or electronically if the employee has opted for electronic notification. Decisions on benefit claim approvals must include the amount of leave approved, the weekly benefit amount, and a statement indicating how the employee may contact the department to request the eligible employee's average weekly wage amount if the employee believes the benefit amount may be incorrect. Denial decisions must include the reason(s) for denial of benefits along with an explanation of an employee's right to appeal the decision and instructions on how to submit an appeal.~~
- ~~(13) Provide an appeal process to review benefit decisions when requested by an employee that also requires the employer or administrator to issue a written decision. The employee must have at least 20-60 calendar days from the date of the written denial to request an appeal with the employer or administrator, if applicable, or as soon as practicable if there is good cause for the delay beyond the 20-60 calendar days as described in OAR 471-070-2400(7). The employee, and the employer, or administrator have 20 calendar days from the date the appeal is received, or as soon as practicable if there is good cause as described in OAR 471-070-2400(7), to resolve the appeal and for the employer or administrator to issue a written appeal determination letter along with an explanation of the department's dispute resolution process as described in OAR 471-070-2400 if an appeal is denied;~~
- ~~(14) Provide that the equivalent plan employer or administrator must make all reasonable efforts to make a decision on whether to allow the claim and issue the first payment of any benefits to an employee within two weeks after receiving the claim or the start of leave, whichever is later. Subsequent benefit payments must be provided weekly by a fully insured equivalent plan and benefit payments may be paid according to the existing paycheck schedule for employees under an employer administered equivalent plan; and~~
- ~~(15) Ensure a written notice poster for the equivalent plan as described in OAR 471-070-2330, will be given to all eligible employees, at the time of hire and each time the policy or procedure changes, in the language that the employer typically uses to communicate with the employee.~~

~~[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.210]~~

~~471-070-2400—Equivalent Plans: Disputes between an Equivalent Plan Employer and Employee, Request for Hearing [Amended]~~

- ~~(1) As required by ORS 657B.420, the department will provide a dispute resolution process to assist in resolving disputes between employers or equivalent plan administrators, as applicable, and employees regarding coverage and benefits provided under an employer's approved equivalent plan if the appeal with the employer or administrator is not otherwise resolved.~~
- ~~(2) Prior to the department providing a dispute resolution process, the employee and employer or administrative must follow the equivalent plan appeal process described in OAR 471-070-2220(13).~~
- ~~(3) In the event that the employee and employer or administrator are unable to resolve an appeal on a coverage or benefit decision through the equivalent plan's appeal process, the employee may request a dispute resolution assistance through the department. The dispute resolution request must:~~
- ~~(a) Be in writing, by phone, online, or in another format approved by the department.~~
  - ~~(b) Include a copy of the employer or administrator appealable decision and any documents related to the dispute, including documents supporting or referencing the employer's or administrator's decision.~~



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~~(c) Be received within 20-60 calendar days of the issuance of the appealable decision, or as soon as practicable if there is good cause as described under section (7) of this rule, for the delay beyond 20-60 calendar days.~~

~~(4) The department shall review the dispute resolution request and issue an advisory decision based on the equivalent plan benefit requirements within 20 calendar days of the receipt of the dispute resolution request.~~

~~(5) If the employer or administrator does not comply with the department's administrative dispute decision, the employee may still submit a wage claim with the Oregon Bureau of Labor and Industries under ORS chapter 652.~~

~~(6) The payment of any benefits not placed in issue by the request for the administrative hearing shall continue during the appeal process.~~

~~(7) Good cause for late appeal or dispute resolution request includes, but is not limited to, the following:~~

~~(a) Difficulty obtaining verification;~~

~~(b) Factors or circumstances beyond the employee's, employer's, administrator, or department's reasonable control that prevented them from providing information;~~

~~(c) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents the employee or employer from timely providing information; or~~

~~(d) A demonstrable inability to reasonably access a means to respond in a timely manner, such as an inability to file a leave report due to a natural disaster or a significant and prolonged outage.~~

[Stat. Auth.: ORS 657B.420; Stats. Implemented: ORS 183.635, 657B.420]

~~471-070-2450—Equivalent Plans: Termination by the Department [Amended]~~

~~(1) The department may terminate an employer's equivalent plan due to reasons that include, but are not limited to:~~

~~(a) Misuse of employee contributions withheld or retained by the employer;~~

~~(b) Failure to adhere to the department approved equivalent plan or to report substantive equivalent plan changes to the department;~~

~~(c) Failure to adhere to applicable Paid Family and Medical Leave Insurance (PFMLI) program requirements, including but not limited to OAR 471-070-2220 and equivalent plan reporting requirements;~~

~~(d) Failure to file for reapproval as required in OAR 471-070-2210;~~

~~(e) Employer insolvency;~~

~~(f) Termination of the insurance policy by the plan administrator;~~

~~(g) Closure of a business; or~~

~~(gh) Failure to respond timely to the department's reasonable inquires for information about the equivalent plan.~~

~~(2) If the plan administrator plans to terminate an employer's insurance policy, the administrator must provide notice to the department at least 30 calendar days prior to the termination date. The termination date must~~

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~~be effective on the last day of a calendar quarter. The administrator's notice to the department should include:~~



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~~(a) The original effective date of the fully insured equivalent plan policy; and~~

~~(b) The effective date of the termination requested by the administrator.~~

~~(3) If the department seeks to terminate an equivalent plan, the department will send the employer and administrator, if applicable, a notice of termination to the employer's last known address, or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records. The notice must provide:~~

~~(a) The reason(s) for the termination;~~

~~(b) Instructions on how to resolve the reason(s) for termination; and~~

~~(c) The effective date of termination, which must be the last day of a calendar quarter, absent further specified action by or on behalf of the employer.~~

~~(4) An employer may appeal the notice of termination in accordance with ORS 657B.410 and applicable administrative rules within 20 calendar days of the notice of termination.~~

~~(5) The employer or administrator must notify all employees of any equivalent plan termination within ten business days of the date on the notice of termination sent by the department.~~

~~(6) All applicable equivalent plan requirements, including but not limited to those outlined within OAR 471-070-2220 and equivalent plan reporting requirements, remain in effect until the effective date of any termination.~~

~~(7) The employer or administrator must pay or continue to pay benefits under the terms of the equivalent plan to eligible employees that were approved for or receiving benefits under the equivalent plan on the effective date of termination 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.~~

~~(8) Within 30 calendar days after the effective date of the termination of an equivalent plan, the employer must send to the department all reporting requirement information on benefit claims paid and administrative expenses incurred from the date of the last report provided to the department under the equivalent plan reporting requirements to the date of termination.~~

~~*Example:* Donald Mouse Partnership's equivalent plan became effective April 1, 2023. On January 31, 2024, Donald Mouse Partnership provided the aggregate equivalent plan information from April 1, 2023 to December 31, 2023. The equivalent plan is terminated effective March 1, 2024. By April 1, 2024, Donald Mouse Partnership must send the aggregate equivalent plan information from January 1, 2024 to February 29, 2024.~~

~~(9) Upon the effective date of the termination of an equivalent plan, the employer must send to the department. Once the department receives the reporting requirements specified in section (8) of this rule, the department will provide an invoice of the contribution amounts due. 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 termination, minus an amount equal to the amount of any benefits due to be paid as required under section (7) of this rule and any anticipated administrative expenses. Once all required benefits are paid under section (7) of this rule, the employer must immediately send to the department any remaining contribution amounts due for deposit into the PFMLI Trust Fund.~~



March 24,

~~(a) The decision for the contributions due become final on the effective date of termination, unless the employer requests an appeal in accordance with section (4) of this rule.~~

~~(b) Interest upon the contribution amount due from the employer shall accrue from the date of termination invoice(s) until paid to the department, in accordance with ORS 657B.320(3).~~

~~(10) Upon the effective date of an equivalent plan termination, the employer must begin paying employee and employer contributions, if required, in accordance with ORS 657B.150 and other applicable statutes and rules.~~

~~(11) After the department terminates an equivalent plan, the employer may not reapply for an equivalent plan approval within three years following the date of termination.~~

~~{Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.210, 657B.220, 657B.240}~~

#### 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) 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~~

~~(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 that 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.~~

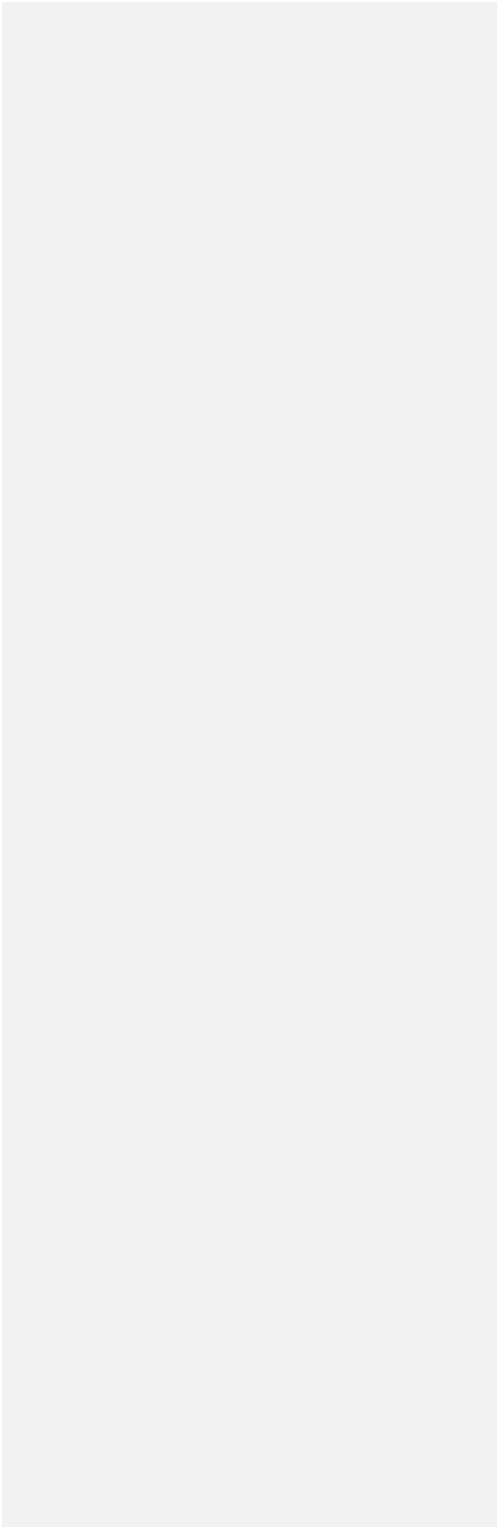
~~(6) Within 30 calendar days after the effective date of the withdrawal of an equivalent plan, the employer must send to the department all reporting requirement information on benefit claims paid and administrative expenses incurred from the last report provided to the department under the equivalent plan reporting requirements to 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~~

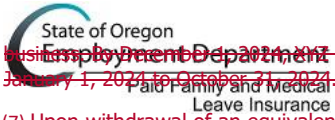


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~~requested a withdrawal from the equivalent plan with an effective date of November 1, 2024 as the partnership is no longer in~~







~~Business Partnership must send the aggregate equivalent plan information from January 1, 2024 to October 31, 2024.~~

~~(7) Upon withdrawal of an equivalent plan, the employer must immediately send to the department. Once the department receives the reporting requirements specified in section (6) of this rule, the department will provide an invoice of the contribution amounts due. 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 the all required benefits are paid under section (5) of this rule, the employer must immediately send to the department any remaining contribution amounts due for deposit into the PFMLI Trust Fund.~~

~~(a) The contributions due become final on the effective date of the withdrawal.~~

~~(b) Interest upon the amount due from the employer shall accrue from the date of the withdrawal invoice(s) until paid to the department, in accordance with ORS 657B.320(3).~~

~~(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.: ORS 657B.240, 657B.340; Stats. Implemented: ORS 657B.240]~~

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March 24,

AMEND: 471-070-2210

RULE SUMMARY: Amends the administrative rule to clarify the timeframe the equivalent plan employer has to respond to the department's request for further information. The timeframe is 14 calendar days for request sent by mail and 10 calendar days if request is sent by telephone, email, or other electronic means.

CHANGES TO RULE:

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;

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(c) Changing the fully funded 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; or

(d) Changing the questionnaire answers for the equivalent plan; or

March 24,

(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 errors; or

(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

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~~(b) 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.~~

~~Example: ABC Corporation submitted an equivalent plan application to the department on February 4, 2023. The department sent an approval letter for the equivalent plan that was dated March 5, 2023 and the equivalent plan becomes effective on April 1, 2023. The application for reapproval is due on March 1 of 2024, 2025, and 2026; 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 any time a substantive amendment occurs. When a substantive amendment occurs after the three-year period, a reapproval application must be submitted by an employer, as described in section (9) of this rule. For non-substantive amendments, a copy of the revised equivalent plan must be submitted to the department at the time the change becomes effective, as described in section (9) of this rule. For a non-substantive amendments, a copy of the revised equivalent plan must be submitted to the department at the time the change becomes effective.~~

~~(12) In addition to the information required in this rule, the department may request additional any information necessary to establish facts relating to eliqibility for an equivalent plan. Unless a timeframe is otherwise defined specified under statute or~~

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~~(12) 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.~~

~~(13) [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.: Statutory/Other Authority: ORS 657B.220-102-10, 657B.340; Stats. Statutes/Other Implemented: ORS 657B.210, 657B.220, 657B.230]~~

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March 24,

AMEND: 471-070-2220

RULE SUMMARY: Amends the administrative rule to increase the timeframe an employee can appeal an equivalent plan employer denial from 20 calendar days to 60 calendar days. This will align with the appeal timeframe in OAR 471-070-8005.

CHANGES TO RULE:

471-070-2220

Equivalent Plans; Plan Requirements [Amended]

In order for an equivalent plan to be approved by the department, the plan must at a minimum:

- (1) Cover all Oregon employees who have been continuously employed with the employer for at least 30 calendar days, regardless of hours worked, including full-time, part-time, temporary workers hired by the employer, and replacement employees hired to temporarily replace eligible employees during PFMLI leave. Any employees who were eligible for benefits under their previous Oregon employer's equivalent plan, who begin working for a new employer with an approved equivalent plan must be automatically covered for benefits under the equivalent plan offered by the new employer as described in ORS 657B.250;
- (2) Provide family leave as described in ORS 657B.010(17) and applicable administrative rules;
- (3) Provide medical leave as described in ORS 657B.010(19) and applicable administrative rules;
- (4) Provide safe leave as described in ORS 657B.010(21) and applicable administrative rules;
- (5) Allow eligible employees to take family leave, medical leave, or safe leave in a benefit year for periods of time equal to or longer than the duration of leave provided under ORS 657B.020;
- (6) Provide eligible employees weekly benefit amounts equal to or greater than benefits provided under ORS 657B.050;
- (7) Allow family leave, medical leave, or safe leave to be taken in increments or nonconsecutive periods as provided under ORS 657B.090;
- (8) Impose no additional conditions or restrictions on the use of family leave, medical leave, or safe leave beyond those explicitly authorized by ORS chapter 657B and applicable administrative rules;
- (9) Provide that the employee contributions withheld by an equivalent plan shall not be greater than the employee contributions that would be charged to employees under ORS 657B.150 and determined annually under OAR 471-070-3010;
- (10) Ensure employee contributions that are received or retained under an equivalent plan are used solely for equivalent plan expenses, are not considered part of an employer's assets for any purpose, and are held separately from all other employer funds;

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- (1) ~~Meet the equivalent plan requirements provided in ORS 657B.210 and applicable administrative rules; 1~~
  - (12) ~~Provide for decisions on benefit claims, to be in writing, either in hard copy or electronically if the employee has opted for electronic notification. Decisions on benefit claim approvals must include the amount of leave 24 approved, the weekly benefit amount, and a statement indicating how the employee may contact the department to request the eligible employee's average weekly wage amount if the employee believes the benefit amount may be incorrect. Denial decisions must include the reason(s) for denial of benefits along with an explanation of an employee's right to appeal the decision and instructions on how to submit an appeal. 1~~
  - (13) ~~Provide an appeal process to review benefit decisions when requested by an employee that also requires the employer or administrator to issue a written decision. The employee must have at least 20-60260 calendar days from the date of the written denial to request an appeal with the employer or administrator, if applicable, or as soon as practicable if there is good cause for the delay beyond the 20-60260 calendar days as described in OAR 471-070-2400(7). The employee, and the employer, or administrator have 20 calendar days from the date the appeal is received, or as soon as practicable if there is good cause as described in OAR 471-070-2400(7), to resolve the appeal and for the employer or administrator to issue a written appeal determination letter along with an explanation of the department's dispute resolution process as described in OAR 471-070-2400 if an appeal is denied; 1~~
  - (14) ~~Provide that the equivalent plan employer or administrator must make all reasonable efforts to make a decision on whether to allow the claim and issue the first payment of any benefits to an employee within two weeks after receiving the claim or the start of leave, whichever is later. Subsequent benefit payments must be provided weekly by the fully insured equivalent plan and benefit payments may be paid according to the existing paycheck schedule for employees under an employer administered equivalent plan; and 1~~
  - (15) ~~Ensure a written notice poster for the equivalent plan as described in OAR 471-070-2330, will be given to all eligible employees, at the time of hire and each time the policy or procedure changes, in the language that the employer typically uses to communicate with the employee.~~
- ~~[Stat. Auth.: Statutory/Other Authority: ORS 657B.340; Stats.~~

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Paid Family and Medical  
Leave Insurance

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RULE SUMMARY: Amends the administrative rule to clarify per work week.

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**CHANGES TO RULE:**

**471-070-2270**

**Equivalent Plans: Proration of Benefit Amounts for Simultaneous Coverage**

(1) An employee is considered to have simultaneous coverage when the employee is covered by more than one employer's equivalent plan at the same time or is covered by the state plan established under ORS 657B.340 and at least one employer with an equivalent plan, at the same time. An employee does not have simultaneous coverage if they work for multiple employers covered by the state plan.¶

(2) An employee with simultaneous coverage at the start of a leave event shall apply separately under all plans they are covered under and from which they are taking leave by following the respective application guidelines for each plan. An equivalent plan employer may ask an employee whether the employee has additional Paid Family and Medical Leave Insurance (PFMLI) coverage but may not require that the employee provide details on the other employers or the plans. The employer, employee, or administrator may request information from the department as described in OAR 471-070-2260.¶

(3) Each equivalent plan is required to pay benefit amounts that are equal to or greater than the benefits offered under the state plan as described in OAR 471-070-2260 and ORS 657B.050 and applicable administrative rules. Upon request, the department may provide information to equivalent plan employers or administrators regarding prorated benefit amounts, if the department is aware of simultaneous coverage. Each respective plan benefit amount shall be prorated by the average number of work days typically worked per work week by the claimant for each respective plan rounded to the nearest whole cent.¶

(a) The state plan shall pay benefits based on the prorated weekly benefit amount and shall further prorate the weekly benefit amount as described in OAR 471-070-1440 for leave taken in work day increments.¶

(b) The equivalent plan shall pay benefits equal to or greater than the prorated weekly benefit amount and may further prorate the weekly benefit amount when leave is taken in work day increments based on the number of work days of leave taken in the work week.¶

Example 1: Alondra is employed by two employers. One employer is a state plan employer and the other is an equivalent plan employer. Alondra typically works five days per work week for the state plan employer and three days per work week for the equivalent plan employer. Alondra is unable to work for both employers due to the need to provide care for a seriously ill parent for the next five weeks. Alondra must apply for benefits separately for the state plan and the equivalent plan. Alondra's weekly benefit amount is \$1,040. Alondra will receive two separate benefit payments each week. The state plan will pay the prorated weekly benefit in the amount of \$650 [(\$1,040 weekly benefit amount divided by 8 total days worked at both jobs) x 5 days worked for the state plan employer]. The equivalent plan employer will pay at least the prorated weekly benefit in the amount of \$390 [(\$1,040 weekly benefit amount divided by 8 total days worked at both jobs) x 3 days worked for the equivalent plan employer].¶

Example 2: Same typical work schedule and weekly benefit amount as in example 1; however, Alondra is unable to work for the state plan employer one day per work week and is unable to work for the equivalent plan employer one day per work week (for a total of two days of leave each week) to provide care for a seriously ill parent for the next five weeks. Alondra must apply for benefits separately for the state plan and the equivalent plan. Alondra's weekly benefit amount is still the same at \$1,040 (the state plan prorated weekly benefit amount is \$650 and the equivalent plan prorated weekly benefit amount is at least \$390). Because the leave is taken in work day increments and not an entire work week, once the prorated weekly benefit amount is determined, the state plan will further prorate the state's weekly benefit amount by the number of work days on leave. The state plan will pay weekly benefits in the amount of \$130 [(\$650 state plan portion of the weekly benefit amount divided by 5 work days) x 1 day on leave in the work week]. The equivalent plan employer may choose to further prorate the weekly benefit amount by the number of work days on leave [(\$390 equivalent plan portion of the weekly benefit amount divided by 3 work days) x 1 day on leave in the work week] for a minimum weekly benefit amount of \$130.¶

(4) The department shall calculate prorated benefit amounts when:¶

(a) The department receives an application for an employee that provides current employment information from a state plan employer(s) and one or more equivalent plan employer(s). The department shall verify coverage under the equivalent plan as described in OAR 471-070-2230 to determine a prorated benefit amount for benefits offered under the state plan.¶

(b) The department receives a request from an equivalent plan employer or administrator for an employee's benefit information in accordance with OAR 471-070-2260. The department shall verify whether the employee has coverage under more than one equivalent plan and, if covered, include the prorated benefit amounts to the

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**Commented [LF1]:** Private plans can be substantially more liable than what would be payable under the state plan. It assigns liability regardless of the wages earned per employer. We think this scenario occurs when the pay with one employer is substantially higher with the other employer.

Also, why must we round, and if we do, and the amount is in the middle, do we round up or down?

**Commented [LF2]:** In example 1 it appears that the work day rate is equal for both employers regardless of what Alondra earned with either employer. This could result in a substantially higher benefit than Alondra earned with her second employer (3 days) because it does not account for the different wages earned.

**Commented [LF3]: Proration of benefits when there is simultaneous employment: The method of proration expressed in examples 1 and 2 appear to create a potential windfall for an employee that has a second higher paying job.** For example, assume two employees are working 20 hours per week at a grocery store (Employer X). Each employee earns \$400 per week, and they each work 4 days each week. Employee A also has a second job as preschool teacher with Employer Y and earns \$640 per week and works 5 days per week. Employee B does not have a second job. Under the methodology shown in the example, Employee A would have a prorated work day benefit of \$115.55 (\$400 with Employer X + \$640 with Employer Y = \$1040/9 work days). Conversely Employee B would have a work day benefit of \$100 (\$400/4 work days). Therefore Employee A would receive a weekly PFML benefit through employment with Employer X of \$462.22, and Employee B (who is in the same position, has the same schedule and makes the same amount of money) would receive a weekly benefit of \$400. *Note: In this example, we are assuming 100% wage replacement due to less than 65% of the SAWWW with each employer.*



~~employer. The department will provide prorated benefit amounts to any other equivalent plan employer or administrator that covers the employee also.¶~~ ~~March 24,~~  
 (5) ~~Should the department receive information about changes in simultaneous coverage after information is provided to an equivalent plan employer or administrator in accordance with OAR 471-070-2260 and under this rule, the department shall calculate or re-calculate the proration, as applicable, and notify all employers, administrators, or employees of the change. Any overpayments made by the Oregon PFMLI program shall be recovered in accordance with OAR 471-070-1510.~~  
~~Statutory/Other Authority: ORS 657B.340, ORS 657B.210~~  
~~Statutes/Other Implemented: ORS 657B.210~~

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~~March 24,~~

~~AMEND: 471-070-2400~~

~~RULE SUMMARY: Amends the administrative rule to increase the appeal timeframe to appeal the employer and employee dispute to the department from 20 calendar days to 60 calendar days. This will align with the appeal timeframe in OAR 471-070-8005.~~

~~CHANGES TO RULE:~~

~~471-070-2400~~

~~Equivalent Plans; Disputes between an Equivalent Plan Employer and Employee, Request for Hearing [Amended]~~

~~(1) As required by ORS 657B.420, the department will provide a dispute resolution process to assist in resolving disputes between employers or equivalent plan administrators, as applicable, and employees regarding coverage and benefits provided under an employer's approved equivalent plan if the appeal with the employer or administrator is not otherwise resolved.~~

~~(2) Prior to the department providing a dispute resolution process, the employee and employer or administrative administrator must follow the equivalent plan appeal process described in OAR 471-070-2220(13).~~

~~(3) In the event that the employee and employer or administrator are unable to resolve an appeal on a coverage or benefit decision through the equivalent plan's appeal process, the employee may request a dispute resolution assistance through the department. The dispute resolution request must:~~

~~(a) Be in writing, by phone, online, or in another format approved by the department;~~

~~(b) Include a copy of the employer or administrator's appealable decision and any documents related to the dispute, including documents supporting or referencing the employer's or administrator's decision.~~

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(3) ~~BE resolved within 20 calendar days of the issuance of the appealable appeal decision, or as soon as practicable if there is good cause as described under section (7) of this rule, for the delay beyond 20-60260 calendar days.~~ Leave Insurance ~~March 24,~~

(4) ~~The department shall review the dispute resolution request and issue an advisory decision based on the equivalent plan benefit requirements within 20 calendar days of the receipt of the dispute resolution request.~~

(5) ~~If the employer or administrator does not comply with the department's department's administrative dispute decision, the employee may still submit a wage claim with the Oregon Bureau of Labor and Industries under ORS chapter 652.~~

(6) ~~The payment of any benefits not placed in issue by the request for the administrative hearing shall continue during the appeal process.~~

(7) ~~Good cause for late appeal or dispute resolution request includes, but is not limited to, the following:~~

(a) ~~Difficulty obtaining verification;~~

(b) ~~Factors or circumstances beyond the employee's, employer's, administrator's, or department's department's reasonable control that prevented them from providing information;~~

(c) ~~A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents the employee or employer from timely providing information; or~~

(d) ~~A demonstrable inability to reasonably access a means to respond in a timely manner, such as an inability to file a leave report due to a natural disaster or a significant and prolonged outage.~~

~~{Stat. Auth.: Statutory/Other Authority: ORS 657B.420; Stats.~~

~~Statutes/Other Implemented: ORS 183.635, 657B.420, ORS 183.635~~

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March 24,

AMEND: 471-070-2450

RULE SUMMARY: Amends the administrative rule to expand the reason the department may terminate an equivalent plan if a business closure occurs. Specifies the appeal timeframe for the employer to appeal the notice of termination is 20 calendar days. Clarifies when contributions collected from employees that are still in the employer's trust must be paid to the department and become final once the plan is terminated and the employer receives an invoice from the department for contributions due.

CHANGES TO RULE:

471-070-2450

Equivalent Plans; Termination by the Department [Amended]

(1) The department may terminate an employer's equivalent plan due to reasons that include, but are not limited to:

- (a) Misuse of employee contributions withheld or retained by the employer;
- (b) Failure to adhere to the department approved equivalent plan or to report substantive equivalent plan changes to the department;
- (c) Failure to adhere to applicable Paid Family and Medical Leave Insurance (PFMLI) program requirements, including but not limited to OAR 471-070-2220 and equivalent plan reporting requirements;
- (d) Failure to file for reapproval as required in OAR 471-070-2210;
- (e) Employer insolvency;
- (f) Termination of the insurance policy by the plan administrator;
- (g) Closure of a business; or
- (gh) Failure to respond timely to the department's reasonable inquires for information about the equivalent plan.

(2) If the plan administrator plans to terminate an employer's insurance policy, the administrator must provide notice to the department at least 30 calendar days prior to the termination date. The termination date must be effective on the last day of a calendar quarter. The administrator's notice to the department should include:

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~~March 24,~~

~~31, 2023. The equivalent plan is terminated effective March 1, 2024. By April 1, 2024, Donald Mouse Partnership must send the aggregate equivalent plan information from January 1, 2024 to February 29, 2024. ¶  
(9) ~~Upon~~~~Once~~ the effective date of the termination of an equivalent plan, the employer must send to the department. Once the department department department receives the reporting requirements report, specified in section (8) 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 employee's wages that remain in the possession of the employer upon the effective date of the equivalent plan termination, minus an amount equal to the amount of any benefits due to be paid as required under section (7) of this rule and any anticipated administrative expenses. Once all required benefits are paid under section (7) of this rule, the employer must immediately send to the department any remaining contribution amounts due for deposit into the PFMLI Trust Fund. for the final report on any additional benefit claims paid or administrative expenses incurred after the date of the last report provided under section (8) of this rule. Once the department receives the report, the department will provide an invoice of any additional contribution amounts due. Any remaining contribution amounts due are deposited into the PFMLI Trust Fund. ¶~~

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~~The decision for the Any contributions due become final due and payable to the department on the effective date of termination, unless the employer timely requests an appeal in accordance with section (4) of this rule.~~  
 Paid Family and Medical Leave Insurance March 24,  
 (b) Interest upon the contribution amount due from the employer shall accrue from the date of termination invoice(s) until paid to the department, in accordance with ORS 657B.320(3).  
 (10) Upon the effective date of an equivalent plan termination, the employer must begin paying employee and employer contributions, if required, in accordance with ORS 657B.150 and other applicable statutes and rules.  
 (11) After the department terminates an equivalent plan, the employer may not reapply for an equivalent plan approval within three years following the date of termination.  
~~Stat. Auth.: Statutory/Other Authority: ORS 657B.340; Stats. Statutes/Other Implemented: ORS 657B.210, 657B.220, 657B.240~~

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~~AMENDED~~ ~~471-070-2455~~ ~~March 24,~~  
Paid Family and Medical Leave Insurance  
RULE SUMMARY: Amends the administrative rule to remove the authority to allow the successor in interest to terminate an equivalent plan anytime there is a substantial reduction of personnel as it goes beyond the statute.

CHANGES TO RULE:

471-070-2455

Equivalent Plans: Termination and Withdrawal by Successor in Interest

~~(1) A successor in interest may request to terminate an equivalent plan that was in effect on the date of acquisition within 90 days after becoming a successor in interest or whenever there is a substantial reduction of personnel, as defined in OAR 471-070-2200, resulting from the acquisition in accordance with ORS 657B.260. The request to terminate may be submitted online, by phone, or in another method prescribed by the department. The successor in interest must provide written documentation of the acquisition, and any other relevant information regarding the acquisition required by the department.¶~~

~~(2) A successor in interest may request to withdraw from the equivalent plan in accordance with OAR 471-070-2460—¶~~

~~(3) If a request to terminate or withdraw is approved, the department will notify the successor in interest of the effective date of the termination or withdrawal. A successor in interest whose request to terminate is approved is subject to sections (5) through (10) of OAR 471-070-2450. A successor in interest whose request for withdrawal is approved is subject to sections (3) through (8) of OAR 471-070-2460.¶~~

~~(4) If a request to terminate or withdraw is denied, the department will notify the successor in interest of the reason for the denial. The successor in interest may appeal the decision to deny a request to terminate or withdraw an equivalent plan, in accordance with ORS 657B.410 and applicable administrative rules.~~

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.260

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March 24,

AMEND: 471-070-2460

RULE SUMMARY: Amends the administrative rule to clarify when contributions collected from employees that are still in the employer's trust must be paid to the department and become final once the plan is withdrawn and the employer receives an invoice from the department for contributions due.

CHANGES TO RULE:

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) 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

(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 that 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 and administrative expenses incurred from 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 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

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 Business by December 31, 2024. Partnership must send the aggregate equivalent plan information from January 1, 2024 to October 31, 2024. ¶  
 (7) Upon withdrawal of an equivalent plan, the employer must immediately send to the department ~~Once the 24~~ department receives the reporting requirements 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~~ 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 the all health~~ required benefits are paid under section (5) of this rule, the employer must immediately send to the department any remaining contribution amounts due for deposit into the PFMLI Trust Fund for 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 of any additional contribution amounts due. Any remaining contribution amounts due are deposited into the PFMLI Trust Fund. ¶  
 (a) ~~The~~ Any contributions due become final due and payable on the effective date of the withdrawal. ¶  
 (b) Interest upon the amount due from the employer shall accrue from the date of the withdrawal ~~invoice withdrawal invoice(s)~~ until paid to the department, in accordance with ORS 657B.320(3)-. ¶  
 (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.  
 (8) ¶ [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.]

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Employment Department  
~~Statutory/Other Authority: ORS 657B.240, 657B.340, Stats., ORS  
657B.240 Statutes/Other Implemented: ORS 657B.240~~

~~March 24,~~

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Paid Leave Oregon  
Batch 7  
EXHIBIT 04

Public Hearing Date	Commenter Name	Rule Number	Comment Summary
Public Hearing #1 6/22/2023	Breanna Scott, New York Life	471-070-1000 - Benefits: Definitions	(15) Opposed - Definition of offset, suggest removing equal to amount owed to department language
		471-070-1010 Benefits: Eligibility and Qualification for Benefits	Opposed - scheduled employment, substitutes may not have "scheduled" employment.
Public Hearing #1 6/22/2023	Brie Caffey, Public Member	471-070-1120 - Benefits: Verification of a Serious Health Condition	Opposed - Expand not limited to diagnosis to determine benefits
		471-070-1465 - Benefits: Payment Due to a Deceased Individual and Abandoned Payment	Question: Does the death have to be due to the SHC for which the claim was filed, or any death that occurs while a payment is determined approved?
Public Hearing #1 6/22/2023	Leslie, Public Member	471-070-1205 - Benefits: Weekly Claims	Question: Intermittent absence claims will be paid weekly, after that week is finished - correct? Will a continuous block of leave be paid out?
Public Hearing #1 6/22/2023	Shawnee Halligan, Lake Oswego School District	471-070-1000 - Benefits: Definitions	(14) Opposed - Intermittent family leave for bonding - request a carve out for schools. Please match FMLA's language for teachers - Leave to care for or bond with a newborn child or for a newly placed adopted or foster child may only be taken intermittently with the employer's approval and must conclude within 12 months after the birth or placement.
Public Hearing #2 6/26/2023	Hannah Nylin, Public Member	471-070-1445 - Benefits: Self-Employed Benefit Calculation	Question: For self-employed workers who have been paying contributions for less than a year, how is the reduced benefit amount calculated? Thank you.
		471-070-2010 - Self-employed: Election Requirements and Effective Date	Question: For the self-employed situation - can I retroactively pay into the fund based on 2023 income once I've filed my 2023 taxes (plus a late-payment penalty)? Or can something like this be considered? If I switch back to W2 now, I will have 2 quarters of self-employed pay that won't be used to calculate benefits.
Public Hearing #2 6/26/2023	Rebecca Vales, Public Member	471-070-1120 - Benefits: Verification of a Serious Health Condition	Question: Rule 471-070-1120 - the addition of the diagnosis as information requested on the health certification, does this align with HIPPA regulations?
Public Hearing #3 6/28/2023	Derek Sangston, Oregon Business Industry	471-070-1015 - Benefits: Leave from Work	Support: the new rule 1015, which better clarifies than the original draft that employees do not qualify for benefits if they would not be performing their work for some reason other than a qualifying purpose. OBI appreciates the added clarity and finds the additional example about Joelle helpful.

**Paid Leave Oregon**  
**Proposed Oregon Administrative Rules - Batch 7**

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May 30, 2023

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## BENEFITS & ASSISTANCE GRANTS

*ORS 657B.010 through ORS 657B.120 establishes benefit claim administration for Paid Leave Oregon. The below rules provide further details on aspects of benefits, such as weekly claims, child support offsets, benefits to a deceased individual, and self-employed benefits.*

*ORS 657B.200 establishes assistance grants for employers with fewer than 25 employees for when an employee takes Paid Leave. The assistance grant rule expands the application to include federal employer identification number. All administrative rules may be expanded, reorganized, or deleted before formal rulemaking.*

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

(1) “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.

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

- (a) Set for each fiscal year beginning July 1 and ending June 30 of the following year;
- (b) Applied for the calculation of weekly benefit amounts starting the first full week following July 1;
- (c) Applied for the entire benefit year after a new benefit year is established, even if the average weekly wage amount changes when the new fiscal year begins.

(3) “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.

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

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

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

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

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

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

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

(9) "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.

(10) "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.

(11) "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.

(12) "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.

(13) "Health care provider" means:

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

- (A) A chiropractic physician, but only to the extent the chiropractic physician provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays;
- (B) A dentist;
- (C) A direct entry midwife;
- (D) A naturopath;
- (E) A nurse practitioner;
- (F) A nurse practitioner specializing in nurse-midwifery;
- (G) An optometrist;
- (H) A physician;
- (I) A physician's assistant;
- (J) A psychologist;
- (K) A registered nurse; or

(L) A regulated social worker.

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

(14) "Intermittent" leave means leave taken periodically in separate blocks of time or when leave is taken for two or more leaves 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.

(15) "Offset" means the withholding of an amount ~~equal to an amount owed to the department,~~ from a benefit payment which would otherwise be payable to a claimant.

(16) "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.

(17) "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.

(18) "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.

(19) "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.

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

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

(22) "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.

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

(a) A claimant or employer omit 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.

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

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

[Stat. Auth.: ORS 657B.090, 657B.120, 657B.340; Stats. Implemented: ORS 657B.010, 657B.090, 657B.120]

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

(1) For an individual to be eligible to receive Paid Family and Medical Leave Insurance (PFMLI) 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 PFMLI 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 schedule 570 Oregon employment or self-employment from which they 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 under ORS chapter 656, or Unemployment Insurance benefits under ORS chapter 657; or

(B) A director determination under ORS 657B.120 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, regardless if a new benefit year starts during the first year following birth or initial placement.

*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 5, 2023. After returning from this leave, Juan has five weeks of leave remaining in the balance of their benefit year. In March 2024, 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 2, 2024 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 17, 2023. Julie takes two weeks of leave to recover from the serious health condition and then returns to work. In June 2024, 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 14, 2024 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.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.015, 657B.020]

#### 471-070-1015 – Benefits: Leave from Work

(1) For an individual to be considered as taking leave from work, the individual must:

- (a) Be otherwise scheduled to work a work day or week; and
- (b) Be unable to perform their employment duties due to a qualifying purpose under ORS 657B.020.

(2) An individual may not be considered as taking leave from work if they would not be performing their employment duties for reasons other than PFMLI qualifying purposes described in ORS 657B.020, including but not limited to, circumstances related to:

- (a) An employer's business operations, such as:
  - (A) A lapse in seasonal operations;
  - (B) School break periods; or
  - (C) Other suspensions or cessations of an employer's business operations.

(b) A period of incarceration, in which an individual is unable to perform their employment duties as a result of being an adult in custody.

*Example 1:* Rory is a seasonal employee for a vegetable farm in the Willamette Valley. Rory does not work at the farm in December and January but is still considered an employee of the vegetable farm and does not have other paid employment during this time. Rory does not qualify for PFMLI benefits in December and January because Rory is not

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taking leave from work, as Rory is not scheduled to work and does not perform employment duties at the vegetable farm during these months.

*Example 2:* Selena is an instructor at Oregon State University with a 9-month contract that begins in September and ends in June. Selena also teaches summer courses at the University of Oregon between June and September. Selena qualifies for PFMLI benefits for a qualifying purpose during the summer break at Oregon State University because Selena is taking leave from work, as Selena is scheduled to work and perform employment duties at the University of Oregon between June and September.

*Example 3:* Fiona works at a restaurant as a server and is scheduled to work a five-day work week Monday through Friday. On Monday and Tuesday Fiona is serving an adult in custody sentence. On Thursday and Friday of the same week, Fiona needs to take care of their father who has a serious health condition. Fiona qualifies for PFMLI benefits on Thursday and Friday because Fiona is taking leave from work on these days as Fiona is scheduled to work to work and is unable to perform employment duties on these days due to a PFMLI qualifying purpose. Fiona does not qualify for PFMLI benefits on Monday and Tuesday, even if they have a PFMLI qualifying purpose, because Fiona is unable to perform duties for their employer for reasons other than a PFMLI qualifying purpose.

*Example 4:* Jack works as a store manager for a clothing store and was approved for four weeks of PFMLI benefits to bond with a child after birth. After two weeks of bonding leave, Jack starts a six-month period of incarceration. Jack does not qualify for PFMLI benefits during the remaining two weeks of leave, because during the time Jack is an adult in custody, they are unable to perform their employment duties for reasons other than a PFMLI qualifying purpose. Once Jack completes the period of incarceration and resumes paid employment, Jack may again be eligible for PFMLI benefits for a qualifying purpose.

*Example 5:* Joelle is a high school teacher with a nine-month contract that begins in September and ends in June. Joelle is not expected to teach during the school break periods and does not have other paid employment during that time. Joelle does not qualify for PFMLI benefits during school break periods, because Joelle is not taking leave from work, as they are not scheduled to work during those times and would not perform their employment duties during break times.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010, 657B.015]

#### 471-070-1100 – Benefits: Application for Benefits [Amended]

(1) To request Paid Family and Medical Leave Insurance (PFMLI) benefits provided under the state plan established in ORS 657B.340, a claimant must submit an application for benefits. An application must be submitted online or by another method approved by the department. For the application to be approved by the department, the application must be complete and must include, but is not limited to, the following:

- (a) Claimant information, including:
  - (A) First and last name;
  - (B) Date of birth;
  - (C) Social Security Number or Individual Taxpayer Identification Number; and
  - (D) Contact information, including mailing address and telephone number.
- (b) Documentation sufficient to establish the claimant's identity;

- (c) Information about the claimant's current employment or self-employment for which they are requesting leave from work:
- (A) Business name(s) and dates of employment or self-employment;
  - (B) Business address and contact information for all employers or self-employed businesses;
  - (C) Average number of work days worked per work week; and
  - (D) Any current breaks from work or anticipated future breaks from work that are unrelated to PFMLI leave.
- (d) Information about the notice given to any employers under ORS 657B.040 and OAR 471-070-1310, if applicable, and the date(s) any notice was given;
- (e) Information about the claimant's leave schedule, including:
- (A) Employer(s) from which leave is being taken;
  - (B) Anticipated leave dates; and
  - (C) Whether the leave is to be taken in consecutive or intermittent periods.
- (f) The type of leave taken by the claimant, which must be one of the following:
- (A) Family leave;
  - (B) Medical leave; or
  - (C) Safe leave.
- (g) Verification of the reason for the leave, including:
- (A) For family leave to care for or bond with a child, verification consistent with OAR 471-070-1110;
  - (B) For family leave to care for a family member with a serious health condition, verification consistent with OAR 471-070-1120 and an attestation that the claimant has a relationship equal to "family member" under ORS 657B.010 and is caring for a family member with a serious health condition;
  - (C) For medical leave, verification consistent with OAR 471-070-1120; or
  - (D) For safe leave, verification consistent with OAR 471-070-1130.
- (h) If the claimant is requesting up to two additional weeks of leave for limitations related to pregnancy, childbirth or a related medical condition, documentation that the claimant is currently pregnant or was pregnant within the year prior to the start of the additional two weeks of leave;
- (i) Information about the claimant's eligibility to receive Workers' Compensation under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657; and
- (j) A written or electronically signed statement declaring under oath that the information provided in support of the application for PFMLI benefits is true and correct to the best of the individual's knowledge.



- (2) An employee who has PFMLI coverage solely through an employer with an equivalent plan approved under ORS 657B.210 must apply for PFMLI benefits by following the employer's equivalent plan application guidelines.
- (3) An employee who is simultaneously covered by more than one employer's equivalent plan approved under ORS 657B.210, or that is simultaneously covered by the state plan and at least one employer with an equivalent plan, must apply separately under all plans they are covered under and from which they are taking leave by following the respective application guidelines for each plan.
- (4) A complete application for PFMLI may be submitted to the department up to 30 calendar days prior to the start of family, medical, or safe leave and up to 30 calendar days after the start of leave. Applications submitted outside of this timeframe, either early or late, will be denied, except in cases where a claimant can demonstrate an application was submitted late for reasons that constitute good cause under section (5) of this rule.
- (5) Good cause exists when a claimant establishes by satisfactory evidence submitted to the department that factors or circumstances beyond the claimant's control prevented the claimant from submitting a completed application within the required timeframe under section (4) of this rule. Good cause for the late submission of an application is determined at the discretion of the department and includes, but is not limited to, the following:
- (a) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents an individual from timely filing an application; or
  - (b) A demonstrated inability to reasonably access a means to file an application in a timely manner, such as an inability to file an application due to a natural disaster or a significant and prolonged department system outage.
- (6) If the department determines the claimant demonstrated good cause for late submission of an application, the department may accept the application up to one year after the 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.090, 657B.100, 657B.340; Stats. Implemented: ORS 657B.090, 657B.100]

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

A claimant applying for Paid Family and Medical Leave Insurance (PFMLI) benefits for their own serious health condition or to care for a family member with a serious health condition must submit verification of the serious health condition from a health care provider that includes:

- (1) The health care provider's first and last name, type of medical practice/specialization, and their contact information, including mailing address and telephone number;
- (2) The patient's first and last name;
- (3) The claimant's first and last name, when different from the patient identified in section (2) of this rule;
- (4) The approximate date on which the serious health condition commenced or when the serious health condition created the need for leave;
- (5) A reasonable estimate of the duration of the condition or recovery period for the patient;
- (6) A reasonable estimate of the frequency and duration of intermittent leave and estimated treatment schedule, if applicable; and

(7) Other information as requested by the department to determine eligibility for the PFMLI 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
- (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.

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

#### 471-070-1200 – Benefits: Claim Processing; Additional Information [Amended]

In addition to the information required from a claimant under OAR 471-070-1100 and OAR 471-070-1205, the department may request that a claimant provide additional information necessary to establish facts relating to eligibility or qualification for benefits. Unless a time frame is otherwise defined under statute or rule or is specified by an authorized department representative, the claimant must respond to all requests for information within the following time frames:

- (1) 14 calendar days from the date of the request for information, if the request was sent by mail to the claimant's last known address as shown in the department's records.
- (2) 10 calendar days from the date of the request for information, if the request was sent by telephone message, email, or other electronic means.
- (3) 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.
- (4) The time frames specified in sections (1) and (2) of this rule may be extended at the department's discretion when a claimant can demonstrate they failed to provide a timely response for good cause. Good cause exists when the claimant responds to the department as soon as practicable and establishes by satisfactory evidence that circumstances beyond the claimant's control prevented the claimant from providing a timely response, including, but not limited to, an incapacitating serious health condition or a situation related to safe leave.

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

#### 471-070-1205 – Benefits: Weekly Claims

- (1) A claimant taking Paid Family and Medical Leave Insurance (PFMLI) benefits on an intermittent leave schedule or for more than one qualifying purpose as described in OAR 471-070-1430, must file a weekly claim in order to receive PFMLI benefits for that week.
- (2) For a weekly claim to be approved, the weekly claim must be complete and include, but is not limited to, the following information:
  - (a) The dates of the work week being claimed;
  - (b) The number of work days of leave taken for each leave type specified under 657B.020;
  - (c) The number of days worked during the work week;
  - (d) Claimant's eligibility to receive Workers' Compensation under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657 for the work week;

(e) Any changes to current employment, including any new employment or employment that has ended since the benefit application or last weekly claim; and

(f) A written or electronically signed statement declaring under oath that the information provided in support of the weekly claim is true and correct to the best of the claimant's knowledge.

(3) The weekly claim must be submitted only after that work week has ended and no later than 30 calendar days following the end of the work week in which the family, medical, or safe leave was taken. Weekly claims submitted after 30 calendar days will be denied, except in cases where a claimant can demonstrate a weekly claim was submitted late for reasons that constitute good cause under section (5) of this rule.

(4) For claimants taking intermittent leave, the number of days of leave eligible in a work week may not exceed the average number of work days worked per week, as provided under ORS 471-070-1100(1)(c)(C) or OAR 471-070-1210(2), minus the number of days actually worked during the work week.

*Example:* Eddie submits an application for benefits that states their average work week consists of four work days. The weekly benefit amount is \$875.00. Eddie submits their first weekly claim and reports three days worked and three days of leave, for a total combination of six days of work and leave reported. Eddie will only be paid for one of the three days of leave reported on the weekly claim report as Eddie worked three days out of a four day work week. The benefit amount paid for the first week of leave to Eddie is \$218.75 [(\$875.00 weekly benefit amount divided by 4 work days) x 1 day of payable leave].

(5) Good cause exists when a claimant establishes by satisfactory evidence submitted to the department that factors or circumstances beyond the claimant's control prevented the claimant from submitting a weekly claim within the required timeframe under section (3) of this rule. Good cause for the late submission of a weekly claim is determined at the discretion of the department and includes, but is not limited to, the following:

(a) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents a claimant from timely filing a weekly claim; or

(b) A demonstrated inability to reasonably access a means to file a weekly claim in a timely manner, such as an inability to file a weekly claim due to a natural disaster or a significant and prolonged department system outage.

(6) If the department determines the claimant demonstrated good cause for late submission of a weekly claim, the department may accept the weekly claim up to one year after the leave was taken.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.020, 657B.090]

#### [471-070-1210 – Benefits: Updates to a Claim for Leave \[Amended\]](#)

(1) After submitting an application for benefits as specified in OAR 471-070-1100, a claimant must notify the department within 10 calendar days of any changes to the information provided on their application and provide additional information as provided in OAR 471-070-1200, if applicable, including, but not limited to, changes to the claimant's:

(a) First and last name;

(b) Mailing address;

(c) Telephone number;

(d) Current employment or self-employment;

(e) Leave schedule;

(f) Type of leave taken; or

(g) Eligibility to receive Workers' Compensation under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657.

(2)

(a) A claimant may change their average number of work days worked per work week that they provided on the application for benefits only under the following circumstances in which the claimant:

(A) Added one or more new employer since applying for benefits;

(B) Left one or more employer since applying for benefits; or

(C) Applied for benefits for an additional qualifying purpose.

(b) Any approved change to the average number of work days worked per work week shall take effect beginning on the Sunday of the first week after the claimant experienced a change in employment or started an additional qualifying purpose for benefits.

(3) Failure to notify the department of any changes to the information provided on an application for benefits as specified in section (1) of this rule may result in a delay, denial, overpayment, or disqualification of weekly benefits.

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

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.090, 657B.100]

#### **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) 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 Family and Medical Leave Insurance 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 (78) 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 ~~the first weekly benefit amount would~~ 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

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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.120.

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

#### 471-070-1420 – Benefits: Leave Periods and Increments [Amended]

(1) A claimant may request family, medical, or safe leave provided under ORS chapter 657B in either consecutive or intermittent periods of leave.

(2) Leave may be taken and benefits may be claimed in increments that are equivalent to one work day or one work week, as defined in OAR 471-070-1000. When claiming an increment of less than a full work week, the number of work days that can be reported during a week is established by the average number of work days worked per week by the claimant.

(3) When benefits are claimed in an increment that is equivalent to one work day or one work week, leave must be taken from all employers and from all self-employed work for the entirety of that period to receive benefits.

*Example 1:* Kelsey is taking family leave and is currently an employee at a university and an architecture firm. Kelsey works for the university in the morning of their work day and the architecture firm in the evenings on the same work day. Kelsey must take leave from both places of employment for the work day in order to claim benefits for the work day. If Kelsey only missed work from the university due to the family leave for that one work day, it would not qualify for benefits.

*Example 2:* Chloe is taking medical leave and is currently an employee at a department store and a self-employed delivery driver. Chloe works four work days total per work week: Monday and Tuesday at the department store and Wednesday and Saturday as a self-employed delivery driver. Chloe must take leave for all four work days from both jobs

in order to claim a full work week of benefits. If Chloe only missed work on Monday and Saturday due to medical leave, Chloe would qualify for benefits for two work days instead of a work week.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.020, 657B.090]

#### 471-070-1430 – Benefits: Simultaneous Qualifying Purposes

(1) A claimant may take Paid Family and Medical Leave Insurance (PFMLI) for more than one qualifying purpose under ORS 657B.020 during the same week, provided the claimant submits a separate and complete application as described in 471-070-1100 for each qualifying purpose, is for a different qualifying reason, and is approved to take leave for each qualifying purpose.

(2) The multiple qualifying reasons taken within the same week can be for the same type of qualifying purpose; for example, a claimant may take family leave for two different family members, each with their own serious health condition.

(3) A claimant shall not receive a PFMLI benefit payment for more than one type of qualifying purpose taken on a single work day.

(4) For any week in which a claimant takes leave for more than one qualifying purpose, that claimant must file a weekly claim, as described in OAR 471-070-1205, to receive PFMLI benefits.

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

#### 471-070-1440 – Benefits: Weekly Benefit Proration [Amended]

(1) A claimant who takes leave in work day increments, as described in OAR 471-070-1000, shall be paid a prorated benefit amount based on the number of work days of leave taken in the work week.

(2) The benefit amount paid for a work day is calculated by dividing the claimant's weekly benefit amount by the average number of work days that the claimant worked per work week.

(3) The total benefit amount paid for leave taken in work day increments is calculated by multiplying the benefit amount paid for a work day, rounded to the nearest whole cent, by the number of work days of leave taken for the work week, not to exceed the weekly benefit amount.

*Example 1:* Allison submits an application for benefits that states their average work week consists of five work days. The weekly benefit amount is \$1,000.00. Allison states on the application that they will take leave for three of the five days that Allison worked in the work week for six weeks. The benefit amount paid to Allison for each week is \$600 [(\$1,000.00 weekly benefit amount divided by 5 work days) x 3 days on leave in the work week]. Assuming nothing changes, Allison will receive a total benefit amount of \$3,600 [(\$600 weekly benefit amount paid) x 6 weeks].

*Example 2:* Lamar submits an application for benefits that states their average work week consists of three work days and they will take leave for one of the three days in each of the four weeks. The weekly benefit amount is \$400.00. The benefit amount paid each week to Lamar is \$133.33 [(\$400.00 weekly benefit amount divided by 3 work days) x 1 day on leave in the work week]. Assuming nothing changes, Lamar will receive a total benefit amount of \$533.32 [(\$133.33 weekly benefit amount paid) x 4 weeks].

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

### 471-070-1445 – Benefits: Self-Employed Benefit Calculation

(1) For any self-employed individual who elects Paid Family and Medical Leave Insurance (PFMLI) coverage under OAR 471-070-2010 and pays contributions as provided in OAR 471-070-2030, the weekly benefit amount that an individual may qualify for is determined as follows:

(a) If the self-employed individual's average weekly income is equal to or less than 65 percent of the average weekly wage, the individual's weekly benefit amount shall be 100 percent of the self-employed individual's average weekly income.

(b) If the self-employed individual's average weekly income is greater than 65 percent of the average weekly wage, the individual's weekly benefit amount is the sum of:

(A) 65 percent of the average weekly wage; and

(B) 50 percent of the self-employed individual's average weekly income that is greater than 65 percent of the average weekly wage.

(2) Notwithstanding section (1) of this rule:

(a) The maximum weekly benefit amount is 120 percent of the average weekly wage.

(b) The minimum weekly benefit amount is five percent of the average weekly wage.

(3) If a self-employed individual is taking less than a full week of leave, the department will prorate the weekly benefit amount as specified in OAR 471-070-1440.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.050]

### 471-070-1450 – Benefits: Benefit Payment Methods

(1) Paid Family and Medical Leave Insurance (PFMLI) 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 PFMLI 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 293.525, 657B.340; Stats. Implemented: ORS 293.525, 657B.050]

### 471-070-1460 – Benefits: Lost, Stolen, Destroyed, or Forged Benefit Checks

(1) When a benefit check has been lost, stolen, destroyed, or forged and for purposes of this rule:

(a) A benefit check is "lost" if the claimant never received an issued check, and the check's whereabouts is unknown, or it was received but was not cashed and now cannot be found.

(b) A benefit check is "stolen" if the check was taken or cashed by another without the authorization of the payee, whether or not the other person's identity is known.



(c) A benefit check is “destroyed” if an issued check has not been cashed and has been rendered nonnegotiable.

(d) “Forgery” of a benefit check has the same meaning as provided in ORS 165.007 and further defined in 165.002.

(2) If a benefit check has been issued but not cashed and the claimant completes a written sworn statement that the benefit check was lost, stolen, or destroyed, the check will be reissued in accordance with ORS 293.475 if at least ten calendar days from the date the original check was issued has elapsed. If the original check and replacement check are both received and cashed by the claimant, the claimant shall be liable for repayment of the overpayment to the department.

(3) If the benefit check has been issued and cashed and it is alleged that the check was not signed by the claimant or the claimant's authorized agent, a determination will be made on the validity of the endorsement:

(a) If the endorsement is determined to be the claimants or the claimant’s authorized agent’s, the director will notify the claimant by letter and no replacement check will be issued;

(b) In the case of forgery or any unauthorized cashing of a benefit check, a replacement check will be issued if the claimant is due benefits, unless the claimant received any portion of the benefits, or otherwise benefited from the funds.

(c) The department will advise the State Treasurer of the forged or unauthorized cashing of the check.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 293.470, 293.475]

#### 471-070-1465 – Benefits: Payment Due to a Deceased Individual and Abandoned Payment

(1) In the event of the death of an individual to whom Paid Family and Medical Leave Insurance (PFMLI) 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 98.336, 98.352, 293.490, 293.495, 657B.090]

#### 471-070-1470 – Benefits: Benefit Payment Offsets

(1) After any benefit reduction under ORS 657B.040, a claimant’s weekly benefit payment may be reduced, as applicable, according to the priorities in section (2) of this rule before the department issues the weekly benefit payment to the claimant.

(2) The priority of additional offsets to the weekly benefit payment are:

(a) Paid Family and Medical Leave Insurance benefit overpayments described under ORS 657B.120 and OAR 471-070-1510.

(b) Federal personal income tax withholdings described under OAR 471-070-1480.

(c) State personal income tax withholdings described under OAR 471-070-1480.

(d) Child support orders described under OAR 471-070-1490.

(e) Funds due to entities that serve a garnishment or levy on the Oregon Employment Department.

(3) Weekly benefit payments of less than \$1.00, after all offsets, will not be issued to the claimant.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.050]

#### 471-070-1480 – Benefits: Federal and State Voluntary Tax Withholding

(1) A claimant receiving Paid Family and Medical Leave Insurance (PFMLI) benefits can elect to voluntarily have federal or state personal income tax withholding. To elect voluntary withholding, the claimant must notify the department on an approved method.

(2) When the department receives the claimants notification requesting withholding, the department will:

(a) Withhold at a rate of 10 percent for federal personal income taxes pursuant to IRC section 3402 (p) and applicable regulations for future benefit payments issued.

(b) Withhold at a rate of eight percent for Oregon personal income taxes for future benefit payment issued.

(3) The amount of voluntary withholding from a claimant benefit payment will be rounded to the nearest cent.

(4) The amount of voluntarily withholding from a claimant benefit payment will be held in trust and:

(a) Transferred to the Internal Revenue Service in the time and manner required for withholdings under IRC section 3402.

(b) Transferred to the Department of Revenue in the time and manner provided by the Department of Revenue under ORS chapter 316 and rule.

(5) The election will remain in effect until the claimant submits to the department an authorization for tax withholding form instructing the department to stop withholding. The withholding will stop with the next benefit payment issued, whenever administratively feasible, after the instruction to stop is received by the department.

(6) The PFMLI program shall provide information to a claimant about the total federal and state personal income tax withheld for the calendar year from PFMLI benefit payments on the Form 1099 no later than January 31st following the calendar year.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.050]

#### 471-070-1510 – Benefits: Repayment of Overpaid Benefits; Interest [Amended]

(1) The director may issue an assessment to a claimant for an overpayment each time a claimant receives Paid Family and Medical Leave Insurance (PFMLI) benefits to which the claimant was not entitled.

(2) If the director determines that a claimant has received benefits to which the claimant was not entitled:

(a) The claimant may be required to repay the amount of benefits that the claimant was overpaid;

(b) The claimant may be required to repay the amount of penalty and interest (if applicable); and

(c) The director may secure the repayment of the overpaid benefits through the deduction from future benefits otherwise payable to the claimant under ORS 657B.100.

(3)

(a) If the department determines that a claimant is at fault for an overpayment, due to the claimant's error, false statement, or failure to report a material fact, then the claimant may be liable for interest on the overpayment amount. Interest that the claimant is liable for shall be paid and collected at the same time repayment of benefits is made by the individual, at the rate of one percent per month or fraction of a month. Interest will accrue, beginning on the first day of the month that begins 60 calendar days after the administrative decision establishing the overpayment becomes final.

(b) If the department determines that a claimant is not at fault for an overpayment, then the claimant shall not be liable for interest on the amount to be repaid as a result of the overpayment.

(4) If the director deducts the claimant's future weekly benefits under section (2)(b) of this rule, the deduction shall be from the claimant's future weekly benefits up to the amount of the prior overpayment, penalty, and interest (if applicable). The deduction will begin with the first benefit payment issued after the department's decision regarding the overpayment becomes final.

(5) If there are multiple benefit overpayments, the deduction described in section (4) of this rule will apply to the oldest unwarranted debt first. Once all unwarranted debt is paid, the deduction will apply to the most recent warranted debt.

(6) Deductions from PFMLI benefits under section (2)(b) of this rule shall be applied solely to the amount of overpaid benefits for which the claimant is liable.

(7) Deductions for the repayment of benefits paid erroneously may be deducted from benefits due to the claimant with no time limitations.

[Stat. Auth.: ORS 657B.120, 657B.340; Stats. Implemented: ORS 657B.120]

#### 471-070-3710 – Assistance Grants: Application Requirements [Amended]

(1) An employer may apply for an assistance grant only:

(a) After an eligible employee has been approved by the department for family leave, medical leave or safe leave; and

(b) Prior to the end of the fourth month following the last day of the eligible employee's period of leave.

(2) An application for a grant must be submitted online or by another method approved by the department. The grant application must be complete and include the following:

(a) Information about the employer applying for the grant, including:

(A) Business Identification Number or Federal Employer Identification Number;

(B) Business name;

(C) Business address; and

(D) Business contact person's name and contact information;

(b) Information about the eligible employee taking leave for which the employer is requesting the grant, including but not limited to:

(A) First and last name;

(B) Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN);

(C) Start date of the leave; and

(D) End date or expected leave end date;

(c) Information about the grant being requested, including:

(A) Type of grant requested; and

(B) Grant amount requested, when applicable;

(d) Written documentation demonstrating that the employer:

(A) Hired a replacement worker to replace an eligible employee on family leave, medical leave or safe leave, including the replacement worker's name, start date, and SSN or ITIN; or

(B) Incurred significant additional wage-related costs due to an eligible employee's use of leave and the amount, including, but not limited to, receipts, personnel or payroll records, or sworn statements; and

(e) Acknowledgement that:

(A) The employer is required to pay the employer contribution for a period of eight calendar quarters in accordance with OAR 471-070-3750; and

(B) The employer could be required to repay an assistance grant if employer is later deemed to be ineligible in accordance with OAR 471-070-3850.

(3) An employer that receives a grant under ORS 657B.200(1)(b) may submit another grant application requesting an additional grant under ORS 657B.200(2).

(a) The new grant application must contain:

(A) A new leave end date or new expected leave end date showing an extension of the initial period of leave requested; and

(B) Written documentation demonstrating that a replacement worker was hired to replace an eligible employee on family leave, medical leave or safe leave including the replacement worker's name, start date, and SSN or ITIN.

(b) The additional grant application submitted under this section will not count against an employer's application limit under ORS 657B.200(3).

(4) An incomplete application will not be considered by the department until and unless it is completed and will not count against an employer's application limit under ORS 657B.200(3).

(5) The department may deny an application for a grant for reasons that include, but are not limited to, the employer's failure to demonstrate that:

(a) The employer hired a replacement worker or incurred significant additional wage-related costs; or

(b) The replacement worker hired or significant additional wage-related costs incurred was due to an employee's use of family leave, medical leave or safe leave.

(6) A denied grant application will count against an employer's application limit under ORS 657B.200(3).

[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.200, 657B.340; Stats. Implemented: ORS 657B.200]

## CONTRIBUTIONS & RECOVERY

*ORS 657B.150 establishes wage reporting and contributions payment requirements for employers and employees and ORS 657B.190, 657B.320, 657B.370, 657B.910, 657B.920, and others establish consequences for employers that fail to report and make payments. This section of the administrative rules expand on recovery and how withholding of contributions occur. All definition sections may be expanded and reorganized before formal rulemaking.*

### 471-070-0010 – Definitions [Amended]

(1) "Paid Leave Oregon" means the Paid Family and Medical Leave Insurance program as described under ORS chapter 657B.

(2) "Volunteer" as used in ORS 657B.010(13)(b)(E), means an individual who performs services for a public agency or private non-profit organizations for civic, charitable, or humanitarian reasons, without promise, expectations or receipt of compensation for services rendered.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010, 657B.340]

### 471-070-0470 – Wages: Paid Leave Oregon Benefits

Paid Leave Oregon benefits issued by the Employment Department, employer or administrator through an approved equivalent plan, are not wages.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

### 471-070-2010 – Self-employed: Election Requirements and Effective Date [Amended]

(1) An eligible self-employed individual may apply to elect coverage under the Paid Family and Medical Leave Insurance program at any time.

(2) A notice to elect must be in writing and submitted online or in another method approved by the department. To be reviewed, the notice must be complete and include:

(a) Information about the individual applying for elective coverage, including:

(A) First and last name;

(B) Social Security Number or Individual Taxpayer Identification Number; and

(C) Address and contact information.

(b) Information on the individual's business, when applicable, including:

(A) Business Identification Number;

(B) Business name; and

(C) Business address and contact information.

(c) The individual's total taxable income from self-employment for a prior tax year, as applicable under section (3) of this rule;

(d) Documentation verifying:

(A) The individual's identity and

(B) The individual's taxable income from self-employment, including but not limited to, income reported to Oregon on the personal income tax return from a prior tax year, as applicable under section (3) of this rule.

(e) An agreement to:

(A) Pay contributions for a period of not less than three years;

(B) Provide any information and documentation on the individual's taxable income from self-employment that the department deems necessary for the administration of the elective coverage, including but not limited to, a copy of the Oregon personal income tax return annually; and

(C) Provide additional information to confirm eligibility for elective coverage, if requested by the department;

(f) Acknowledgement of the conditions for termination of self-employed elective coverage established in OAR 471-070-2170, including, but not limited to, the condition that coverage cannot be terminated until coverage has been in effect for at least three years.

(3) If the eligible self-employed individual elects coverage:

(a) In the first quarter of the calendar year (January through March), the individual must provide the tax return required to be filed with the Oregon Department of Revenue for the tax year immediately prior to the last tax year.

(b) In quarters two through four of the calendar year (April through December), the individual must provide the tax return required to be filed with the Oregon Department of Revenue for the last tax year.

*Example 1:* Kaja elects to have self-employment coverage in February of 2024. Kaja must provide a copy of their 2022 Oregon personal income tax return because it is within the first quarter of the calendar year.

*Example 2:* Jackie elects to have self-employment coverage in June of 2024. Jackie must provide a copy of their 2023 Oregon personal income tax return because it is after the first quarter of the calendar year.

(4) The department may deny a notice to elect if:

(a) The notice does not include the required information and documentation in accordance with this rule or

(b) The self-employed individual does not meet the eligibility requirements in OAR 471-070-2005 or other applicable law.

(5) Approved elective coverage becomes effective on the date the complete notice to elect was received with 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.: ORS 657B.340; Stats. Implemented: ORS 657B.130]

#### **471-070-2030 – Self-employed: Contribution Payments and Reporting Requirements [Amended]**

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

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

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

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

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

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

Fourth quarterly payment, period January 1 through March 30 (first quarter calendar year 2025), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).

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

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

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

(6) The self-employed individual must annually report information and provide documentation provided in subsection (a) and (b) of this section the department deems necessary for the administrative of elective coverage.

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

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

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 293.660, 657B.130, 657B.150]

#### 471-070-3000 – Contributions: Definitions [Amended]

“Maximum wage amount” means the maximum employee wages per employer subject to Paid Family and Medical Leave Insurance (PFMLI) contributions per calendar year.

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

### 471-070-3040 – Contributions: Withholding of Employee Contributions [Amended]

(1) An employer may not deduct from the employee's subject wages more than the maximum allowable amount of 60 percent of the total contribution rate described in OAR 471-070-3010 for a pay period rounded to the nearest cent.

(2) When performing the calculation described in section (1) of this rule, the intermediate steps shall not be rounded, only the final step shall be rounded to the nearest cent.

*Example:* On February 2, 2023 Jennifer earned \$1,769.89 in subject wages for the pay period. The employer calculates Jennifer's contributions by multiplying the subject wages by the total contribution rate of 1% (not rounded) by the employee contribution rate of 60% (rounded to the nearest cent). The total potential contribution is \$17.6989 ( $\$1,769.89 \times 0.01 = \$17.6989$ , not rounded). Jennifer's employee portion of the potential contribution is \$10.62 ( $\$17.6989 \times 0.60 = \$10.61934$ , rounded to the nearest cent is \$10.62). The employer's contribution (if a large employer) is \$7.08 ( $\$17.6989 \times 0.40 = \$7.07956$ , rounded to the nearest cent is \$7.08).

(3) If an employer fails to deduct the maximum allowable employee share of the contribution rate for a pay period, the employer is considered to have elected to pay that portion of the employee's contribution that the employer failed to deduct, and the employer is liable to pay that portion of the employee share under ORS 657B.150(5) or ORS 657B.210(5) for that pay period if not corrected within the quarter. The employer may deduct from the employee's subject wages the amount they failed to deduct within the quarter.

(4) An employer may elect to pay the employee's contribution, in whole or in part, and must provide a written notice, policy, or procedure to the employee or enter into a collective bargaining agreement with the employee specifying that the employer is electing to pay the employee contribution, making the employer liable for that portion of the employee contribution. The employer must give written notice of an update to its notice, policy, or procedure or amendment to its collective bargaining agreement to the employee at least one pay period prior to any reduction by the employer of the employee contribution amount that the employer previously elected to pay.

(5) If an employer has elected to pay, in whole or in part, the employee portion of contributions as stated in section (4) of this rule, the employer may not deduct the amount the employer elected to pay from a future paycheck of the employee.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.150, 657B.210]

### 471-070-3310 – Contributions: Application of Payments [Repeal]

~~(1) "Designated payments" are payments received by the department specifying a specific quarter(s) or Dstraint warrant.~~

~~(2) "Undesignated payments" are payments received by the department that are not specified for a specific quarter(s) or Dstraint warrant.~~

~~(3) Except as otherwise provided by statute, or as directed by a court of competent jurisdiction, payments made to the department by or on behalf of an employer for Paid Family and Medical Leave Insurance (PFMLI) contributions; and legal fees (as defined in OAR 471-070-3000), penalties and interest related to those PFMLI contributions; in accordance with the provisions of ORS chapter 657B shall be identified by the department as either "Designated Payments" or "Undesignated Payments" and will be credited to the employer's account in the following order of priority:~~

~~(a) Undesignated Payments:~~



~~(A) To the oldest unwarranted unpaid quarter balance in the following order:~~

- ~~(i) Penalties;~~
- ~~(ii) Interest; and then~~
- ~~(iii) PFMLI Contributions.~~

~~(B) After the payment amounts under subsection (a)(A) of this rule have been applied, any remaining amounts shall then be credited to the most recent unpaid Distraint warrant in the following order:~~

- ~~(i) Legal Fees;~~
- ~~(ii) Penalties;~~
- ~~(iii) Interest; and then~~
- ~~(iv) PFMLI Contributions.~~

~~(b) Designated Payments:~~

- ~~(A) Legal Fees;~~
- ~~(B) Penalties;~~
- ~~(C) Interest; and then~~
- ~~(D) PFMLI Contributions.~~

~~(4) The department may identify categories of indebtedness for internal accounting procedures and may retire each category separately in the order of priority set forth in section (3) of this rule.~~

~~(5) Nothing in this rule shall be construed in any way as abridging or limiting the authority or powers of the director granted under ORS chapter 657B.~~

~~(6) The employees listed in OAR 471-070-0550 may act on behalf of the director for purposes of section (4) and (5) of this rule.~~

~~(7) Notwithstanding any instructions to the contrary by or on behalf of the employer, payments will be applied in the manner specified in this rule.~~

~~(8) Credit balances will be treated as payments for purposes of this rule.~~

~~[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.120, 657B.150, 657B.320, 657B.430, 657B.910]~~

#### 471-070-5200 – Due Dates for Balances Owed to the Department

(1) Unless otherwise specified in statute or administrative rule, balances owed to the department under ORS chapter 657B are considered due and payable as of the date the decision causing the balance due becomes final.

(2) “Final” means a decision made under this chapter for which the timeframe to request a hearing as described in OAR 471-070-8005 has expired, unless a timely request for a hearing with the department regarding the decision has been filed in which case “final” means when the decision issued following the hearing, or any appeal of the hearing, has been issued and the time period to further appeal that decision has passed without a timely appeal being filed.

## 471-070-5210 – Application of Payments

(1) As used in this administrative rule:

- (a) “Designated payments” are payments received by the department specifying a specific debt, distraint warrant, or quarter(s) in the case of contributions.
- (b) “Legal fees” means fees attributed to the recording or processing of a distraint warrant on behalf of the department for the purpose of collecting amounts owed under ORS chapter 657B pursuant to ORS 657B.300 and search fees attributed to garnishments issued to financial institutions pursuant to ORS 18.790.
- (c) “Principal” means any balance owing under ORS chapter 657B, excluding legal fees, penalties, and interest.
- (d) “Undesignated payments” are payments received by the department that are not specified for a debt, distraint warrant, or quarter(s) in the case of contributions.

(2) Except as otherwise provided by statute, or as directed by a court of competent jurisdiction, payments made to the department by or on behalf of an individual or employer for amounts owed under ORS chapter 657B; legal fees, and related penalties; in accordance with the provisions of ORS chapter 657B shall be identified by the department as either “Designated payments” or “Undesignated payments” and will be credited to the individual’s or employer’s account in the following order of priority:

(a) Undesignated payments:

(A) To the oldest unwarranted unpaid balance in the following order:

- (i) Penalties;
- (ii) Interest; and then
- (iii) Principal.

(B) After the payment amounts under subsection (a)(A) of this rule have been applied, any remaining amounts shall then be credited to the most recent unpaid warranted balance in the following order:

- (i) Legal Fees;
- (ii) Penalties;
- (iii) Interest; and then
- (iv) Principal.

(b) Designated payments:

- (A) Legal Fees;
- (B) Penalties;
- (C) Interest; and then
- (D) Principle.

(3) The department may identify categories of indebtedness for internal accounting procedures and may retire each category separately in the order of priority set forth in section (2) of this rule.

(4) Nothing in this rule shall be construed in any way as abridging or limiting the authority or powers of the director granted under ORS chapter 657B.

(5) The employees listed in OAR 471-070-0550 may act on behalf of the director for purposes of section (3) and (4) of this rule.

(6) Notwithstanding any instructions to the contrary by or on behalf of the individual or employer, payments will be applied in the manner specified in this rule.

(7) Credit balances will be treated as payments for purposes of this rule.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.040, 657B.120, 657B.150, 657B.240, 657B.300, 657B.320, 657B.330, 657B.370, 657B.430, 657B.910, 657B.920]

#### 471-070-8520 – One-Percent Penalty [Amended]

(1) If an employer has failed to file or complete all required reports or pay all required contributions for the calendar year as described in 471-070-3030, the department shall assess the penalty authorized by ORS 657B.910 on the Paid Family and Medical Leave Insurance (PFMLI) subject wages. The department shall send notice of the assessment of such penalty to the employer's last known address or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records on or before October 20 of the year. The penalty shall become due on November 10 immediately following the assessment.

(2) On or after the date of the assessment, but prior to November 10 immediately following the assessment, the employer may request waiver of the penalty based on good cause as defined in OAR 471-070-8530.

(3) If an employer makes a request for waiver of the penalty within the time prescribed in section (2) of this rule, the department shall make a decision, either granting or denying the waiver, and mail notice of the decision to the employer's last known address or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records. If, prior to November 10 immediately following the assessment, the department determines that the employer had good cause for the failure to file all reports or pay all contributions due by September 1, the department shall grant the request for waiver and remove the penalty from the employer's account. If the employer fails to establish good cause prior to November 10 immediately following the assessment, the department shall deny the request for waiver. If the request for waiver is denied, the department shall notify the employer that a request for a contested case hearing may be filed within 20 days after the date that the penalty waiver decision is sent to the employer.

(4) Hearings held and administrative law judge decisions issued pursuant to section (3) of this rule shall be in accordance with the provisions of chapter 137, division 3 of the Oregon Administrative Rules that have been adopted for the PFMLI program.

(5) Judicial review of administrative law judge decisions issued pursuant to this rule shall be as provided for review of orders in contested cases under ORS 183.310 through 183.550. The director is designated as a party for purposes of hearings under this rule.

(6) Upon motion of the director or upon application of an interested employer, the director may reconsider a penalty imposed under ORS 657B.910 irrespective of whether it has become final:

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(a) Such reconsideration shall be restricted to penalties resulting from clerical errors or errors of computation and may include a new decision upon any grounds or issues not previously ruled upon or new facts not previously known to the director;

(b) A new decision issued after reconsideration shall be subject to hearing and judicial review in accordance with this rule.

(7) A request for waiver of the penalty for good cause must be in writing. The date of any request for waiver under this rule shall be:

(a) The postmarked date on the request, if mailed;

(b) The date specified in OAR 471-070-0850, if electronically filed; or

(c) In the absence of a postmark, submittal date or machine imprinted date, the most probable date of mailing as determined by the director.

(8) The employees listed in OAR 471-070-0550 may act on behalf of the director for the purposes of sections (1), (2) and (3) of this rule.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.910]

#### 471-070-8530 – Good Cause for Failure to File Reports or Pay Contributions [Amended]

(1) As used in ORS 657B.910 and 657B.920 and OAR 471-070-8520, good cause for failure to file all required reports or to pay all contributions due will be found when the employer establishes, by satisfactory evidence, that factors or circumstances beyond the employer's reasonable control caused the delay in filing the required report or paying the contribution due.

(2) In determining good cause under section (1) of this rule, the director may consider all circumstances, but shall require at a minimum, that the employer:

(a) Prior to the date the report or contributions were due, gave notice to the department, when reasonably possible, of the factors or circumstances which ultimately caused the delay;

(b) Filed the required report or paid the contributions due no later than seven calendar days after the date determined by the director to be the date the factors or circumstances causing the delay ceased to exist;

(c) Made a diligent effort to remove the cause of the delay and to prevent its recurrence; and

(d) Provided an official police report, or other documentation acceptable to the director or an authorized representative, that was made within 20 calendar days of a criminal act, or discovery of the act, if the delay was due to a criminal act by any party; and

(e) Provided copies of timely filed reports and proof of all related payments to another jurisdiction, if the delay was due to making contributions to the incorrect jurisdiction. Good cause will be considered if, within 30 calendar days of the date the department or employer determines the contributions are due to the Paid Family and Medical Leave Insurance Trust Fund instead of another jurisdiction, the employer filed the required report and paid the contributions due.

(3) In applying sections (1) and (2) of this rule, a lack of funds on the part of the employer shall not constitute good cause.

(4) In applying sections (1) and (2) of this rule, failure to notify the department of an updated mailing address shall not constitute good cause.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.910, 657B.920]

#### 471-070-8540– Penalty Amount When Employer Fails to File Report [Amended]

(1) If an employer fails to file all required reports within the time period described in ORS 657B.920(2), the department may assess a late filing penalty in addition to any other amounts due.

(2) The penalty shall be 0.02 percent of the employer’s employees total Paid Family and Medical Leave Insurance (PFMLI) subject wages for the late report rounded to the nearest \$100. If the penalty is calculated to be less than \$100, the amount will be the minimum \$100.

*Example:* Athena’s Yoga and Piyo Studio has 20 employees with total PFMLI subject wages for first quarter of 2024 of \$120,000. Athena does not file the 2024 Oregon Quarterly Tax Report for the first quarter. The department sends a written notice warning on May 10, 2024, to Athena’s Yoga and Piyo Studio, but they do not correct the deficiency by filing the needed report. A penalty of \$24 ( $0.0002 \times \$120,000$  PFMLI subject wages) is calculated by the department. But since the minimum penalty is \$100, the penalty imposed by the department is \$100.

(3) The penalty assessment becomes final 20 calendar days from the date on which the department assessed the late filing penalty, unless the employer files a timely request for hearing as described in OAR 471-070-8005.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.920]

## EQUIVALENT PLANS

*ORS 657B.210 to 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 the application process, provision of benefit, and withdrawal and termination of an equivalent plan. Further details are provided in the rules in this section to describe the timeframe the equivalent plan employers have to respond to the department’s letters and when the final payments are due if the equivalent plan is withdrawn or terminated. All administrative rules may be expanded, reorganized, or deleted before formal rulemaking.*

#### 471-070-2200 – Equivalent Plans: Definitions [Amended]

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

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

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

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

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

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

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

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

[Stat. Auth.: ORS 657B.340; Stats. Implemented: 657B.210, 657B.260]

#### 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 errors; or
  - (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.

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(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

*Example:* ABC Corporation submitted an equivalent plan application to the department on February 4, 2023. The department sent an approval letter for the equivalent plan that was dated March 5, 2023 and the equivalent plan becomes effective on April 1, 2023. The application for reapproval is due on March 1 of 2024, 2025, and 2026; 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 amendments, 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.: ORS 657B.210, 657B.340; Stats. Implemented: ORS 657B.210, 657B.230]

#### 471-070-2220 – Equivalent Plans: Plan Requirements [Amended]

In order for an equivalent plan to be approved by the department, the plan must at a minimum:

(1) Cover all Oregon employees who have been continuously employed with the employer for at least 30 calendar days, regardless of hours worked, including full-time, part-time, temporary workers hired by the employer, and replacement employees hired to temporarily replace eligible employees during PFMLI leave. Any employees who were eligible for benefits under their previous Oregon employer's equivalent plan, who begin working for a new employer with an approved equivalent plan must be automatically covered for benefits under the equivalent plan offered by the new employer as described in ORS 657B.250;

(2) Provide family leave as described in ORS 657B.010(17) and applicable administrative rules;

(3) Provide medical leave as described in ORS 657B.010(19) and applicable administrative rules;



- (4) Provide safe leave as described in ORS 657B.010(21) and applicable administrative rules;
- (5) Allow eligible employees to take family leave, medical leave, or safe leave in a benefit year for periods of time equal to or longer than the duration of leave provided under ORS 657B.020;
- (6) Provide eligible employees weekly benefit amounts equal to or greater than benefits provided under ORS 657B.050;
- (7) Allow family leave, medical leave, or safe leave to be taken in increments or nonconsecutive periods as provided under ORS 657B.090;
- (8) Impose no additional conditions or restrictions on the use of family leave, medical leave, or safe leave beyond those explicitly authorized by ORS chapter 657B and applicable administrative rules;
- (9) Provide that the employee contributions withheld by an equivalent plan shall not be greater than the employee contributions that would be charged to employees under ORS 657B.150 and determined annually under OAR 471-070-3010;
- (10) Ensure employee contributions that are received or retained under an equivalent plan are used solely for equivalent plan expenses, are not considered part of an employer's assets for any purpose, and are held separately from all other employer funds;
- (11) Meet all equivalent plan requirements provided in ORS 657B.210 and applicable administrative rules;
- (12) Provide for decisions on benefit claims, to be in writing, either in hard copy or electronically if the employee has opted for electronic notification. Decisions on benefit claim approvals must include the amount of leave approved, the weekly benefit amount, and a statement indicating how the employee may contact the department to request the eligible employee's average weekly wage amount if the employee believes the benefit amount may be incorrect. Denial decisions must include the reason(s) for denial of benefits along with an explanation of an employee's right to appeal the decision and instructions on how to submit an appeal.
- (13) Provide an appeal process to review benefit decisions when requested by an employee that also requires the employer or administrator to issue a written decision. The employee must have at least 60 calendar days from the date of the written denial to request an appeal with the employer or administrator, if applicable, or as soon as practicable if there is good cause for the delay beyond the 60 calendar days as described in OAR 471-070-2400(7). The employee, and the employer, or administrator have 20 calendar days from the date the appeal is received, or as soon as practicable if there is good cause as described in OAR 471-070-2400(7), to resolve the appeal and for the employer or administrator to issue a written appeal determination letter along with an explanation of the department's dispute resolution process as described in OAR 471-070-2400 if an appeal is denied;
- (14) Provide that the equivalent plan employer or administrator must make all reasonable efforts to make a decision on whether to allow the claim and issue the first payment of any benefits to an employee within two weeks after receiving the claim or the start of leave, whichever is later. Subsequent benefit payments must be provided weekly by a fully insured equivalent plan and benefit payments may be paid according to the existing paycheck schedule for employees under an employer administered equivalent plan; and
- (15) Ensure a written notice poster for the equivalent plan as described in OAR 471-070-2330, will be given to all eligible employees, at the time of hire and each time the policy or procedure changes, in the language that the employer typically uses to communicate with the employee.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.210]

## 471-070-2270 – Equivalent Plans: Proration of Benefit Amounts for Simultaneous Coverage [Amended]

(1) An employee is considered to have simultaneous coverage when the employee is covered by more than one employer's equivalent plan at the same time or is covered by the state plan established in ORS 657B.340 and at least one employer with an equivalent plan, at the same time. An employee does not have simultaneous coverage if they work for multiple employers covered by the state plan.

(2) An employee with simultaneous coverage at the start of a leave event shall apply separately under all plans they are covered under and from which they are taking leave by following the respective application guidelines for each plan. An equivalent plan employer may ask an employee whether the employee has additional Paid Family and Medical Leave Insurance (PFMLI) coverage but may not require that the employee provide details on the other employers or the plans. The employer, employee, or administrator may request information from the department as described in OAR 471-070-2260.

(3) Each equivalent plan is required to pay benefit amounts that are equal to or greater than the benefits offered under the state plan as described in OAR 471-070-2260 and ORS 657B.050 and applicable administrative rules. Upon request, the department may provide information to equivalent plan employers or administrators regarding prorated benefit amounts, if the department is aware of simultaneous coverage. Each respective plan benefit amount shall be prorated by the average number of work days worked per work week by the claimant for each respective plan rounded to the nearest whole cent.

(a) The state plan shall pay benefits based on the prorated weekly benefit amount and shall further prorate the weekly benefit amount as described in OAR 471-070-1440 for leave taken in work day increments.

(b) The equivalent plan shall pay benefits equal to or greater than the prorated weekly benefit amount and may further prorate the weekly benefit amount when leave is taken in work day increments based on the number of work days of leave taken in the work week.

*Example 1:* Alondra is employed by two employers. One employer is a state plan employer and the other is an equivalent plan employer. Alondra works five days per work week for the state plan employer and three days per work week for the equivalent plan employer. Alondra is unable to work for both employers due to the need to provide care for a seriously ill parent for the next five weeks. Alondra must apply for benefits separately for the state plan and the equivalent plan. Alondra's weekly benefit amount is \$1,040. Alondra will receive two separate benefit payments each week. The state plan will pay the prorated weekly benefit in the amount of \$650 [(\$1,040 weekly benefit amount divided by 8 total days worked at both jobs) x 5 days worked for the state plan employer]. The equivalent plan employer will pay at least the prorated weekly benefit in the amount of \$390 [(\$1,040 weekly benefit amount divided by 8 total days worked at both jobs) x 3 days worked for the equivalent plan employer].

*Example 2:* Same typical work schedule and weekly benefit amount as in example 1; however, Alondra is unable to work for the state plan employer one day per work week and is unable to work for the equivalent plan employer one day per work week (for a total of two days of leave each week) to provide care for a seriously ill parent for the next five weeks. Alondra must apply for benefits separately for the state plan and the equivalent plan. Alondra's weekly benefit amount is still the same at \$1,040 (the state plan prorated weekly benefit amount is \$650 and the equivalent plan prorated weekly benefit amount is at least \$390). Because the leave is taken in work day increments and not an entire work week, once the prorated weekly benefit amount is determined, the state plan will further prorate the state's weekly benefit amount by the number of work days on leave. The state plan will pay weekly benefits in the amount of \$130 [(\$650 state plan portion of the weekly benefit amount divided by 5 work days) x 1 day on leave in the work week]. The equivalent

plan employer may choose to further prorate the weekly benefit amount by the number of work days on leave [(\$390 equivalent plan portion of the weekly benefit amount divided by 3 work days) x 1 day on leave in the work week] for a minimum weekly benefit amount of \$130].

(4) The department shall calculate prorated benefit amounts when:

(a) The department receives an application for an employee that provides current employment information from a state plan employer(s) and one or more equivalent plan employer(s). The department shall verify coverage under the equivalent plan as described in OAR 471-070-2230 to determine a prorated benefit amount for benefits offered under the state plan.

(b) The department receives a request from an equivalent plan employer or administrator for an employee's benefit information in accordance with OAR 471-070-2260. The department shall verify whether the employee has coverage under more than one equivalent plan and, if covered, include the prorated benefit amounts to the employer. The department will provide prorated benefit amounts to any other equivalent plan employer or administrator that covers the employee also.

(5) Should the department receive information about changes in simultaneous coverage after information is provided to an equivalent plan employer or administrator in accordance with OAR 471-070-2260 and under this rule, the department shall calculate or re-calculate the proration, as applicable, and notify all employers, administrators, or employees of the change. Any overpayments made by the Oregon PFMLI program shall be recovered in accordance with OAR 471-070-1510.

[Stat. Auth.: ORS 657B.210, 657B.340; Stats. Implemented: 657B.210]

#### 471-070-2400 – Equivalent Plans: Disputes between an Equivalent Plan Employer and Employee, Request for Hearing [Amended]

(1) As required by ORS 657B.420, the department will provide a dispute resolution process to assist in resolving disputes between employers or equivalent plan administrators, as applicable, and employees regarding coverage and benefits provided under an employer's approved equivalent plan if the appeal with the employer or administrator is not otherwise resolved.

(2) Prior to the department providing a dispute resolution process, the employee and employer or administrator must follow the equivalent plan appeal process described in OAR 471-070-2220(13).

(3) In the event that the employee and employer or administrator are unable to resolve an appeal on a coverage or benefit decision through the equivalent plan's appeal process, the employee may request a dispute resolution assistance through the department. The dispute resolution request must:

(a) Be in writing, by phone, online, or in another format approved by the department.

(b) Include a copy of the employer or administrator appeal decision and any documents related to the dispute, including documents supporting or referencing the employer's or administrator's decision.

(c) Be received within 60 calendar days of the issuance of the appeal decision, or as soon as practicable if there is good cause as described under section (7) of this rule, for the delay beyond 60 calendar days.

(4) The department shall review the dispute resolution request and issue an advisory decision based on the equivalent plan benefit requirements within 20 calendar days of the receipt of the dispute resolution request.

- (5) If the employer or administrator does not comply with the department's administrative dispute decision, the employee may still submit a wage claim with the Oregon Bureau of Labor and Industries under ORS chapter 652.
- (6) The payment of any benefits not placed in issue by the request for the administrative hearing shall continue during the appeal process.
- (7) Good cause for late appeal or dispute resolution request includes, but is not limited to, the following:
- (a) Difficulty obtaining verification;
  - (b) Factors or circumstances beyond the employee's, employer's, administrator, or department's reasonable control that prevented them from providing information;
  - (c) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents the employee or employer from timely providing information; or
  - (d) A demonstrable inability to reasonably access a means to respond in a timely manner, such as an inability to file a leave report due to a natural disaster or a significant and prolonged outage.

[Stat. Auth.: ORS 657B.420; Stats. Implemented: ORS 183.635, 657B.420]

#### 471-070-2450 – Equivalent Plans: Termination by the Department [Amended]

- (1) The department may terminate an employer's equivalent plan due to reasons that include, but are not limited to:
- (a) Misuse of employee contributions withheld or retained by the employer;
  - (b) Failure to adhere to the department approved equivalent plan or to report substantive equivalent plan changes to the department;
  - (c) Failure to adhere to applicable Paid Family and Medical Leave Insurance (PFMLI) program requirements, including but not limited to OAR 471-070-2220 and equivalent plan reporting requirements;
  - (d) Failure to file for reapproval as required in OAR 471-070-2210;
  - (e) Employer insolvency;
  - (f) Termination of the insurance policy by the plan administrator;
  - (g) Closure of a business; or
  - (h) Failure to respond timely to the department's reasonable inquires for information about the equivalent plan.
- (2) If the plan administrator plans to terminate an employer's insurance policy, the administrator must provide notice to the department at least 30 calendar days prior to the termination date. The termination date must be effective on the last day of a calendar quarter. The administrator's notice to the department should include:
- (a) The original effective date of the fully insured equivalent plan policy; and
  - (b) The effective date of the termination requested by the administrator.
- (3) If the department seeks to terminate an equivalent plan, the department will send the employer and administrator, if applicable, a notice of termination to the employer's last known address, or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records. The notice must provide:

- (a) The reason(s) for the termination;
- (b) Instructions on how to resolve the reason(s) for termination; and
- (c) The effective date of termination, which must be the last day of a calendar quarter, absent further specified action by or on behalf of the employer.

(4) An employer may appeal the notice of termination in accordance with ORS 657B.410 and applicable administrative rules within 20 calendar days of the notice of termination.

(5) The employer or administrator must notify all employees of any equivalent plan termination within ten business days after the date that the termination becomes effective.

(6) All applicable equivalent plan requirements, including but not limited to those outlined within OAR 471-070-2220 and equivalent plan reporting requirements as outlined in OAR 471-070-2230, remain in effect until the effective date of any termination.

(7) The employer or administrator must pay or continue to pay benefits under the terms of the equivalent plan to eligible employees that were approved for or receiving benefits under the equivalent plan on the effective date of termination 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.

(8) Within 30 calendar days after the effective date of the termination 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 from the date of the last report provided to the department under the equivalent plan reporting requirements to the date of termination.

*Example:* Donald Mouse Partnership's equivalent plan became effective April 1, 2023. On January 31, 2024, Donald Mouse Partnership provided the aggregate equivalent plan information from April 1, 2023 to December 31, 2023. The equivalent plan is terminated effective March 1, 2024. By April 1, 2024, Donald Mouse Partnership must send the aggregate equivalent plan information from January 1, 2024 to February 29, 2024.

(9) Once the department receives the report specified in section (8) 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 equivalent plan termination, minus an amount equal to the amount of any benefits due to be paid as required under section (7) of this rule and any anticipated administrative expenses. Once all required benefits are paid under section (7) 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 (8) of this rule. Once the department receives the report, the department will provide an invoice of any additional contribution amounts due. Any remaining contribution amounts due are deposited into the PFMLI Trust Fund.

(a) Any contributions become due and payable to the department on the effective date of termination, unless the employer timely requests an appeal in accordance with section (4) of this rule.

(b) Interest on the contribution amount due from the employer shall accrue from the date of invoice(s) until paid to the department, in accordance with ORS 657B.320(3).

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

(11) After the department terminates an equivalent plan, the employer may not reapply for an equivalent plan approval within three years following the date of termination.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.210, 657B.220, 657B.240]

#### 471-070-2455 – Equivalent Plans: Termination and Withdrawal by Successor in Interest [Amended]

(1) A successor in interest may request to terminate an equivalent plan that was in effect on the date of acquisition within 90 days after becoming a successor in interest resulting from the acquisition in accordance with ORS 657B.260. The request to terminate may be submitted online, by phone, or in another method prescribed by the department. The successor in interest must provide written documentation of the acquisition, and any other relevant information regarding the acquisition required by the department.

(2) A successor in interest may request to withdraw from the equivalent plan in accordance with OAR 471-070-2460.

(3) If a request to terminate or withdraw is approved, the department will notify the successor in interest of the effective date of the termination or withdraw. A successor in interest whose request to terminate is approved is subject to sections (5) through (10) of OAR 471-070-2450. A successor in interest whose request for withdrawal is approved is subject to sections (3) through (8) of OAR 471-070-2460.

(4) If a request to terminate or withdraw is denied, the department will notify the successor in interest of the reason for the denial. The successor in interest may appeal the decision to deny a request to terminate or withdraw an equivalent plan, in accordance with ORS 657B.410 and applicable administrative rules.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.260]

#### 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) 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

(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 that were approved or receiving benefits under the equivalent plan on the effective date of the

May 30, 2023

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 of any additional contribution amounts due. Any remaining contribution amounts due are deposited into the PFMLI 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 of the invoice(s) until paid to the department, in accordance with ORS 657B.320(3).

(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.: ORS 657B.240, 657B.340; Stats. Implemented: ORS 657B.240]

**FRIEND Anne \* OED**

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**From:** Shawnee Halligan <halligas@loswego.k12.or.us>  
**Sent:** Thursday, June 22, 2023 3:32 PM  
**To:** OED\_RULES \* OED  
**Subject:** Feedback on Paid Leave Oregon

You don't often get email from halligas@loswego.k12.or.us. [Learn why this is important](#)

\* Request there will be a rule for PFMLI like Rule 839-009-0290 -OFLA:  
Special Rules for Public School Teachers

\* **Intermittent** family leave for baby bonding is very disruptive in classrooms. Request OR rules match FMLA's language for teachers: Leave to care for or bond with a newborn child or for a newly placed adopted or foster child may only be taken intermittently with the employer's approval and must conclude within 12 months after the birth or placement.

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**Shawnee Halligan**  
Lake Oswego School District  
Central Office  
Lead Grants and Benefits Specialist  
503-534-2135  
2455 Country Club Rd  
Lake Oswego OR 97034



**FRIEND Anne \* OED**

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**From:** Lisa Kwon <lisakwon@familyforward.org>  
**Sent:** Friday, June 30, 2023 3:11 PM  
**To:** OED\_RULES \* OED; HUMELBAUGH Karen M; BALL Shannon L \* OED  
**Cc:** Courtney Veronneau  
**Subject:** 7/30 Batch 7 Rules Feedback  
**Attachments:** Time to Care Batch 7 Rules Feedback.pdf

**Categories:** Anne

Hello,

Please see attached our written feedback to the Batch 7 administrative rules from the Time to Care Coalition.

In this batch of rules, the most significant concern for our coalition pertains to paragraph (2) in rule 471-070-1015 (Benefits: Leave from Work). This proposed rule would essentially exclude any worker with a “lapse in seasonal operations, school break periods or other suspensions or cessations of an employer’s business operations” from receiving paid leave benefits. As a result, this rule would particularly impact farmworkers, seasonal workers and school employees from accessing benefits, even though they will have already paid into the program. Not surprisingly, these workers are performing some of the lowest-paid jobs with the least amount of job security. This is exactly why we passed and are building a paid leave program that *is not* attached to the employer.

We firmly believe that this proposed administrative rule goes against the department’s commitment to equity in Paid Leave Oregon implementation, as well as the original legislative intent of the paid leave law, and must be changed before the Rules are finalized.

Please don't hesitate to reach out if you have any questions.

Thank you,  
Lisa



Lisa Kwon (she/her)  
Policy Manager  
Family Forward Oregon & Family Forward Action  
PO Box 15146, Portland, OR 97293  
Cell: 971-295-9463



# Time *to* Care OREGON

June 30, 2023

To: Karen Humelbaugh and PFMLI Policy Team, Oregon Employment Department

From: Time to Care Oregon Coalition

RE: PFML Batch 7 Rules

Thank you for the opportunity to provide feedback on Batch 7 of proposed rules regarding Benefits for Paid Leave Oregon. Family Forward Oregon is submitting this feedback on behalf of Time to Care Oregon.

In this batch of rules, the most significant concern for our coalition pertains to paragraph (2) in rule 471-070-1015 (Benefits: Leave from Work). This proposed rule would essentially exclude any worker with a “lapse in seasonal operations, school break periods or other suspensions or cessations of an employer’s business operations” from receiving paid leave benefits. As a result, this rule would particularly impact farmworkers, seasonal workers and school employees from accessing benefits, even though they will have already paid into the program. Not surprisingly, these workers are performing some of the lowest-paid jobs with the least amount of job security. This is exactly why we passed and are building a paid leave program that *is not* attached to the employer.

We firmly believe that this proposed administrative rule goes against the department’s commitment to equity in Paid Leave Oregon implementation, as well as the original legislative intent of the paid leave law, and must be changed before the Rules are finalized.

## **BENEFITS & ASSISTANCE GRANTS**

### **471-070-1000 – Benefits: Definitions**

(9) This draft of the regulations helpfully swaps the word “cannot” for “may not” so that the second sentence reads “A claimant who is taking consecutive leave may not perform work for any employer or self-employed work during the leave period.” We support this change which would help to avoid potential confusion about whether a worker must be unable to perform the functions of their job while on consecutive leave, which could have been implied by a previous version of these regulations, but would not be supported by the statute.

(14) “Intermittent leave” is not a term that is used or defined in the statute, though it is a defined term in OFLA regulations. *See* OAR 839-009-0210(18). In this latest draft of rules, this definition has been amended to include “when leave is taken for two or more leaves types simultaneously.” **We recommend reverting this proposed rule back to how it was originally drafted, and eliminating reference to leaves taken for two or more leave types simultaneously, as leaves taken for more than one leave type are not inherently intermittent**

# Time *to* Care OREGON

**in nature, unless they are taken in periodic blocks.** This rule would also be divergent from the OFLA and federal FMLA regulations relating to intermittent leave.

## **471-070-1010 – Benefits: Eligibility and Qualification for Benefits**

We support the changes in this section.

## **471-070-1015 – Benefits: Leave from Work**

As noted in the introduction of our feedback, we have serious concerns with paragraph (2) of this section, which would exclude a significant number of workers who work non-traditional hours and schedules. As advocates who have been closely involved with the crafting of HB 2005 in 2019, we are deeply disappointed to see new restrictions around eligibility for workers being proposed despite the simple eligibility requirements that are outlined in statute ORS 657B.015. The paid family and medical leave statute and legislative intent has always been clear that the program was designed to “include all workers regardless of the employer size, regardless of the type of industry they work in, and in an economy where most people are piecing together multiple jobs that both full time and hourly workers can get the benefit.”<sup>1</sup>

The Department of Education employs over 63,000 teachers, administrators, and other school and district staff across the state, many who do not work over the summer months. This section could result in tens of thousands of school employees and seasonal farmworkers from being able to access benefits they are paying for in what could be some of their greatest times of need. We strongly encourage the agency to reconsider this section, as this proposed rule does not align with the department’s commitment to advancing equity in the implementation of Paid Leave Oregon and will disproportionately impact many of our most vulnerable among the workforce.

In addition, we strongly advise reworking the language in this section to comport with the statute, which does not require that the claimant be unable to perform their employment duties while on leave; instead, the statute merely requires that the claimant has a need for family leave, medical leave, or safe leave. Requiring that workers be unable to perform their employment duties is a different standard than envisioned by the statute.

## **471-070-1100 – Benefits: Application for Benefits [Amended]**

## **471-070-1120 – Benefits: Verification of a Serious Health Condition**

## **471-070-1200 – Benefits: Claim Processing; Additional Information**

We support the changes throughout these sections.

## **471-070-1205 – Benefits: Weekly Claims**

As previously noted, this section generally establishes that claimants must submit weekly leave claims if they are taking intermittent leave or leave for more than one qualifying purpose. **We strongly recommend eliminating the requirement that workers file weekly leave claims in**

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<sup>1</sup> HB 2005 public hearing in House Committee on Rules

# Time *to* Care OREGON

**such circumstances as this would create a significant barrier to access for workers who may be recovering from a serious illness, welcoming a new child, or caring for a seriously ill family member, and thus may not be able to keep up with weekly claim applications.** Workers take paid family and medical leave during some of life's most trying moments, and requiring weekly claim submission is overly burdensome. Instead, we recommend that the Department ask claimants if they intend to take leave on an intermittent basis and require medical certification to support the intermittent leave claim when the claimant initially applies.

## **471-070-1210 – Benefits: Updates to a Claim for Leave**

We support the changes in this section.

## **471-070-1310 – Benefits: Employee Notice to Employers Prior to Commencing Leave**

As previously noted, paragraph (2) has been amended to include a requirement that employees give oral notice to employers at least 30 days before commencing foreseeable leave. **However, the statute does not include such a requirement, so, to ensure that workers have full access to leave and benefits without any additional barriers, we recommend deleting this oral notice requirement and instead preserving the rule as previously drafted,** which comported with the statute's allowance for employers to choose to require written notice.

Paragraph (3) has been amended to allow for "another person" to give notice to the employee's employer "on behalf of the eligible employee taking leave." This is a smart change that aligns with the statute at ORS 657B.040(3)(b) and envisions the reality that some workers may be unable to notify their employer of unanticipated leave needs without the help of another person.

**We strongly suggest striking the last sentence from paragraph (5), which would require that employees taking intermittent leave give oral notice to their employer "within 24 hours of the commencement of each work day taken."** This notice requirement is overly burdensome on workers, who are already required to give their employers notice of leave as otherwise established throughout these regs and the statute.

As previously noted, under these proposed rules, paragraph (10) has been amended to state that the department may reduce benefits beyond the first weekly benefit payment when the claimant failed to give required notice to their employer in instances where the "first benefit payment issued is less than the entire amount of the reduction." However, pursuant to the statute, "[i]f an eligible employee fails to give notice as required . . . the Director of the Employment Department may reduce **the first weekly benefit amount** payable to the employee under ORS 657B.090 **by up to 25 percent.**" ORS 657B.040(4)(a). Thus, because the Department may only reduce the *first benefit payment* by up to 25 percent of the amount of benefits in that first benefit payment, there will never be an instance where the benefit reduction is greater than the first benefit payment. Thus, we recommend revising this provision accordingly.

# Time *to* Care OREGON

We are very glad to see the inclusion of paragraph (13), which is new to this draft and states that the Department may waive the imposition of a benefit reduction. This is a smart addition to these rules, and will allow the Department to make equitable decisions relating to benefit reductions.

## **471-070-1420 – Benefits: Leave Periods and Increments**

We support the changes in this section.

## **471-070-1430 – Benefits: Simultaneous Qualifying Purposes**

**As previously noted and as explained above in relation to the proposed rule at OAR 471-070-1205, we strongly recommend eliminating the requirement that workers using leave for more than one qualifying purpose file weekly leave claims.** Instead, we recommend that the Department initially require applications for both leave purposes, and process the claims as they usually would without any additional barriers. Workers with more than one qualifying leave purpose might be especially unable to comply with weekly claim requirements, as they are the most likely to be preoccupied with caregiving, for example.

## **471-070-1440 – Benefits: Weekly Benefit Proration**

The changes throughout this section are all minor, technical amendments and are fine as drafted.

## **471-070-1445 – Benefits: Self-Employed Benefit Calculation**

We support the changes in this section.

## **471-070-1450 – Benefits: Benefit Payment Methods**

As previously noted, this section explains the payment methods that the Department may use for weekly benefit payments. For the most part, this section matches the unemployment insurance regulations at OAR 471-030-0050, and this section should work fine as drafted.

## **471-070-1460 – Benefits: Lost, Stolen, Destroyed, or Forged Benefit Checks**

As previously noted, we might recommend using the term “benefit payment” in lieu of “benefit check” because benefit payments not through direct deposit may be issued via ReliaCard Visa pursuant to OAR 471-070-1450.

## **471-070-1465 – Benefits: Payment of Benefits Due to a Deceased Individual**

We are glad to see this section included to ensure that families of recently deceased workers who were expecting benefit payment through the program might be made more whole.

## **471-070-1470 – Benefits: Benefit Payment Offsets**

We support this section, which addresses offsets to benefits, such as child support orders and garnishments, comports with Oregon’s existing paid family and medical leave regulations.

## **471-070-1480 – Benefits: Federal and State Voluntary Tax Withholding**

# Time *to* Care OREGON

We strongly recommend revising this section so that it's clear that the Department will only allow for claimants to elect to withhold applicable federal taxes. We know from our work with other state paid family and medical leave programs that there is currently some confusion over whether all paid family and medical leave benefit payments for all covered purposes are fully taxed under federal law. **We recommend that the Department or another relevant state agency request a ruling from the IRS on this.**

## **471-070-1490 – Benefits: Child Support Withholding Obligations**

In this section, it is unclear to us if by striking this section, the Department intends to change its policy, and instead of allowing child support withholding, prohibit such withholding. If so, this would be a nice change to see incorporated so that workers who need PMLI benefits can use them as needed.

## **471-070-1510 – Benefits: Repayment of Overpaid Benefits; Interest [Amended]**

## **471-070-3710 – Assistance Grants: Application Requirements [Amended]**

We support the changes in these sections.

## **CONTRIBUTIONS & RECOVERY**

### **471-070-0010 – Definitions**

We support the definition changes made in this section.

### **471-070-0470 – Wages: Paid Leave Oregon Benefits**

### **471-070-2010 – Self-employed: Election Requirements and Effective Date**

### **471-070-2030 – Self-employed: Contribution Payments and Reporting Requirements**

### **471-070-3000 – Contributions: Definitions**

### **471-070-3040 – Contributions: Withholding of Employee Contributions**

### **471-070-3310 – Contributions: Application of Payments**

### **471-070-5200 – Due Dates for Balances Owed to the Department**

### **471-070-5210 – Application of Payments**

### **471-070-8520 – One-Percent Penalty**

### **471-070-8530 – Good Cause for Failure to File Reports or Pay Contributions**

### **471-070-8540 – Penalty Amount When Employer Fails to File Report**

We support the changes made in all of the sections above.

## **EQUIVALENT PLANS**

### **471-070-2200 – Equivalent Plans: Definitions**

### **471-070-2210 – Equivalent Plans: Application Requirements and Effective Date**

We support the changes made in the sections above.

### **471-070-2220 – Equivalent Plans: Plan Requirements**

This section has been amended to extend the appeal timeline for employees under approved equivalent plans from 20 days to 60 days. This is a vast improvement, and will help to ensure

# Time *to* Care OREGON

that workers covered under equivalent plans have meaningful access to an appeal process. We strongly support this amendment.

**471-070-2270 – Equivalent Plans: Proration of Benefit Amounts for Simultaneous Coverage**

The amendments throughout this section are minor and should work as drafted.

**471-070-2400 – Equivalent Plans: Disputes between an Equivalent Plan Employer and Employee, Request for Hearing**

We are happy to see that this section has been amended to extend the appeal timeline for the dispute resolution process utilized once an equivalent plan's internal appeals process has been exhausted from 20 days to 60 days. We strongly support this change.

**471-070-2450 – Equivalent Plans: Termination by the Department**

We support that subsection (1) has been amended to clarify that the department may terminate an equivalent plan when the business has closed.

Subsection (8) has been amended to require that within 30 calendar days of termination of an equivalent plan, employers must send “amounts of contributions collected or owing” to the Department, amongst other information. This is a smart change that we support.

**471-070-2455 – Equivalent Plans: Termination and Withdrawal by Successor in Interest**

**471-070-2460 – Equivalent Plans: Employer Withdrawal**

We support the changes made in the sections above.

We appreciate your consideration of our feedback.



**FRIEND Anne \* OED**

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**From:** Freeman, Daris N. <DFreeman3@UNUM.COM>  
**Sent:** Monday, June 19, 2023 5:06 AM  
**To:** OED\_RULES \* OED  
**Cc:** Freeman, Daris N.  
**Subject:** Batch 7 - Unum comments

**Categories:** Anne

Thank you for your thoroughness and responsiveness to feedback. As a result, we only have one item to comment on this round so sending in email form. As you know from comments we submitted to the RAC, the issue of non-working days can create a lot of confusion. One thing in particular are company holidays (e.g. 4<sup>th</sup> of July). Many employers who provide paid holidays do NOT provide their employees with that pay if they are on leave before/after the actual holiday. As a result, we recommend PLO benefits continue through the entire week even though the employee may not have been expected to work on the holiday.

To solve for this, we recommend specifying in the rule that the non performance of the individual's employment duties last a week or more (with the exception of incarceration). This would then still incorporate all the examples already in the rule but would allow employees on leave during a company holiday to receive their full week of benefits. Recommended added language is below in red. We have also added an example for clarity although you can likely come up with a better one 😊

As always, thank you for your thoughtful consideration of our feedback!!

**471-070-1015**

Benefits: Leave from Work

(1) For an individual to be considered as taking leave from work, the individual must:

- (a) Be otherwise scheduled to work a work day or week; and
- (b) Be unable to perform their employment duties due to a qualifying purpose under ORS 657B.020.

(2) An individual may not be considered as taking leave from work if they would not be performing their employment duties for a week or more (with the exception of (b) which may be for less than a week) for reasons other than PFMLI qualifying purposes described in ORS 657B.020, including but not limited to, circumstances related to:

- (a) An employer's business operations, such as:
  - (A) A lapse in seasonal operations;
  - (B) School break periods; or
  - (C) Other suspensions or cessations of an employer's business operations.
- (b) A period of incarceration, in which an individual is unable to perform their employment duties as a result of being an adult in custody.¶

**Example 1:** Rory is a seasonal employee for a vegetable farm in the Willamette Valley. Rory does not work at the farm in December and January but is still considered an employee of the vegetable farm and does not have other paid employment during this time. Rory does not qualify for PFMLI benefits in December and January because Rory is not taking leave from work, as Rory is not scheduled to work and does not perform employment duties at the vegetable farm during these months.

**Example 2:** Selena is an instructor at Oregon State University with a 9-month contract that begins in September and ends in June. Selena also teaches summer courses at the University of Oregon between June and September. Selena qualifies for PFMLI benefits for a qualifying purpose during the summer break at Oregon State University because Selena is taking leave from work, as Selena is scheduled to work and perform employment duties at the University of Oregon between June and September.

**Example 3:** Fiona works at a restaurant as a server and is scheduled to work a five-day work week Monday through Friday. On Monday and Tuesday Fiona is serving an adult in custody sentence. On Thursday and Friday of the same week, Fiona needs to take care of their father who has a serious health condition. Fiona qualifies for



PFMLI benefits on Thursday and Friday because Fiona is taking leave from work on these days as Fiona is scheduled to work to work and is unable to perform employment duties on these days due to a PFMLI qualifying purpose. Fiona does not qualify for PFMLI benefits on Monday and Tuesday, even if they have a PFMLI qualifying purpose, because Fiona is unable to perform duties for their employer for reasons other than a PFMLI qualifying purpose.

**Example 4:** Jack works as a store manager for a clothing store and was approved for four weeks of PFMLI benefits to bond with a child after birth. After two weeks of bonding leave, Jack starts a six-month period of incarceration. Jack does not qualify for PFMLI benefits during the remaining two weeks of leave, because during the time Jack is an adult in custody, they are unable to perform their employment duties for reasons other than a PFMLI qualifying purpose. Once Jack completes the period of incarceration and resumes paid employment, Jack may again be eligible for PFMLI benefits for a qualifying purpose.

**Example 5:** Joelle is a high school teacher with a nine-month contract that begins in September and ends in June. Joelle is not expected to teach during the school break periods and does not have other paid employment during that time. Joelle does not qualify for PFMLI benefits during school break periods, because Joelle is not taking leave from work, as they are not scheduled to work during those times and would not perform their employment duties during break times.

**Example 6:** Terry is a bank teller and is scheduled to work a five-day work week Monday through Friday. Terry takes 12 weeks of PLO for knee replacement surgery beginning in November. Terry's bank observes Thanksgiving Day, Christmas Day and New Years Day as paid bank holidays. Although Terry would not work those days for reasons other than the medical condition, she will receive full PLO benefits for each week since the non-scheduled work days are less than one week in duration.

**Daris N. Freeman**

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June 28, 2023

**To:** Oregon Employment Department

**From:** Odalis Aguilar Aguilar, Political Coordinator, Oregon AFSCME

**RE:** Batch 7 Administrative Rules

On behalf of Oregon AFSCME who represents over 35,000 workers in the public sector, I write with deep appreciation of the work done to establish and execute the Paid Family Medical Leave Program but want to also highlight some of our concerns with the rules being proposed. We want to ensure that the intent in which the program is created during the 2019 legislative session is also translated into the rulemaking process for this program. Workers should be able to easily access paid and protected leave starting day 1 of implementation and as stated on the house floor by the chief sponsor of the bill, "this program is designed to fit the realities of our lives..."

Our concerns specifically lie with the ability for a worker who has already been paying into the program to be able to access those benefits regardless of their occupation. The proposed rule would exclude workers from accessing those paid family and medical leave benefits although they have already contributed to the program. Dozens of testimony from the hearings in 2019 highlight the ability for all workers regardless of the employer size or type of industry to benefit from this program. The 471-070-1015 proposed rule on Leave from Work states that this, "creates a new administrative rule to clarify the requirements for considering if an individual is taking leave from work to qualify for Paid Leave Oregon benefits. Individuals will not be considered taking leave from work if they would not be performing their employment duties for reasons other than Paid Leave."<sup>1</sup>

Workers who do not work a regular schedule due to the nature of their jobs and experience lapse in seasonal operations, school break periods or other suspensions or cessations of an

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<sup>1</sup> Agency Information; Rulemaking. Oregon Employment Department.  
<https://www.oregon.gov/employ/Agency/Pages/OED%20Administrative%20Rules.aspx>



employer's business operations would be excluded from accessing benefits while ignoring their personal contributions. We understand that this issue is complicated and can be difficult to manage but we encourage the department to examine more closely the legislative intent, specifically as it relates to seasonal workers and those who have lapse in their work that is out of their personal control. It is also important to acknowledge that not all workers fit into a "one-size fits all" category and their jobs are also needed to strengthen our economy and communities.

With respect,

Odalís Aguilar Aguilar / [oaguilar@oregonafscme.org](mailto:oaguilar@oregonafscme.org)  
Political Coordinator, Oregon AFSCME

## FRIEND Anne \* OED

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**From:** Sonia Wendelschafer <SoniaW@crpud.org>  
**Sent:** Thursday, June 29, 2023 12:57 PM  
**To:** OED\_RULES \* OED  
**Subject:** Rulemaking Comments/Questions  
**Attachments:** PFMLI Batch 7 Suggestions 1.pdf; PFMLI Batch 7 Suggestions 2.pdf; PFMLI Batch 7 Suggestions 3.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

**Categories:** Anne

Good afternoon,

I attended the public hearing this last Monday at 9 am for Batch 7 proposed rules. Please see the attached suggestions for each set of rules discussed.

During the meeting, we were told that the legislation in SB 913 removed the requirement that employees could not receive more than 100% of their pay while receiving Oregon Paid Leave benefits. We were pointed to SB 913, section 14 for this information. I read through section 14 and the current verbiage doesn't appear to be removing the 100% as we were told. The verbiage currently states:

"Section 14. ORS 657B.030 is amended to read:

657B.030. (1) Family and medical leave insurance benefits are in addition to any paid sick time under ORS 653.606, vacation leave or other paid leave earned by an employee.

(2) An employer may permit an employee to use all or a portion of paid sick time, vacation leave or any other paid leave earned by the employee in addition to receiving paid family and medical leave insurance benefits [*to replace an employee's wages up to 100 percent of the eligible employee's average weekly wage*] during a period of leave taken for family leave, medical leave or safe leave."

It appears that the verbiage is still referencing (in the italics) that the employee can only receive up to 100% still, but that is not what we were told during the public hearing on Monday. Could someone please clarify this?

Thank you,  
Sonia Wendelschafer  
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(15) "Offset" means the withholding of an amount equal to an amount owed to the department from a benefit payment which would otherwise be payable to a claimant. ¶

(16) "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. ¶

(17) "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. ¶

~~(148)~~ "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. ¶

~~(152)~~ "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. ¶

~~(1620)~~ "Subject Wages" means PFMLI wages that are paid and reported for an employee, as defined in ORS 657B.010(13), or an employee of a tribal government who has elected coverage under ORS 657B.130. ¶

~~(217)~~ "Willful" and "willfully" means a knowing and intentional act or omission. ¶

~~(1822)~~ "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. ¶

~~(1923)~~ "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. ¶

~~(204)~~ "Work day" means any day on which an employee performs any work for an employer and is an increment of a work week. The number of work days in a work week is based on the average number of work days worked by an employee at all employment. There are a maximum of seven work days in a work week. If a work day spans two calendar days, such as a shift beginning on day one at 10 p.m. and ending on the next day at 5 a.m., the work day

ADOPT: 471-070-1015

RULE SUMMARY: Creates a new administrative rule to clarify the requirements for considering if an individual is taking leave from work to qualify for Paid Leave Oregon benefits. Individual will not be considered taking leave from work if they would not be performing their employment duties for reasons other than Paid Leave.

CHANGES TO RULE:

471-070-1015

Benefits: Leave from Work

(1) For an individual to be considered as taking leave from work, the individual must:

(a) Be otherwise scheduled to work a work day or week; and

(b) Be unable to perform their employment duties due to a qualifying purpose under ORS 657B.020.

(2) An individual may not be considered as taking leave from work if they would not be performing their employment duties for reasons other than PFMLI qualifying purposes described in ORS 657B.020, including but not limited to, circumstances related to:

(a) An employer's business operations, such as:

(A) A lapse in seasonal operations;

(B) School break periods; or

(C) Other suspensions or cessations of an employer's business operations.

(b) A period of incarceration, in which an individual is unable to perform their employment duties as a result of being an adult in custody.

Example 1: Rory is a seasonal employee for a vegetable farm in the Willamette Valley. Rory does not work at the farm in December and January but is still considered an employee of the vegetable farm and does not have other paid employment during this time. Rory does not qualify for PFMLI benefits in December and January because Rory is not taking leave from work, as Rory is not scheduled to work and does not perform employment duties at the vegetable farm during these months.

Example 2: Selena is an instructor at Oregon State University with a 9-month contract that begins in September and ends in June. Selena also teaches summer courses at the University of Oregon between June and September. Selena qualifies for PFMLI benefits for a qualifying purpose during the summer break at Oregon State University because Selena is taking leave from work, as Selena is scheduled to work and perform employment duties at the University of Oregon between June and September.

Example 3: Fiona works at a restaurant as a server and is scheduled to work a five-day work week Monday through Friday. On Monday and Tuesday Fiona is serving an adult in custody sentence. On Thursday and Friday of the same week, Fiona needs to take care of their father who has a serious health condition. Fiona qualifies for PFMLI benefits on Thursday and Friday because Fiona is taking leave from work on these days as Fiona is scheduled to work (to work) and is unable to perform employment duties on these days due to a PFMLI qualifying purpose. Fiona does not qualify for PFMLI benefits on Monday and Tuesday, even if they have a PFMLI qualifying purpose, because Fiona is unable to perform duties for their employer for reasons other than a PFMLI qualifying purpose.

Example 4: Jack works as a store manager for a clothing store and was approved for four weeks of PFMLI benefits to bond with a child after birth. After two weeks of bonding leave, Jack starts a six-month period of incarceration. Jack does not qualify for PFMLI benefits during the remaining two weeks of leave, because during the time Jack is an adult in custody, they are unable to perform their employment duties for reasons other than a PFMLI qualifying purpose. Once Jack completes the period of incarceration and resumes paid employment, Jack may again be eligible for PFMLI benefits for a qualifying purpose.

Example 5: Joelle is a high school teacher with a nine-month contract that begins in September and ends in June. Joelle is not expected to teach during the school break periods and does not have other paid employment during that time. Joelle does not qualify for PFMLI benefits during school break periods, because Joelle is not taking leave from work, as they are not scheduled to work during those times and would not perform their employment duties during break times.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.010, ORS 657B.015

ADOPT: 471-070-1205

RULE SUMMARY: Requires a weekly claim to be filed to receive weekly benefits for claimants who are taking intermittent leave or are taking leave for more than one qualifying purpose at a time. The weekly claim must be submitted after the work week has ended and no later than 30 calendar days following the end of the work week unless there is good cause.

CHANGES TO RULE:

471-070-1205

Benefits: Weekly Claims

(1) A claimant taking Paid Family and Medical Leave Insurance (PFMLI) benefits on an intermittent leave schedule or for more than one qualifying purpose as described in OAR 471-070-1430, must file a weekly claim in order to receive PFMLI benefits for that week.¶

(2) For a weekly claim to be approved, the weekly claim must be complete and include, but is not limited to, the following information:¶

(a) The dates of the work week being claimed;¶

(b) The number of work days of leave taken for each leave type specified under 657B.020;¶

(c) The number of days worked during the work week;¶

(d) Claimant's eligibility to receive Workers' Compensation under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657 for the work week;¶

(e) Any changes to current employment, including any new employment or employment that has ended since the benefit application or last weekly claim; and¶

(f) A written or electronically signed statement declaring under oath that the information provided in support of the weekly claim is true and correct to the best of the claimant's knowledge.¶

(3) The weekly claim must be submitted only after that work week has ended and no later than 30 calendar days following the end of the work week in which the family, medical, or safe leave was taken. Weekly claims submitted after 30 calendar days will be denied, except in cases where a claimant can demonstrate a weekly claim was submitted late for reasons that constitute good cause under section (5) of this rule.¶

(4) For claimants taking intermittent leave, the number of days of leave eligible in a work week may not exceed the average number of work days worked per week, as provided under ORS 471-070-1100(1)(c)(C) or OAR 471-070-1210(2), minus the number of days actually worked during the work week. ¶

Example: Eddie submits an application for benefits that states their average work week consists of four work days. The weekly benefit amount is \$875.00. Eddie submits their first weekly claim and reports three days worked and three days of leave, for a total combination of six days of work and leave reported. Eddie will only be paid for one of the three days of leave reported on the weekly claim report as Eddie worked three days out of a four day work week. The benefit amount paid for the first week of leave to Eddie is \$218.75 [(\$875.00 weekly benefit amount divided by 4 work days) x 1 day of payable leave]. ¶

(5) Good cause exists when a claimant establishes by satisfactory evidence submitted to the department that factors or circumstances beyond the claimant's control prevented the claimant from submitting a weekly claim within the required timeframe under section (3) of this rule. Good cause for the late submission of a weekly claim is determined at the discretion of the department and includes, but is not limited to, the following:¶

(a) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents a claimant from timely filing a weekly claim; or¶

(b) A demonstrated inability to reasonably access a means to file a weekly claim in a timely manner, such as an inability to file a weekly claim due to a natural disaster or a significant and prolonged department system outage.¶

(6) If the department determines the claimant demonstrated good cause for late submission of a weekly claim, the department may accept the weekly claim up to one year after the leave was taken.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.020, 657B.090



AMEND: 471-070-1210

RULE SUMMARY: Amends the administrative rule to clarify and require that the claimant may not change their average work schedule throughout the entire claim unless has current employment or self-employment changes or applied for additional qualifying purposes. This will alleviate administrative burden and provide consistency in calculations for benefit payments.

CHANGES TO RULE:

471-070-1210

Benefits: Updates to a Claim for Leave

(1) After submitting an application for benefits as specified in OAR 471-070-1100, a claimant must notify the department within 10 calendar days of any changes to the information provided on their application and provide additional information as provided in OAR 471-070-1200, if applicable, including, but not limited to, changes to the claimant's:¶

(a) First and last name;¶

(b) Mailing address;¶

(c) Telephone number;¶

(d) Current employment or self-employment;¶

~~(e) Average number of work days worked per work week;¶~~

~~(f) Leave schedule;¶~~

~~(g) Type of leave taken; or¶~~

~~(h) Eligibility to receive Workers' Compensation under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657.¶~~

(2)(a) A claimant may change their average number of work days worked per work week that they provided on the application for benefits only under the following circumstances in which the claimant: ¶

(A) Added one or more new employer since applying for benefits;¶

(B) Left one or more employer since applying for benefits; or¶

(C) Applied for benefits for an additional qualifying purpose.¶

(b) Any approved change to the average number of work days worked per work week shall take effect beginning on the Sunday of the first week after the claimant experienced a change in employment or started an additional qualifying purpose for benefits.¶

(3) Failure to notify the department of any changes to the information provided on an application for benefits as specified in section (1) of this rule may result in a delay, denial, overpayment, or disqualification of weekly benefits.¶

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

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

Statutes/Other Implemented: ORS 657B.090, 657B.100

AMEND: 471-070-1310

RULE SUMMARY: Amends the administrative rule to clarify an eligible employee is required to give notice to their employer when commencing family, medical, or safe leave. Also change "continuous" to "consecutive" and to clarify the 25 percent benefit reduction and clarify how the benefit payments will be reduced. The department may waive the imposition of the benefit reduction.

CHANGES TO RULE:

471-070-1310

Benefits: Employee Notice to Employers Prior to Commencing Leave

(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 employer may require an eligible employee must give written or oral notice at least 30 calendar days before commencing a period of paid family, medical, or safe 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. ¶

(23) 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. ¶

(34) 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) Anticipated timing and duration of leave. ¶

(45) 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 continuous or is to be taken intermittently, notice need only be given one time 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. ¶

(56) An employer that requires eligible employees to provide a 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 a written notice, the policy and procedures must include a description of the penalty benefit reduction under section (910) of this rule that may be imposed by the department for not complying with the employer's notice requirements. ¶

(67) An employee does not need to expressly mention the Paid Family and Medical Leave Insurance program when giving their employer written or oral notice under this rule. ¶

(78) 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. ¶

(82) If the employer does not respond to the department's notice as described in section (82) 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. ¶

(910) If the department determines that the claimant did not provide the required leave notice to the employer, the department may impose a penalty benefit reduction by issuing a decision and reducing the first weekly benefit amount payable under ORS 657B.090 by 25 percent. The penalty will be a 25 percent reduction, except when the first benefit payment it would be issued will be reduced by the weekly benefit amount below the minimum benefit amount

provided in ORS 657B.050(2)(b). The claimant may appeal the imposition of the penalty in accordance with ORS 657B.410 and applicable administrative rules. 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. A 25 percent reduction of their benefit amount in the first week equals \$35 ( $\$140 \times .25$ ), so the first 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 would be reduced to \$105 ( $\$140 - \$35$ ). However, the minimum weekly benefit amount is  $\times .25$  reduction). Sanomi's first benefit payment would have been \$1240, so Sanomi's but the first weekly benefit payment amount would be \$120 instead. ¶  
(10) For leave taken in increments of less than a full work week, the total penalty amount shall be divided by the number of work day increments contained in a work week and deducted from benefits paid for that number of work days 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 ~~four~~ six work days in a work week and was unable to work the entire one of those days each week due to taking medical leave. Joy's weekly benefit amount is \$4600, which is prorated to \$100 per work day of leave because Joy only works an average of four days in a work week. The penalty amount is \$25 per work day ( $\$600$  weekly benefit amount / 6 days per week). The amount of the benefit reduction is \$150 ( $\$600$  weekly benefit amount  $\times .25$  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 -  $\$1050 \times .25$ ). Joy's benefit amount is reduced to \$75 ( $\$100$  per work day minus \$25 penalty per work day) for each of the first four work days of leave taken, as four days equals one work week 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. ¶

(142) The employee may request a waiver of the benefit reduction penalty 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. ¶

(123) 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 penalty will be considered an erroneous overpayment, and that penalty amount amount of the reduction may be collected from the employee in accordance with ORS 657B.120.

Statutory/Other Authority: ORS 657B.340, ORS 657B.040

Statutes/Other Implemented: ORS 657B.040

ADOPT: 471-070-1450

RULE SUMMARY: Describes the primary payment method for Paid Leave Oregon benefit payments <sup>by</sup> direct deposit. If the claimant doesn't apply for direct deposit, then the payment will be issued on a ReliaCard Visa. If the department determines that is not feasible, then the department may issue a check to the claimant.

CHANGES TO RULE:

471-070-1450

Benefits: Benefit Payment Methods

(1) Paid Family and Medical Leave Insurance (PFMLI) 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 PFMLI 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.

Statutory/Other Authority: ORS 293.525, 657B.340

Statutes/Other Implemented: ORS 293.525, 657B.050

ADOPT: 471-070-1460

RULE SUMMARY: Describes the process to request a new benefit check if the claimant's benefit check was lost, stolen, destroyed, or forged.

CHANGES TO RULE:

471-070-1460

Benefits: Lost, Stolen, Destroyed, or Forged Benefit Checks

(1) When a benefit check has been lost, stolen, destroyed, or forged and for purposes of this rule:

(a) A benefit check is "lost" if the claimant never received an issued check, and the check's whereabouts is unknown, or it was received but was not cashed and now cannot be found.

(b) A benefit check is "stolen" if the check was taken or cashed by another without the authorization of the payee, whether or not the other person's identity is known.

(c) A benefit check is "destroyed" if an issued check has not been cashed and has been rendered nonnegotiable.

(d) "Forgery" of a benefit check has the same meaning as provided in ORS 165.007 and further defined in 165.002.

(2) If a benefit check has been issued but not cashed and the claimant completes a written sworn statement that the benefit check was lost, stolen, or destroyed, the check will be reissued in accordance with ORS 293.475 if at least ten calendar days from the date the original check was issued has elapsed. If the original check and replacement check are both received and cashed by the claimant, the claimant shall be liable for repayment of the overpayment to the department.

(3) If the benefit check has been issued and cashed and it is alleged that the check was not signed by the claimant or the claimant's authorized agent, a determination will be made on the validity of the endorsement:

(a) If the endorsement is determined to be the claimant's or the claimant's authorized agent's, the director will notify the claimant by letter and no replacement check will be issued.

(b) In the case of forgery or any unauthorized cashing of a benefit check, a replacement check will be issued if the claimant is due benefits, unless the claimant received any portion of the benefits, or otherwise benefited from the funds.

(c) The department will advise the State Treasurer of the forged or unauthorized cashing of the check.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 293.470, 293.475

ADOPT: 471-070-1465

RULE SUMMARY: Describes the process to request benefit payments due in the event of the death of a claimant <sup>who</sup> ~~that~~ has an approved application for benefits but the benefits are still due. This allows for claimant's survivors to receive payment of any unpaid benefits the claimant had already claimed prior to death. Payments not claimed within two years will be considered abandoned and sent to the State Treasurer.

CHANGES TO RULE:

471-070-1465

Benefits: Payment Due to a Deceased Individual and Abandoned Payment

(1) In the event of the death of an individual to whom Paid Family and Medical Leave Insurance (PFMLI) 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.

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

Statutes/Other Implemented: ORS 657B.090, ORS 98.336, 98.352, 293.490, 293.495

ADOPT: 471-070-1480

RULE SUMMARY: Clarifies the withholding rate for voluntary federal and state personal income tax to be withheld from Paid Leave Oregon benefit payments. Federal personal income tax withholding will be 10 percent and Oregon personal income tax withholding will be eight percent.

CHANGES TO RULE:

471-070-1480

Benefits: Federal and State Voluntary Tax Withholding

(1) A claimant receiving Paid Family and Medical Leave Insurance (PFMLI) benefits can elect to voluntarily have federal or state personal income tax withholding. To elect voluntary withholding, the claimant must notify the department on an approved method.

(2) When the department receives the claimant's notification requesting withholding, the department will:

(a) Withhold at a rate of 10 percent for federal personal income taxes pursuant to IRC section 3402 (p) and applicable regulations for future benefit payments issued.

(b) Withhold at a rate of eight percent for Oregon personal income taxes for future benefit payment issued.

(3) The amount of voluntary withholding from a claimant benefit payment will be rounded to the nearest cent.

(4) The amount of voluntary withholding from a claimant benefit payment will be held in trust and:

(a) Transferred to the Internal Revenue Service in the time and manner required for withholdings under IRC section 3402.

(b) Transferred to the Department of Revenue in the time and manner provided by the Department of Revenue under ORS chapter 316 and rule.

(5) The election will remain in effect until the claimant submits to the department an authorization for tax withholding form instructing the department to stop withholding. The withholding will stop with the next benefit payment issued, whenever administratively feasible, after the instruction to stop is received by the department.

(6) The PFMLI program shall provide information to a claimant about the total federal and state personal income tax withheld for the calendar year from PFMLI benefit payments on the Form 1099 no later than January 31st following the calendar year.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.050

AMEND: 471-070-3710

RULE SUMMARY: Amends the administrative rule to include the use of a federal employer identification number (FEIN) on the assistance grant application and changes claim identification number to social security number or individual taxpayer identification number.

CHANGES TO RULE:

471-070-3710

Assistance Grants: Application Requirements

(1) An employer may apply for an assistance grant only:¶

(a) After an eligible employee has been approved by the department for family leave, medical leave or safe leave; and¶

(b) Prior to the end of the fourth month following the last day of the eligible employee's period of leave.¶

(2) An application for a grant must be submitted online or by another method approved by the department. The grant application must be complete and include the following:¶

(a) Information about the employer applying for the grant, including:¶

(A) Business Identification Number or Federal Employer Identification Number;¶

(B) Business name;¶

(C) Business address; and¶

(D) Business contact person's name and contact information;¶

(b) Information about the eligible employee taking leave for which the employer is requesting the grant, including but not limited to:¶

(A) First and last name;¶

(B) Claim Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN);¶

(C) Start date of the leave; and¶

(D) End date or expected leave end date;¶

(c) Information about the grant being requested, including:¶

(A) Type of grant requested; and¶

(B) Grant amount requested, when applicable;¶

(d) Written documentation demonstrating that the employer:¶

(A) Hired a replacement worker to replace an eligible employee on family leave, medical leave or safe leave, including the replacement worker's name, start date, and Social Security Number or Individual Taxpayer Identification Number (SN or ITIN); or¶ *SSN*

(B) Incurred significant additional wage-related costs due to an eligible employee's use of leave and the amount, including, but not limited to, receipts, personnel or payroll records, or sworn statements; and¶

(e) Acknowledgement that:¶

(A) The employer is required to pay the employer contribution for a period of eight calendar quarters in accordance with OAR 471-070-3750; and¶

(B) The employer could be required to repay an assistance grant if employer is later deemed to be ineligible in accordance with OAR 471-070-3850.¶

(3) An employer that receives a grant under ORS 657B.200(1)(b) may submit a revised other grant application requesting an additional grant under ORS 657B.200(2).-¶

(a) The revised new grant application must contain:¶

(A) A revised new leave end date or revised new expected leave end date showing an extension of the initial period of leave requested; and¶

(B) Written documentation demonstrating that a replacement worker was hired to replace an eligible employee on family leave, medical leave or safe leave including the replacement worker's name, start date, and Social Security Number or Individual Taxpayer Identification Number.¶

(b) The revised SN or ITIN.¶ *SSN*

(b) The additional grant application submitted under this section will not count against an employer's application limit under ORS 657B.200(3).¶

(4) An incomplete application will not be review considered by the department until and unless it is completed and will not count against an employer's application limit under ORS 657B.200(3).¶

(5) The department may deny an application for a grant for reasons that include, but are not limited to, the employer's failure to demonstrate that:¶

(a) The employer hired a replacement worker or incurred significant additional wage-related costs; or¶

(b) The replacement worker hired or significant additional wage-related costs incurred was due to an employee's use of family leave, medical leave or safe leave.¶




WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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RULES PROPOSED:

471-070-0010, 471-070-0470, 471-070-2010, 471-070-2030, 471-070-3000, 471-070-3040, 471-070-3310, 471-070-5200, 471-070-5210, 471-070-8520, 471-070-8530, 471-070-8540

AMEND: 471-070-0010


RULE SUMMARY: Amends the administrative rule to define a "volunteer" for purposes of who would not be considered an employee for Paid Leave Oregon purposes 

CHANGES TO RULE:

471-070-0010

Definitions

(1) "Paid Leave Oregon" means the Paid Family and Medical Leave Insurance program as described under ORS chapter 657B.11

(2) "Volunteer" as used in ORS 657B.010(13)(b)(E), means an individual who performs services for a public agency or private non-profit organization  for civic, charitable, or humanitarian reasons, without promise, expectations or receipt of compensation for services rendered.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.340, 657B.010

AMEND: 471-070-2030

RULE SUMMARY: Amends the administrative rule to clarify which year of the tax return is needed.

CHANGES TO RULE:

471-070-2030

Self-employed: Contribution Payments and Reporting Requirements

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

(2) Total contribution payments will be based on the individual's total taxable income from self-employment from the tax return required to be filed in the ~~previous calendar year~~ for a prior tax year, per OAR 471-070-2010 and generally shall be divided into four quarterly contribution payments. ~~The contribution payments will begin in the quarter the self-employed election is made and continue through the first quarter of the next year.~~ If a contribution is due for only part of a quarter, the contribution amount shall be prorated based on the number of calendar days that the elective coverage is in effect.¶

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

~~The first~~¶

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

~~The s~~Second quarterly payment, period of July 1 through September 30 (third quarter for calendar year 2024), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).¶

~~The third~~Third quarterly payment, period of October 1 through December 31 (fourth quarter for calendar year 2024), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).¶

~~The fourth~~Fourth quarterly payment, period of January 1 through March 30 (first quarter for calendar year 2025), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).¶

Example 2: Bert, a self-employed individual, elects PFMLI coverage on August 22, 2024. Bert earned \$40,000 in taxable income from self-employment in 2023. Because Bert's election is made during the third quarter of 2024, Bert only has three quarterly payments (third quarter of 2023, fourth quarter of 2023, and first quarter of 2024) until a new quarterly amount is determined. Assuming a total contribution rate of one percent, Bert's three quarterly contribution amounts due are calculated as follows:¶

The first payment period of July 1 through September 30 (third quarter for calendar year 2024), will be \$26.09 [(\$40,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters) x 40/92 calendar days in the quarter].¶

The second payment period of October 1 through December 31 (fourth quarter for calendar year 2024), will be \$60 (\$40,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).¶

The third payment period of January 1 through March 30 (first quarter for calendar year 2025), will be \$60 (\$40,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).¶

Bert's next payment will be based on the taxable income from self-employment in 2024. ¶

~~(3) Quarterly contributions shall be due and payable in accordance with OAR 471-070-303~~ (3) Quarterly contributions shall be due and payable in accordance with OAR 471-070-3030.¶

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

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

(56) The self-employed individual must annually report information and provide documentation provided in subsection (a) and (b) of this section the department deems necessary for the administrative of elective coverage. Failure to provide the information by December 31 will result in termination of the self-employed individual's

*Handwritten initials/signature*

ADOPT: 471-070-5210

RULE SUMMARY: Clarifies the order in which payments are applied to all outstanding debts under ORS chapter 657B. Similar language for contribution debts was previously listed in OAR 471-070-3310; however, that rule is being repealed so the order applies to all outstanding debts.

CHANGES TO RULE:

471-070-5210

Application of Payments

(1) As used in this administrative rule:

(a) "Designated payments" are payments received by the department specifying a specific debt, distraint warrant, or quarter(s) in the case of contributions.

(b) "Legal fees" means fees attributed to the recording or processing of a distraint warrant on behalf of the department for the purpose of collecting amounts owed under ORS chapter 657B pursuant to ORS 657B.300 and search fees attributed to garnishments issued to financial institutions pursuant to ORS 18.790.

(c) "Principal" means any balance owing under ORS chapter 657B, excluding legal fees, penalties, and interest.

(d) "Undesignated payments" are payments received by the department that are not specified for a debt, distraint warrant, or quarter(s) in the case of contributions.

(2) Except as otherwise provided by statute, or as directed by a court of competent jurisdiction, payments made to the department by or on behalf of an individual or employer for amounts owed under ORS chapter 657B; legal fees, and related penalties; in accordance with the provisions of ORS chapter 657B shall be identified by the department as either "Designated payments" or "Undesignated payments" and will be credited to the individual's or employer's account in the following order of priority:

(a) Undesignated payments:

(A) To the oldest unwarranted unpaid balance in the following order:

(i) Penalties;

(ii) Interest; and then

(iii) Principal.

(B) After the payment amounts under subsection (a)(A) of this rule have been applied, any remaining amounts shall then be credited to the most recent unpaid warranted balance in the following order:

(i) Legal Fees;

(ii) Penalties;

(iii) Interest; and then

(iv) Principal.

(b) Designated payments:

(A) Legal Fees;

(B) Penalties;

(C) Interest; and then

(D) Principal.

*repealed*

(3) The department may identify categories of indebtedness for internal accounting procedures and may retire each category separately in the order of priority set forth in section (2) of this rule.

(4) Nothing in this rule shall be construed in any way as abridging or limiting the authority or powers of the director granted under ORS chapter 657B.

(5) The employees listed in OAR 471-070-0550 may act on behalf of the director for purposes of section (3) and (4) of this rule.

(6) Notwithstanding any instructions to the contrary by or on behalf of the individual or employer, payments will be applied in the manner specified in this rule.

(7) Credit balances will be treated as payments for purposes of this rule.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.040, 657B.120, 657B.150, 657B.240, 657B.300, 657B.320, 657B.330, 657B.370, 657B.430, 657B.910, 657B.920

AMEND: 471-070-8520

RULE SUMMARY: Amends the administrative rule to change "final" to "due" to describe when the penalty is due.

CHANGES TO RULE:

471-070-8520

One-Percent Penalty

(1) If an employer has failed to file or complete all required reports or pay all required contributions for the calendar year as described in 471-070-3030, the department shall assess the penalty authorized by ORS 657B.910 on the Paid Family and Medical Leave Insurance (PFMLI) subject wages. The department shall send notice of the assessment of such penalty to the employer's last known address or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records on or before October 20 of the year. The penalty shall become ~~final~~ due on November 10 immediately following the assessment.¶

(2) On or after the date of the assessment, but prior to November 10 immediately following the assessment, the employer may request waiver of the penalty based on good cause as defined in OAR 471-070-8530.¶

(3) If an employer makes a request for waiver of the penalty within the time prescribed in section (2) of this rule, the department shall make a decision, either granting or denying the waiver, and mail notice of the decision to the employer's last known address or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records. If, prior to November 10 immediately following the assessment, the department determines that the employer had good cause for the failure to file all reports or pay all contributions due by September 1, the department shall grant the request for waiver and remove the penalty from the employer's account. If the employer fails to establish good cause prior to November 10 immediately following the assessment, the department shall deny the request for waiver. If the request for waiver is denied, the department shall notify the employer that a request for a contested case hearing may be filed within 20 days after the date that the penalty waiver decision is sent to the employer.¶

(4) Hearings held and administrative law judge decisions issued pursuant to section (3) of this rule shall be in accordance with the provisions of chapter 137, division 3 of the Oregon Administrative Rules that have been adopted for the PFMLI program.¶

(5) Judicial review of administrative law judge decisions issued pursuant to this rule shall be as provided for review of orders in contested cases under ORS 183.310 through 183.550. The director is designated as a party for purposes of hearings under this rule.¶

(6) Upon motion of the director or upon application of an interested employer, the director may reconsider a penalty imposed under ORS 657B.910 irrespective of whether it has become final:¶

(a) Such reconsideration shall be restricted to penalties resulting from clerical errors or errors of computation and may include a new decision upon any grounds or issues not previously ruled upon or new facts not previously known to the director;¶

(b) A new decision issued after reconsideration shall be subject to hearing and judicial review in accordance with this rule.¶

(7) A request for waiver of the penalty for good cause must be in writing. The date of any request for waiver under this rule shall be:¶

(a) The postmarked date on the request, if mailed;¶

(b) The date specified in OAR 471-070-0850, if electronically filed; or¶

(c) In the absence of a postmark, submittal date or machine imprinted date, the most probable date of mailing as determined by the director.¶

(8) The employees listed in OAR 471-070-0550 may act on behalf of the director for the purposes of sections (1), (2) and (3) of this rule.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.910

AMEND: 471-070-8540

RULE SUMMARY: Amends the administrative rule to specify the penalty is determined final within 20 calendar days from the date the department assessed the late filing penalty, unless the employer requests a timely hearing before the 20 calendar days.

CHANGES TO RULE:

471-070-8540

Penalty Amount When Employer Fails to File Report

(1) If an employer fails to file all required reports within the time period described in ORS 657B.920(2), the department may assess a late filing penalty in addition to any other amounts due.¶

(2) The penalty shall be 0.02 percent of the employer's employees total Paid Family and Medical Leave Insurance (PFMLI) subject wages for the late report rounded to the nearest \$100. If the penalty is calculated to be less than \$100, the amount will be the minimum \$100.¶

Example: Athena's Yoga and Piyo Studio has 20 employees with total PFMLI subject wages for first quarter of 2024 of \$120,000. Athena does not file the 2024 Oregon Quarterly Tax Report for the first quarter. The department sends a written notice warning on May 10, 2024, to Athena's Yoga and Piyo Studio, but they do not correct the deficiency by filing the needed report. A penalty of \$24 ( $0.0002 \times \$120,000$  PFMLI subject wages) is calculated by the department. But since the minimum penalty is \$100, the penalty imposed by the department is \$100.¶

(3) The penalty assessment becomes final 20 calendar days from the date on which the department assessed the late filing penalty, unless the employer files a timely request for hearing as described in OAR 471-070-8005.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.920

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.¶

Example: ABC Corporation submitted an equivalent plan application to the department on February 4, 2023. The department sent an approval letter for the equivalent plan that was dated March 5, 2023 and the equivalent plan becomes effective on April 1, 2023. The application for reapproval is due on March 1 of 2024, 2025, and 2026; 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 any-time a substantive amendment occurs. ~~When a substantive amendment occurs after the three-year period, a reapproval application must be submitted by an employer as described in section (9) of this rule. For non-substantive amendments, a copy of the revised equivalent plan must be submitted to the department at the time the change becomes effective, 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.]

Statutory/Other Authority: ORS 657B.22~~10~~, 657B.340

Statutes/Other Implemented: ORS 657B.210, ~~657B.220~~, 657B.230

AMEND: 471-070-2220

RULE SUMMARY: Amends the administrative rule to increase the timeframe an employee can appeal an equivalent plan employer denial from 20 calendar days to 60 calendar days. This will align with the appeal timeframe in OAR 471-070-8005.

CHANGES TO RULE:

471-070-2220

## Equivalent Plans: Plan Requirements

In order for an equivalent plan to be approved by the department, the plan must at a minimum:¶

- (1) Cover all Oregon employees who have been continuously employed with the employer for at least 30 calendar days, regardless of hours worked, including full-time, part-time, temporary workers hired by the employer, and replacement employees hired to temporarily replace eligible employees during PFMLI leave. Any employees who were eligible for benefits under their previous Oregon employer's equivalent plan, who begin working for a new employer with an approved equivalent plan must be automatically covered for benefits under the equivalent plan offered by the new employer as described in ORS 657B.250;¶
- (2) Provide family leave as described in ORS 657B.010(17) and applicable administrative rules;¶
- (3) Provide medical leave as described in ORS 657B.010(19) and applicable administrative rules;¶
- (4) Provide safe leave as described in ORS 657B.010(21) and applicable administrative rules;¶
- (5) Allow eligible employees to take family leave, medical leave, or safe leave in a benefit year for periods of time equal to or longer than the duration of leave provided under ORS 657B.020;¶
- (6) Provide eligible employees weekly benefit amounts equal to or greater than benefits provided under ORS 657B.050;¶
- (7) Allow family leave, medical leave, or safe leave to be taken in increments or nonconsecutive periods as provided under ORS 657B.090;¶
- (8) Impose no additional conditions or restrictions on the use of family leave, medical leave, or safe leave beyond those explicitly authorized by ORS chapter 657B and applicable administrative rules;¶
- (9) Provide that the employee contributions withheld by an equivalent plan shall not be greater than the employee contributions that would be charged to employees under ORS 657B.150 and determined annually under OAR 471-070-3010;¶
- (10) Ensure employee contributions that are received or retained under an equivalent plan are used solely for equivalent plan expenses, are not considered part of an employer's assets for any purpose, and are held separately from all other employer funds;¶
- (11) Meet all equivalent plan requirements provided in ORS 657B.210 and applicable administrative rules;¶
- (12) Provide for decisions on benefit claims, to be in writing, either in hard copy or electronically if the employee has opted for electronic notification. Decisions on benefit claim approvals must include the amount of leave approved, the weekly benefit amount, and a statement indicating how the employee may contact the department to request the eligible employee's average weekly wage amount if the employee believes the benefit amount may be incorrect. Denial decisions must include the reason(s) for denial of benefits along with an explanation of an employee's right to appeal the decision and instructions on how to submit an appeal.¶
- (13) Provide an appeal process to review benefit decisions when requested by an employee that also requires the employer or administrator to issue a written decision. The employee must have at least 260 calendar days from the date of the written denial to request an appeal with the employer or administrator, if applicable, or as soon as practicable if there is good cause for the delay beyond the 260 calendar days as described in OAR 471-070-2400(7). The employee, and the employer, or administrator have 20 calendar days from the date the appeal is received, or as soon as practicable if there is good cause as described in OAR 471-070-2400(7), to resolve the appeal and for the employer or administrator to issue a written appeal determination letter along with an explanation of the department's dispute resolution process as described in OAR 471-070-2400 if an appeal is denied;¶
- (14) Provide that the equivalent plan employer or administrator must make all reasonable efforts to make a decision on whether to allow the claim and issue the first payment of any benefits to an employee within two weeks after receiving the claim or the start of leave, whichever is later. Subsequent benefit payments must be provided weekly by the fully insured equivalent plan and benefit payments may be paid according to the existing paycheck schedule for employees under an employer administered equivalent plan; and¶
- (15) Ensure a written notice poster for the equivalent plan as described in OAR 471-070-2330, will be given to all eligible employees, at the time of hire and each time the policy or procedure changes, in the language that the employer typically uses to communicate with the employee.

Statutory/Other Authority: ORS 657B.340

AMEND: 471-070-2400

RULE SUMMARY: Amends the administrative rule to increase the appeal timeframe to appeal the employer and employee dispute to the department from 20 calendar days to 60 calendar days. This will align with the appeal timeframe in OAR 471-070-8005.

CHANGES TO RULE:

471-070-2400

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

(1) As required by ORS 657B.420, the department will provide a dispute resolution process to assist in resolving disputes between employers or equivalent plan administrators, as applicable, and employees regarding coverage and benefits provided under an employer's approved equivalent plan if the appeal with the employer or administrator is not otherwise resolved.¶

(2) Prior to the department providing a dispute resolution process, the employee and employer or administrator must follow the equivalent plan appeal process described in OAR 471-070-2220(13).¶

(3) In the event that the employee and employer or administrator are unable to resolve an appeal on a coverage or benefit decision through the equivalent plan's appeal process, the employee may request <sup>(K)</sup> dispute resolution assistance through the department. The dispute resolution request must:¶

(a) Be in writing, by phone, online, or in another format approved by the department.¶

(b) Include a copy of the employer or administrator appeal decision and any documents related to the dispute, including documents supporting or referencing the employer's or administrator's decision.¶

(c) Be received within ~~260~~ 60 calendar days of the issuance of the appeal decision, or as soon as practicable if there is good cause as described under section (7) of this rule, for the delay beyond ~~260~~ 60 calendar days.¶

(4) The department shall review the dispute resolution request and issue an advisory decision based on the equivalent plan benefit requirements within 20 calendar days of the receipt of the dispute resolution request.¶

(5) If the employer or administrator does not comply with the department's administrative dispute decision, the employee may still submit a wage claim with the Oregon Bureau of Labor and Industries under ORS chapter 652.¶

(6) The payment of any benefits not placed in issue by the request for the administrative hearing shall continue during the appeal process.¶

(7) Good cause for late appeal or dispute resolution request includes, but is not limited to, the following:¶

(a) Difficulty obtaining verification;¶

(b) Factors or circumstances beyond the employee's, employer's, administrator's, <sup>Kael</sup> or department's reasonable control that prevented them from providing information;¶

(c) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents the employee or employer from timely providing information; or¶

(d) A demonstrable inability to reasonably access a means to respond in a timely manner, such as an inability to file a leave report due to a natural disaster or a significant and prolonged outage.

Statutory/Other Authority: ORS 657B.420

Statutes/Other Implemented: ORS 657B.420, ORS 183.635



AMEND: 471-070-2450

RULE SUMMARY: Amends the administrative rule to expand the reason the department may terminate an equivalent plan if a business closure occurs. Specifies the appeal timeframe for the employer to appeal the notice of termination is 20 calendar days. Clarifies when contributions collected from employees <sup>who</sup> that are still in the employer's trust must be paid to the department and become final once the plan is terminated and the employer receives an invoice from the department for contributions due.

CHANGES TO RULE:

471-070-2450

Equivalent Plans: Termination by the Department

(1) The department may terminate an employer's equivalent plan due to reasons that include, but are not limited to:¶

(a) Misuse of employee contributions withheld or retained by the employer;¶

(b) Failure to adhere to the department approved equivalent plan or to report substantive equivalent plan changes to the department;¶

(c) Failure to adhere to applicable Paid Family and Medical Leave Insurance (PFMLI) program requirements, including but not limited to OAR 471-070-2220 and equivalent plan reporting requirements;¶

(d) Failure to file for reapproval as required in OAR 471-070-2210;¶

(e) Employer insolvency;¶

(f) Termination of the insurance policy by the plan administrator;¶

(g) Closure of a business; or¶

(gh) Failure to respond timely to the department's reasonable inquires for information about the equivalent plan.¶

¶

(2) If the plan administrator plans to terminate an employer's insurance policy, the administrator must provide notice to the department at least 30 calendar days prior to the termination date. The termination date must be effective on the last day of a calendar quarter. The administrator's notice to the department should include:¶

(a) The original effective date of the fully insured equivalent plan policy; and¶

(b) The effective date of the termination requested by the administrator.¶

(3) If the department seeks to terminate an equivalent plan, the department will send the employer and administrator, if applicable, a notice of termination to the employer's last known address, or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records. The notice must provide:¶

(a) The reason(s) for the termination;¶

(b) Instructions on how to resolve the reason(s) for termination; and¶

(c) The effective date of termination, which must be the last day of a calendar quarter, absent further specified action by or on behalf of the employer.¶

(4) An employer may appeal the notice of termination in accordance with ORS 657B.410 and applicable administrative rules within 20 calendar days of the notice of termination.¶

(5) The employer or administrator must notify all employees of any equivalent plan termination within ten (10) business days of after the date on the notice of termination sent by the department that the termination becomes effective.¶

(6) All applicable equivalent plan requirements, including but not limited to those outlined within OAR 471-070-2220 and equivalent plan reporting requirements as outlined in OAR 471-070-2230, remain in effect until the effective date of any termination.¶

(7) The employer or administrator must pay or continue to pay benefits under the terms of the equivalent plan to eligible employees that were approved for or receiving benefits under the equivalent plan on the effective date of termination 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.¶

(8) Within 30 calendar days after the effective date of the termination 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 from the date of the last report provided to the department under the equivalent plan reporting requirements to the date of termination.¶

Example: Donald Mouse Partnership's equivalent plan became effective April 1, 2023. On January 31, 2024, Donald Mouse Partnership provided the aggregate equivalent plan information from April 1, 2023 to December

AMEND: 471-070-2455

RULE SUMMARY: Amends the administrative rule to remove the authority to allow the successor in interest to terminate an equivalent plan anytime there is a substantial reduction of personnel as it goes beyond the statute.

CHANGES TO RULE:

471-070-2455

Equivalent Plans: Termination and Withdrawal by Successor in Interest

(1) A successor in interest may request to terminate an equivalent plan that was in effect on the date of acquisition within 90 days after becoming a successor in interest ~~or whenever there is a substantial reduction of personnel, as defined in OAR 471-070-2200,~~ resulting from the acquisition in accordance with ORS 657B.260. The request to terminate may be submitted online, by phone, or in another method prescribed by the department. The successor in interest must provide written documentation of the acquisition, and any other relevant information regarding the acquisition required by the department.¶

(2) A successor in interest may request to withdraw from the equivalent plan in accordance with OAR 471-070-2460.¶

(3) If a request to terminate or withdraw is approved, the department will notify the successor in interest of the effective date of the termination or withdrawal. A successor in interest whose request to terminate is approved is subject to sections (5) through (10) of OAR 471-070-2450. A successor in interest whose request for withdrawal is approved is subject to sections (3) through (8) of OAR 471-070-2460.¶

(4) If a request to terminate or withdraw is denied, the department will notify the successor in interest of the reason for the denial. The successor in interest may appeal the decision to deny a request to terminate or withdraw an equivalent plan, in accordance with ORS 657B.410 and applicable administrative rules.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.260 ✓

AMEND: 471-070-2460

RULE SUMMARY: Amends the administrative rule to clarify when contributions collected from employees <sup>who</sup> that are still in the employer's trust must be paid to the department and become final once the plan is withdrawn and the employer receives an invoice from the department for contributions due.

## CHANGES TO RULE:

## 471-070-2460

## Equivalent Plans: Employer Withdrawal

- (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) 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¶
- (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 <sup>who</sup> ~~that~~ 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 and administrative expenses incurred from 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) ~~Upon withdrawal of an equivalent plan, the employer must immediately send to the department~~ 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 the all required benefits are paid under section (5) of this rule, the employer must immediately send to the department any remaining contribution amounts for 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 of any additional contribution amounts due. Any remaining contribution amounts due are deposited into the PFMLI Trust Fund. ¶
- (a) Any contributions become due and payable on the effective date of the withdrawal.¶
- (b) Interest upon the amount due from the employer shall accrue from the date of the ~~withdrawal~~ invoice(s) until paid to the department, in accordance with ORS 657B.320(3).¶
- (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.]




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# A STRONG VOICE FOR OREGON'S WORKERS

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To: Karen Humelbaugh and PFMLI Policy Teams, Oregon Employment Department  
 FROM: Catie Theisen, Political Director Oregon AFL-CIO  
 RE: Batch 7 Administrative Rules

June 29, 2023

On behalf of the 300,000 working people represented by the Oregon AFL-CIO, thank you for the opportunity to submit comments on Batch 7 of the Administrative Rules for the Paid Family Medical Leave program. We appreciate the staff time that has been put into getting to this point and want to highlight several places where the rules can and should align with the intent of the 2019 legislation to make sure workers can access paid and protected leave starting day 1 of implementation.

Namely, we're concerned that the proposed rule will essentially exclude a number of workers from accessing the paid family and medical leave benefits that they've already paid into simply because of the inherent nature of their job under the proposed rule outlining that a worker must "have current scheduled Oregon employment from which they are taking leave from work," specifically calling out "lapse in seasonal operations, school break periods or other suspensions or cessations of an employer's business operations." These qualifiers go well beyond what is in statute, which only requires that the claimant has a need for family leave, medical leave, or safe leave, and is an "eligible employee who during the base year contributes to the fund and submits a claim for benefits."<sup>1</sup> Requiring that workers be actively performing services or scheduled for work is a wholly different standard than envisioned under "benefit eligibility" in the statute.

Further, the legislative intent was clear that the program was designed to "include all workers regardless of the employer size, regardless of the type of industry they work in, and in an economy where most people are piecing together multiple jobs and that both full time and hourly workers can get the benefit."<sup>2</sup> Obviously, the very nature of some industries is not a standard 9am to 5pm, 365 day year. On the House floor, Representative Williamson said "So unlike unemployment insurance, this insurance will be portable and will follow a worker without gaps in coverage."<sup>3</sup> We understand that the DOJ has extrapolated from other places in statute that a worker must be actively working to qualify, but we encourage them and the department to examine more closely the legislative intent, specifically as it relates to seasonal workers.

A few examples of how this proposed rule could play out that is fundamentally out of alignment with the legislative intent that workers across industries can access benefits:

- An undocumented seasonal farmworker who works 80+ hours a week for the 3 seasons of harvest. The worker has a medical emergency at the end of the fall. Under the current proposed

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<sup>1</sup> 657B.015

<sup>2</sup> HB 2005 House Rules public hearing

<sup>3</sup> HB 2005 House floor




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## A STRONG VOICE FOR OREGON'S WORKERS

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rule, even though they have paid into PFML through the year and are ineligible for UI because of their immigration status, they would not be able to get benefits in the winter weeks.

- A construction worker has a 4 month job. She gets sick for the final 2 weeks of the project and goes out on paid family and medical leave. Had she not been sick, in those 2 weeks she would have otherwise been lining up her next job. Under the current proposed rule, even though she paid into PFML throughout the year, she would only qualify for 2 weeks of PFML benefits. She would then be eligible for UI benefits, but may not be able to actually qualify for UI because she is sick and can't actively apply for other jobs.
- A classified school employee whose job entails that he does not work during the summer, but he is expected to return in the fall. He and his partner are adopting a child and they time the adoption for the summer due to travel and continuity for his students. Under the proposed rule, he would be ineligible for PFML benefits that he had already paid into simply because of the seasonal nature of his job.

These scenarios will only incentivize workers to time their leave wherever possible during peak work times when a replacement worker will be necessary, putting an undue burden on both the worker and the employer. We strongly encourage the department to adopt rules that take into consideration workers who are ineligible for unemployment insurance, have paid into the program but have a non-traditional job where they may not work for the same employer from month to month.

In addition to this concern, we wanted to flag a concern in the proposed rule that claimants must submit weekly leave claims if they are taking intermittent leave. We strongly recommend eliminating the requirement that workers file weekly leave claims in such circumstances as this would create a significant barrier to access for workers who may be recovering from a serious illness, welcoming a new child, or caring for a seriously ill family member, and thus may not be able to keep up with weekly claim applications. Workers take paid family and medical leave during some of life's most trying moments, and requiring weekly claim submission is overly burdensome. Instead, we recommend that the Department ask claimants if they intend to take leave on an intermittent basis and require medical certification to support the intermittent leave claim when the claimant initially applies.

Fundamentally, the legislative intent for paid family and medical leave was clear: to make sure Oregon workers – particularly those in low-wage, hourly and non-traditional jobs who were less likely to have robust paid time off – could get the time they needed to take care of themselves and their families. Because the proposed rule goes beyond the letter of the law, functionally, it will be wholly contradictory to this goal by making the process overly burdensome for those needing intermittent leave, and may disenfranchise those without a traditional job and who are ineligible for UI from getting paid family and medical leave benefits simply because of the nature of their industry.

We are happy to partner on legislative fixes for some of these issues in the future, however we also strongly believe that this can be foundationally addressed in rule-making to meet the legislative intent and provide seamless, understandable, and equitable leave to workers as soon as the program goes online. Thank you for the work and for considering and adopting these comments into the final adoption of the rules.



Karen Humelbaugh and PFMLI Policy Teams and the Oregon Employment Department,

Thank you for the opportunity to submit comments on Batch 7 of the Administrative Rules for the Paid Family Medical Leave program. Collectively the Oregon & Southern Idaho District Council of Laborers and LIUNA Local 737 represent approximately 4,000 members, who primarily work as construction craft laborers. We write to emphasize the legislative intent of the Paid Family Medical Leave program, and we additionally hope to clarify why the legislative intent was and remains so critical to the complexities of workers in the construction industry.

We have great concern that this rulemaking will result in highly inequitable outcomes for workers who not only pay into the program, but were intended to be fully covered by that same program. The construction industry is dominated by work that is both seasonal and project-based. We represent members who work long-term and continuously for one employer, as well as members who move between many employers as projects begin and end. There is no one standard employment relationship in construction, but as a whole, it is normal to move around to various employers and projects throughout the year. Regardless of how a laborer—or any construction worker—works in this industry, **nearly every construction worker is paying into the PFML program.**

It is for this reason that we write with great concern: as the rules are currently proposed, a substantial portion of construction workers could face barriers to readily accessing the program in a consistent, reliable way *despite* paying into it over the course of their careers. Specifically, we are concerned with the proposal that workers must “have current scheduled Oregon employment from which they are taking leave from work,” specifically calling out the “lapse in seasonal operations, school break periods or other suspensions or cessations of an employer’s business operations.” These qualifiers go well beyond what is in statute, which only requires that the claimant has a need for family leave, medical leave, or safe leave, and is an “eligible employee who during the base year contributes to the fund and submits a claim for benefits.”<sup>1</sup> Requiring that workers be actively performing services or scheduled for work is a wholly different standard than envisioned under “benefit eligibility” in the statute.

The proposed rules will result in making PFML a **fundamentally inequitable and unjust program for construction workers.** We strongly encourage the department to adopt rules that take into consideration workers who are ineligible for unemployment insurance, have paid into the program but have a non-traditional job where they may not work for the same employer from month to month.

As we understand the proposed rules now, we envision the following scenario emerging as a problem:

- A construction worker has a 4 month job. She gets sick for the final 2 weeks of the project and goes out on paid family and medical leave. Had she not been sick, in those 2 weeks she would have otherwise been lining up her next job. Under the current proposed rule, even though she paid into PFML throughout the year, she would only qualify for 2 weeks of PFML benefits. She would then be eligible for UI benefits, but may not be able to actually qualify for UI because she is sick and can’t actively apply for other jobs.

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<sup>1</sup> 657B.015



The legislative intent of PFML was to: “include all workers regardless of the employer size, regardless of the type of industry they work in, and in an economy where most people are piecing together multiple jobs and that both full time and hourly workers can get the benefit.”<sup>2</sup> On the House floor, Representative Williamson said “So unlike unemployment insurance, this insurance will be portable and will follow a worker without gaps in coverage.”<sup>3</sup> **We find the proposed rules to be in direct conflict with the clear legislative intent.** PFML was especially intended to target workers in industries that did not already have any form of paid leave; workers who are disproportionately working class folks in hourly and “non-traditional” employment, which typifies much of the construction industry.

Additionally, we wish to highlight the proposed requirement that claimants must submit weekly claims if they take intermittent leave. Workers will be utilizing PFML during some of the most difficult moments of their lives. It is fundamentally unreasonable to make this a requirement when someone is recovering from a serious illness, assisting a seriously ill loved one, or caring for a new child.

As this program and any rulemaking around it directly and critically impacts the workers we represent, we request to be considered key stakeholders in all future rulemaking. We want to partner with the Employment Department to make PFML work for *all* workers in Oregon.

Chris Hewitt  
Political Director  
Oregon & Southern Idaho District Council of Laborers

Ryan Nielsen  
Political Representative  
LIUNA Local 737

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<sup>2</sup> HB 2005 House Rules public hearing

<sup>3</sup> HB 2005 House floor

## FRIEND Anne \* OED

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**From:** Ballew-Renfro Kenneth R <KENNETH.R.BALLEW-RENFRO@oha.oregon.gov>  
**Sent:** Friday, June 30, 2023 1:18 PM  
**To:** OED\_RULES \* OED  
**Subject:** paid leave

**Categories:** Anne

You don't often get email from kenneth.r.ballew-renfro@oha.oregon.gov. [Learn why this is important](#)

**SECURE EMAIL DELIVERY:** This email message was securely transmitted from a sender at Oregon ODHSOHA to your email system using Transport Layered Security (TLS).

Hello

What I am hearing the most from my fellow coworkers is this

Since it is coming out of our checks why.

Do we have to have it run with FMLA/OFLA and we have to use our time just as before.

There needs to be a clarification on how it will work.

I don't think it is fair if we have to use time, FMLA/OFLA and not get paid the 12 weeks that we are paying for.

The paid leave Oregon needs to be 12 weeks above and beyond what FEMLA and OFLA do.

To make us pay for something we should be able to use any way we chose, but with some guidelines to follow.

Just not a very big moral and employee feeling to do if it is with FMLA and OFLA.

Thanks for letting me give my input.

Kenneth Roland Ballew-Renfro

work 503 947 3680

personal 503 871 6813





**Sarah Montgomery**

Assistant Vice President, PFML Implementation  
(202) 624-2052 t  
sarahmontgomery@acli.com

June 30, 2023

Ms. Anne Friend  
Rules Coordinator, Paid Leave Oregon  
Oregon Employment Department  
875 Union Street, NE  
Salem, OR 97311

Sent via email to: [rules@employ.oregon.gov](mailto:rules@employ.oregon.gov)

Dear Ms. Friend:

On behalf of our member companies, the American Council of Life Insurers (ACLI) appreciates the opportunity to provide the following comments on the Batch 7 Rules regarding Benefits and Assistance Grants and Equivalent Plans.

Benefits and Assistance Grants

- In Section 471-070-1000 (15) in the definition of “Offset”, we recommend removing the phrase “equal to an amount owed to the department” as it could lead to confusion over what types of offsets are permitted. For example, if there are court ordered reductions to an employee’s benefit payments to meet child support obligations, that amount is not owed to the department, but rather a third party. Without an amendment to this provision, it may be possible to challenge offsets taken for amounts not owed to the department that are permitted by other statutory provisions.
- In Section 471-070-1010(1)(3) that requires an employee to “[h]ave current scheduled Oregon employment or self-employment from which they are taking leave from work as described in OAR 471-070-1015.” In certain scenarios, a claimant will be employed but not necessarily scheduled to work such as a substitute teacher or an on-call nurse. We request that the Oregon Employment Department (OED) consider these types of work scenarios and not limit the availability of benefits for “scheduled” employment for these categories of employees.

**American Council of Life Insurers** | 101 Constitution Ave, NW, Suite 700 | Washington, DC 20001-2133

The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 94 percent of industry assets in the United States.

## EXHIBIT 14

- In Section 471-070-1310(4)(d), that lists the items an employer may include in their notice of leave form, we request that the OED include a provision to add specific dates of leave if they are known. The amended section would read “Anticipated timing and duration of leave including dates of leave, if known.” This additional language is helpful for employers so they are aware of specific dates their employees may be on leave from work if those dates are certain at the time the medical certification is provided.

### Equivalent Plans

- In Section 471-070-2210 that details the requirements to file an equivalent plan application, we have two recommended amendments.
  - First, we request that the OED add a subsection (d) to Section 471-070-2210 (7) that defines non-substantive amendments to indicate that amendments required to conform with changing law would not constitute a substantive change. Amended language would read “(d) Any amendment to conform to changing law.”
  - Second, we request an amendment to Section 471-070-2210 (12) that gives the OED authority to request additional information related to eligibility for an equivalent plan. We offer the following amendment to the first sentence of the provision: “The department may request information from an employer as needed to establish facts relating to an employer’s eligibility for an equivalent plan.”

I appreciate the opportunity to provide these comments to the Department. If you have any questions, please do not hesitate to contact me at [sarahmontgomery@acll.com](mailto:sarahmontgomery@acll.com).

Sincerely,



Sarah J. Montgomery  
Assistant Vice President, Paid Family and Medical Leave Implementation



TO: Karen Humelbaugh, Oregon Employment Department  
 FROM: Ira Cuello-Martinez, PCUN  
 RE: PFML Batch 7 Proposed Administrative Rules

June 30, 2023

Dear Paid Leave Oregon Rules Coordinator,

My name is Ira Cuello-Martinez and I am the Policy and Advocacy Director at PCUN, Oregon's Farmworker Union. PCUN is a part of the Time to Care coalition, which worked to pass Oregon's paid family and medical leave law in 2019. Our coalition prioritizes and focuses on racial, gender, and class justice, especially as we work to ensure equitable access to the program and its benefits.

**I am submitting a comment on Paid Family Medical Leave Batch 7 Proposed Administrative Rule 471-070-1015, specifically regarding paragraph (2), which would essentially exclude any worker with a "lapse in seasonal operations, school break periods or other suspensions or cessations of an employer's business operations" from receiving paid leave benefits.**

This rule would harm and exclude a number of workers, particularly agricultural workers and school employees from accessing benefits, even though they will have already paid into the program. The paid family and medical leave statute and legislative intent has always been clear that the program was designed to "include all workers regardless of the employer size, regardless of the type of industry they work in, and in an economy where most people are piecing together multiple jobs that both full time and hourly workers can get the benefit."<sup>1</sup>

As Oregon's Farmworker Union, we are deeply concerned about how the rule will exclude farmworkers from accessing PFML benefits. There are approximately 86,389 migrant and seasonal farmworkers in Oregon who will not be able to access PFML benefits once harvest season ends.<sup>2</sup> Agricultural work is seasonal in nature with work typically starting in the spring, peaking in the summer, and ending in the fall. Under this proposed rule, farmworkers who have paid into PFML will not be able to access this benefit during the winter season because there is little to no agricultural work.

We do not agree that farmworkers should be excluded from accessing PFML benefits due to the seasonal nature of their work. The eligibility requirements in statute for accessing paid leave benefits are simple— a claimant only needs to have earned \$1,000 in the base year regardless of hours worked, and they must have a need for family leave, medical leave, or safe leave.

<sup>1</sup> HB 2005 public hearing.

<sup>2</sup> Estimates of Migrant and Seasonal Farmworkers in Agriculture, 2018 Update, page 11. This study does not include every sector of agricultural work in Oregon that would be affected by the proposed rule. <https://www.oregon.gov/oha/HPA/HP-PCO/Documents/2018%20Updates%20to%20MSFW%20Enumeration%20Studies%20Report.pdf>

Requiring that workers perform services is a different standard than envisioned by the statute. Despite how the DOJ interprets and defines current employment and worker eligibility, we encourage the department to examine more closely the legislative intent, specifically as it relates to seasonal workers.

We believe this proposed administrative rule goes against the department's commitment to equity in Paid Leave Oregon implementation. While we intend to support legislative fixes for some of these issues in the future, we strongly believe some of these can be addressed in rulemaking to meet the legislative intent that all workers can access the full scope of benefits as soon as benefits become available in September.

Thank you for your consideration of this feedback.

June 30, 2023

*Via electronic submission only*

Anne Friend  
[OED\\_Rules@employ.oregon.gov](mailto:OED_Rules@employ.oregon.gov)  
875 Union Street NE  
Director's Office  
Salem, OR 97311

Re: Public Comment related to Paid Leave Oregon Batch 7

To the Oregon Employment Department:

On behalf of the Oregon Law Center and Legal Aid Services of Oregon, below please find our comments on the Paid Leave Oregon Batch 7 proposed rules.

The Oregon Law Center and Legal Aid Services of Oregon provide a full range of free, civil legal services to low-income individuals in Oregon. Both organizations have dedicated programs for farmworkers. The rules implementing Paid Leave Oregon will have a significant impact on all our low-income clients who receive limited paid time off from work for sick leave and/or for safe leave.

### **Proposed Rules**

The paid leave statute was designed to “include all workers regardless of the employer size, regardless of the type of industry they work in, and in an economy where most people are piecing together multiple jobs that both full time and hourly workers can get the benefit.” HB 2005 public hearing in House Committee on Rules. It is with that in mind that we provide our comments.

The Batch 7 proposed rule 471-070-1015(2) – Benefits: Leave from Work will disproportionately affect migrant and seasonal farmworkers, and other seasonal workers who have paid into the system but will effectively be unable to use it for portions of the year. The proposed rule states:

*(2) An individual may not be considered as taking leave from work if they would not be performing their employment duties for reasons other than PFMLI qualifying purposes described in ORS 657B.020, including but not limited to, circumstances related to: (a) An employer's business operations, such as: (A) A lapse in seasonal operations; ...*

*Example 1: Rory is a seasonal employee for a vegetable farm in the Willamette Valley between February and November. Rory is does not expected to work at the farm in December and January but is still considered an employee of the vegetable farm and does not have other paid employment during this time. Rory does not qualify for PFMLI benefits in December and January because Rory is not requesting taking leave from work, as Rory is not expected*

## EXHIBIT 16

*scheduled to work and does not perform services employment duties at the vegetable farm and does not miss any wages during that time during these months.*

Because of the seasonal nature of agricultural work, and the fluctuation in weather, labor, and other issues, the exact dates of when work ends and starts is often unknown. This proposed rule also makes it easier for unscrupulous employers to take advantage of workers—for example, an employer could take note if someone is pregnant or if there is an accident at work and design a work schedule to the employer’s advantage.

The Paid Leave Oregon website states that someone is “automatically covered” if they “work for an employer in Oregon, and ... earned at least \$1000 the year before” the application for benefits, and “...have a life event that qualifies” them for benefits.<sup>1</sup> The proposed rule adds ill-advised and additional requirements not authorized by statute.

Given the unpredictability of work for many farmworkers in the economic market, this proposed rule, if finalized, would unnecessarily (and yet again) exclude farmworkers and particularly migrant and seasonal workers, from protections.

Thank you for your consideration of these comments. Should you have any questions, we can be reached at the email addresses listed below.

Sincerely,

OREGON LAW CENTER  
Julie Samples,  
[jsamples@oregonlawcenter.org](mailto:jsamples@oregonlawcenter.org)  
Nargess Shadbeh,  
[nshadbeh@oregonlawcenter.org](mailto:nshadbeh@oregonlawcenter.org)

LEGAL AID SERVICES OF OREGON  
Laurie Hoefler

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<sup>1</sup> [Employees and Paid Leave Oregon](#) (last accessed June 30, 2023).

**FRIEND Anne \* OED**

**From:** Brie Caffey <bcaffey1@yahoo.com>  
**Sent:** Friday, June 30, 2023 7:53 PM  
**To:** OED\_RULES \* OED  
**Subject:** Public comments and question on Paid Leave Oregon

**Categories:** Anne

You don't often get email from bcaffey1@yahoo.com. [Learn why this is important](#)

**Comments:**

**Paid Leave Oregon (PLO) is a WELL-INTENDED, VERY POORLY WRITTEN law with gaping holes that are going to allow massive amounts of fraud.**

**Why didn't the state simply make OFLA a paid leave? Or require that PLO match, line for line with OFLA except for the "pay" part? Or require that all employers offer an Short-Term-Disability plan that *also* included a safe leave clause? The state is WASTING THOUSANDS OF DOLLARS hiring staff to *create* a leave computer system, figure out the rules, evaluate leave claims, look over medical information, store records, distribute money, explain benefits, etc. when all of those mechanisms are already in place today. What's more, the state will now have personal MEDICAL information on thousands of Oregonians; that is a VERY FRIGHTENING thought coming on the heels of the state's recent, massive data breach.**

**Has the state given ANY thought to the fact that almost everyone has a "serious health condition" (SHC)? Diabetes -even if it is controlled- is a "SHC." GERD (heartburn) is a "SHC." Migraines are a "SHC." Pink-eye is a "SHC." Muscle atrophy is a "SHC." OFLA has been a huge disruption to the workplace and that impact can only expand once employees realize they can be paid while taking that time off. Why didn't the state just say, "We're going to give every working Oregonian one quarter of each fiscal year off with pay"? The money saved would have probably paid for such a program! And it might have even encouraged welfare recipients to get a job, increasing our employment rate. And the money saved on those welfare benefits could have gone into the PLO plan.**

**When asked in a PLO meeting what the state is doing to reduce PLO double-dipping (and other fraud), the answer was, "Well, employees will know they are not supposed to do that." That is a frightening answer given the state of Oregon's finances! Remember this is the same department that was overwhelmed by massive amounts of fraudulent unemployment claims during COVID.**

During one of the Public Hearings, they kept saying that during the first 90 days of employment, an employee can take PLO "but their job won't be protected." **The reality is, it might as well be! An employer can't fire a new hire that shows up on Day 1 and says, "Hi, I'm going to take the next 12 weeks off" without facing a lawsuit alleging that they discriminated against the employee for using an entitlement.** The PLO team kept harping on the fact that the time off in the first 90 days won't be paid but **for many employees, pay is not the issue; getting time off whenever they want it without the employer's approval (and frankly, without regard to the impact on the service to customers) is what they will be going for.** Oregon's businesses might very well have to shut down for the summer due to lack of staff; that won't do much for state tourism! (I hope the state staffs up for the PLO requests they will be getting for December 24<sup>th</sup>! Assuming all of them report for work and

aren't absent because they are out "caring for" their sweetheart whose GERD just *happens* to be acting up on Christmas Eve.)

### Questions:

**Where does *Oregon Sick Leave (OSL)* fit into all of this?** With Short-Term-Disability (STD), employees have a waiting period of 14 days before they are eligible to receive STD pay and they use OSL and vacation for pay during that time. If OSL is **not** used for the first 5 days of PLO, doesn't that really give employees **13 weeks** of protected time off with pay? Is that really what the Legislature intended?

**What safe guard is the state creating to ensure that an employee won't hire on with an employer that has an Equivalent Plan (EP), take 12 weeks paid time off under PLO, quit, join *another* employer with an EP and do it all again? And again?** During the Public Hearings, that question could not be answered, which tells me there could be **massive fraud** for which the state is not prepared. **Is there any provision wherein an employer paying for an EP, or their 3<sup>rd</sup>-party administrators, can be reimbursed if/when such fraud is discovered? If fraud is found, will the state deduct the reimbursement from any tax refund or benefit going to that double-dipping employee? Is there any liability waiver under the law for an employer to ask a new hire's prior employer if they person used PLO in an attempt to avoid such fraud?**

**What rights does an employer have to correct overpayments to an employee paid by the employer (vacation pay, etc.) that were caused by the state's lag in making a leave decision?** I know "the goal" is to have decisions within 2 weeks, however many parts of Oregon are still experiencing delays in USPS deliveries, making the "goal" (not the *promise*) of a 2 week turn-around actually longer, further increasing the chance that such overpayments will occur.

**Why won't the state be communicating with employers via email or portal message for more timely transfer of information?** Or have a computer system set up so that an employer enter an employee's SSN and find out instantly when that employee's plan year started, how much PLO they have used in their plan year thus far, and how much they have pending?

**How is an employer expected to "top off" an employee's PLO if employers are not entitled to know how much benefit the employee is receiving under PLO?** It seems to me that the state is setting the scene for employees to receive **more than 100% of wages** while on PLO, making the potential for **fraudulent** claims even *more* likely.

**Under the law, employers cannot reduce the salary of an exempt employee if they worked any part of that week. If an exempt employee's PLO is NOT approved, will an employer be allowed to go back and deduct vacation time for the day the employee missed and is now going to get PLO? Is double pay what the Legislature intended?** Will there be a rule allowing employers to delete a day's pay for an exempt employee while waiting for a PLO decision? Then if PLO is not approved pay them those wages in the **next** pay period?

**How will PLO address claims from an employee that says a doctor will NOT provide a medical certification to the employee because they are not actually related to the patient (i.e. the neighbor down the road that's "like a sister to me") because the provider doesn't want to**



violate HIPAA laws? It opens the door for **massive fraud** to pay PLO if an employee only has to “attest” that there is a “serious health condition.”

Is there a cap on how many individuals one employee have an “affinity” with? A poorly defined, unlimited “affinity” definition will open the door for **massive fraud**. (It won't surprise me at all to see **Craigslist ads offering an “affinity relationship”** for the “low, low cost of only \$100 cash.”)

During one of the Public Hearings, it was asked if an employee can take PLO to “care for” a patient that is overseas. The answer was “Yes that goes to offering emotional support.” It opens the door for **massive fraud** to pay PLO if “providing care” means an employee **doesn't even have to be in the same country** as the patient. What is the thinking behind this decision? What is to keep an employee from saying they intend to “care for their grandmother in Spain” when they are actually calling out *every single sunny day* to make a run to the coast? At least with OFLA employers can require additional documentation if they see what *looks like* leave abuse. **Will PLO have such a clause?**

If PLO is requested to “care for” a patient that is in another country, how will PLO address claims from an employee that says “The doctors in XXX country refuse to complete USA forms” or “The patient doesn't have access to a doctor in that country” so they “can't” get a **medical certification**? It opens the door for **massive fraud** to pay PLO without any kind of proof that there is, in fact, a “serious health condition.” Or even a family member that is actually sick, for that matter.

471-070-1120 reads “not limited to diagnosis.” How can someone possibly have a “serious health condition” if there has been no diagnosis (unless they are currently hospitalized, being tested to **determine** a diagnosis)? If a condition is not “serious” enough to warrant hospitalization or a completed medical certification form, then it opens the door for **massive fraud** to pay PLO without any kind of proof that there is, in fact, a “serious health condition.”

Why is intermittent leave under PLO allowed to be taken without any say or negotiation with the employer (as is allowed in the OFLA law)? Is it the state's intention to have businesses shut down due to lack of staff around every holiday? That could easily be the effect.

Why are dentists able to certify a “serious health condition”? What dental serious health conditions exist that did not also include an oral/maximal/facial surgeon, anesthesiologist, or some other medical professional available to complete (or at least confirm) the existence of a medical certification form?

What support does the state intend to offer medical providers for the extra hours of time **completing medical certification forms**? Oregon is already understaffed in the medical field. The increase in paperwork (OFLA and now PLO on **top** of that) will further reduce the amount of time doctors have available to actually see a patient.

What is the state's definition of a “spiritual healer”? Can an employee be their own spiritual healer and fill out their own medical certification? Can my boyfriend be my spiritual healer? My mom? **What if my healer is a Spirit Animal and they can't fill out a form?** I know you think I'm being sarcastic, I'm not. This sort of thing, if not thought through will open the door for **massive fraud**.

**How will the state ensure that the doctors, dentists, etc. are actual, legally allowed to operate, licensed medical providers?** It opens the door for **massive fraud** if the state does **not** intend to verify the validity of providers.

**I think it is clear the state is not ready to launch PLO in September.  
Thank you for considering these concerns and providing the much-needed answers.**

Brie Caffey  
Philomath, OR

**FRIEND Anne \* OED**

**From:** Ryan and Debbie Josephson <ryananddebbie@gmail.com>  
**Sent:** Friday, June 30, 2023 10:40 PM  
**To:** OED RULES \* OED  
**Subject:** PFML Rule comment submission - Batch 7

**Categories:** Anne

You don't often get email from ryananddebbie@gmail.com. [Learn why this is important](#)

Please accept the following input for Notice of Proposed Rulemaking for Batch 7 administrative rules relating to Assistance Grants, Benefits, Contributions, Equivalent Plans, Recovery, and Self-employed:

[https://www.oregon.gov/employ/Agency/Documents/SOS\\_NOTICE\\_filing\\_rcpt\\_May\\_31\\_2023\\_Benefits\\_A\\_Grants.pdf](https://www.oregon.gov/employ/Agency/Documents/SOS_NOTICE_filing_rcpt_May_31_2023_Benefits_A_Grants.pdf)

**Feedback Requests:**

AMEND: 471-070-1120 (p. 14)

*RULE SUMMARY: Amends the administrative rule for the verification of a serious health condition includes, but is not limited to, a diagnosis in order to determine eligibility for benefits.*

*(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.*

- Replace “diagnosis” from this sentence with “**medical facts.**”

States with existing statutory plans typically ask for **medical facts** to help substantiate the serious health condition. It is recommended to change diagnosis to medical facts within this provision.

AMEND: 471-070-1310 (p. 18)

*RULE SUMMARY: Amends the administrative rule to clarify an eligible employee is required to give notice to their employer when commencing family, medical, or safe leave. Also change "continuous" to "consecutive" and to clarify the 25 percent benefit reduction and clarify how the benefit payments will be reduced. The department may waive the imposition of the benefit reduction.*

*Benefits: Employee Notice to Employers Prior to Commencing Leave*

- This section documents how employers will be required to respond to the state within 10 calendar days to an employer form.

Recommend **replace with 10 business days**. This matches with other statutory states that utilizes business days to allow adequate time for response.

Thank you and please reach out for further clarification or dialogue.

Deborah Herron  
 Walmart State and Local GR  
 503-539-5333

Sent from my iPhone