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CHAPTER 471

EMPLOYMENT DEPARTMENT

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FILING CAPTION: Definition and administrative provisions related to small employers and assistance grants for PFMLI Division.

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RULES:

471-070-3150, 471-070-3160, 471-070-3700, 471-070-3705, 471-070-3710, 471-070-3730, 471-070-3750, 471-070-3850

ADOPT: 471-070-3150

RULE TITLE: Employer Size: Definitions

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Defines terms used by the Paid Family and Medical Leave Insurance division necessary to regulate contributions and award assistance grants.

RULE TEXT:

- (1) "Employee count" means a headcount of all of an employer's employees with wages subject to Oregon Paid Family and Medical Leave Insurance (PFMLI) contributions and all out-of-state employees, excluding the number of replacement employees hired to temporarily replace eligible employees during PFMLI leave.
- (2) "Employer size" means the average number of employees in the employee count that were employed by an employer during the preceding four quarters.
- (3) "Large employer" means an employer whose employer size is 25 or more employees.
- (4) "Small employer" means an employer whose employer size is less than 25 employees.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.360

ADOPT: 471-070-3160

RULE TITLE: Employer Size: Method to Determine Number of Employees Employed by an Employer

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Establishes a method for how to determine whether an employer has fewer than 25 employees for the Paid Family and Medical Leave Insurance program. Informs employers how they should count the number of employees they have for calendar year 2023, 2024, 2025 and beyond and requires the count to be reported on the Oregon Quarterly Tax Report.

RULE TEXT:

(1) The employer size is based on the employer's employee count.

(a) An employer's quarterly employee count is based on numbers provided on the Oregon Quarterly Tax Report or the Oregon Annual Report, and is the sum of:

(A) The number of employees with Oregon Paid Family and Medical Leave Insurance (PFMLI) wages; and

(B) The number of out-of-state employees.

(b) The employee count may not include any replacement employees hired to temporarily replace eligible employees during periods of PFMLI leave.

Example 1: For second quarter, which covers April to June, an employer reports 20 employees on the Oregon Quarterly Tax Report; eight out-of-state employees; and one replacement worker. The employer's employee count for the second quarter is 27 employees (20 Oregon PFMLI employees + 8 out-of-state employees – 1 replacement worker).

Example 2: For fourth quarter, which covers October to December, a domestic employer reports two employees on the Oregon Annual Report; zero out-of-state employees; and zero replacement workers. The employer's employee count for the fourth quarter is two employees (2 Oregon PFMLI employees + 0 out-of-state employees – 0 replacement workers).

(2) Employer size is not rounded.

(3) For calendar year beginning on January 1, 2023:

(a) Quarterly filers employer size shall be determined by April 30, based on the employee count reported for the first quarterly Oregon Quarterly Tax Report of 2023, which covers January to March 2023. Notices on employer size shall be sent by the department 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 by June 1, 2023. Employer size determined from the first quarterly Oregon Quarterly Tax Report will be the size for the entire 2023 calendar year.

Example 3: For first quarter of 2023, an employer reports 20 on employees the Oregon Quarterly Tax Report; three out-of-state employees; and zero replacement workers. The employer's employee count for 2023 first quarter is 23 employees (20 Oregon PFMLI employees + 3 out-of-state employees – 0 replacement workers). Because the employee size is under 25, the employer is a small employer for the entire 2023 calendar year starting on January 1, 2023.

(b) Annual filers employer size shall be determined based on the 2023 Oregon Annual Report and calculated as stated in subsection (3)(a) of this rule. The notice on employer size shall be sent by the department 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 by March 1, 2024.

(4) For calendar year beginning on January 1, 2024:

(a) Quarterly filers employer size shall be determined on or before September 30, 2023, based on the average of the employee counts on the Oregon Quarterly Tax Reports for the first quarter of 2023, which covers January to March 2023, and the second quarter of 2023, which covers April to June 2023. Notices on employer size shall be sent by the

department 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 by November 15, 2023. This determination of employer size will be the employer size for the entire 2024 calendar year.

Example 4: An employer has an employee count of 27 for first quarter of 2023 and an employee count of 24 for second quarter of 2023. The employer's size is 25.5 $[(27 + 24) / 2 \text{ quarters}]$. Because the average employer size is 25, the employer is a large employer for all 2024 calendar year.

(b) Annual filers employer size shall be determined based on the 2023 Oregon Annual Report and calculated as stated in subsection (4)(a) of this rule. The notice on employer size shall be sent by the department 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 by March 1, 2024.

(5) For calendar years beginning on or after January 1, 2025:

(a) Quarterly filers employer size shall be determined on or before September 30 each year for the following year by averaging the employee counts reported for the preceding four completed quarters on the Oregon Quarterly Tax Reports. Notices on employer size determinations shall be sent by the department 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 by November 15.

Example 5: [See PDF link below]

(b) Annual filers employer size shall be determined based on the Oregon Annual Report and calculated as stated in subsection (5)(a) of this rule. The notice on employer size shall be sent by the department 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 by March 1.

(6) For new Oregon employers, employer size for the first calendar year is determined by the employee count for the first quarter employees that are reported on the Oregon Quarterly Tax Report. Notice on employer size shall be sent by the department 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 within 45 days of the submission of the employer's first quarterly Oregon Quarterly Tax Report. For the second calendar year, employer size shall be the average of the employee counts for the preceding year's third quarter to the second quarter of the following year. If the employer did not report for all four of those quarters, because the employer was not yet established in Oregon, the average of the reported quarters is used to determine the employer size for the second calendar year. Notice on employer size for the second calendar year shall be sent by the department 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 by November 15.

Example 6: A new employer has employees in Oregon starting September 2025. For third quarter of 2025, which covers June to September 2025, the employer reports 15 employees on the Oregon Quarterly Tax Report; 25 out-of-state employees; and zero replacement worker. The employer's employee count for third quarter of 2025 is 40 employees (15 Oregon PFMLI employees + 25 out-of-state employees – 0 replacement workers). Because the employer size is over 25, the employer is a large employer for the entire 2025 calendar year.

(7) If an employer has not filed all of the required Oregon Quarterly Tax Reports or Oregon Annual report or any of the required reports are incomplete at the time the employer size determination is made by the department, the employer will be considered a large employer and required to pay the employer contributions until all required reports are completed and filed.

(8) Employer size determinations will be reassessed when either:

(a) The Oregon Quarterly Tax Reports or Oregon Annual Reports that were missing or incomplete are submitted; or
(b) The Oregon Quarterly Tax Reports or Oregon Annual Reports are amended, including amendments by the employer or as the result of an audit.

(9) When reassessment of an employer size determination under section (7) of this rule results in a change in the employer size, the liability for employer contributions will also be reassessed. An employer that changed from a small employer to a large employer will be assessed the employer contributions for previous quarters. An employer that changes from a large employer to a small employer will be credited the previous employer contributions paid.

[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.360

OAR 471-070-3160

Example 5: An employer has the following employee counts:

Year	Quarter 1	Quarter 2	Quarter 3	Quarter 4
2023	24	28	27	24
2024	23	25	26	24
2025	25	32	28	23
2026	22	30	27	25

For 2025, the employer’s size is the average of the third quarter of 2023 through the second quarter of 2024. The employer’s size is 24.75 employees $[(27 \text{ from } 3^{\text{rd}} \text{ quarter of } 2023 + 24 \text{ from } 4^{\text{th}} \text{ quarter of } 2023 + 23 \text{ from } 1^{\text{st}} \text{ quarter of } 2024 + 25 \text{ from } 2^{\text{nd}} \text{ quarter of } 2024) / 4 \text{ quarters}]$. Because the employer size is under 25, the employer is a small employer the entire 2025 calendar year.

For 2026, the employer’s size is the average of the third quarter of 2024 through the second quarter of 2025. The employer’s size is 26.75 employees $[(26 \text{ from } 3^{\text{rd}} \text{ quarter of } 2024 + 24 \text{ from } 4^{\text{th}} \text{ quarter of } 2024 + 25 \text{ from } 1^{\text{st}} \text{ quarter of } 2025 + 32 \text{ from } 2^{\text{nd}} \text{ quarter of } 2025) / 4 \text{ quarters}]$. Because the employer size is over 25, the employer is a large employer the entire 2026 calendar year.

For 2027, the employer’s size is the average of the third quarter of 2025 through the second quarter of 2026. The employer’s size is 25.75 employees $[(28 \text{ from } 3^{\text{rd}} \text{ quarter of } 2025 + 23 \text{ from } 4^{\text{th}} \text{ quarter of } 2025 + 22 \text{ from } 1^{\text{st}} \text{ quarter of } 2026 + 30 \text{ from } 2^{\text{nd}} \text{ quarter of } 2026) / 4 \text{ quarters}]$. Because the employer size is over 25, the employer is a large employer the entire 2027 calendar year.

ADOPT: 471-070-3700

RULE TITLE: Assistance Grants: Definitions

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Defines terms used by the Paid Family and Medical Leave Insurance program necessary to regulate contributions and award assistance grants.

RULE TEXT:

"Significant additional wage-related costs" means added expenses incurred by the employer due to an eligible employee's use of family leave, medical leave, or safe leave and include:

- (1) Paying additional wages to an existing employee;
- (2) Outsourcing costs;
- (3) Certification;
- (4) Equipment purchases;
- (5) Training costs; or
- (6) Other costs that the department, in its discretion, determines are appropriate.

STATUTORY/OTHER AUTHORITY: ORS 657B.340, 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.200

ADOPT: 471-070-3705

RULE TITLE: Assistance Grant: Eligibility

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Clarifies which employers are eligible for assistance grants for the Paid Family and Medical Leave Insurance program. Employers with fewer than 25 employees are not required to pay the employer-share of the contribution amount, but if they do then they are eligible to apply for and receive assistance grants. This rule specifies that for an employer to be eligible for an assistance grant they have to have an employee on family leave, medical leave, or safe leave that was approved by the department; complete an assistance grant application; commits to pay employer contributions for eight calendar quarters; and doesn't have any delinquent reports or PFMLI contributions.

RULE TEXT:

(1) An employer is eligible for an assistance grant if:

- (a) At the time an employee starts a period of family leave, medical leave, or safe leave approved by the department, the employer is a small employer as defined in OAR 471-070-3150;
- (b) The employer completes an employer assistance grant application and provides the required documentation to the department within the established timeframe as described in OAR 471-070-3710;
- (c) The employer commits to pay the employer contribution for a period of at least eight calendar quarters as described in OAR 471-070-3750; and
- (d) The employer does not have any delinquent reports, delinquent contributions, and has no unpaid penalties or interest under ORS chapter 657B.

(2) An employer may apply for an assistance grant under ORS 657B.200 only if an eligible employee has taken family leave, medical leave or safe leave for a period of seven or more working days.

STATUTORY/OTHER AUTHORITY: ORS 657B.340, 657B.200

STATUTES/OTHER IMPLEMENTED: 657B.200

ADOPT: 471-070-3710

RULE TITLE: Assistance Grants: Application Requirements

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Explains the application process for employer to apply for assistance grants pursuant to ORS 657B.200. The application will include information about the employer applying for the grant, information about the eligible employee taking leave, information about the grant being requested, documentation showing hiring of a replacement worker or significant additional wage-related costs, and acknowledgement that the employer will pay employer contributions for eight calendar quarters.

RULE TEXT:

(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;
- (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) 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; 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 a revised grant application requesting an additional grant under ORS 657B.200(2).

(a) The revised grant application must contain:

(A) A revised leave end date or revised 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 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 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).

(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.]

STATUTORY/OTHER AUTHORITY: ORS 657B.200, 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.200

ADOPT: 471-070-3730

RULE TITLE: Assistance Grants: Grant Amounts

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Clarifies two different types of assistance grants available to employers. The first grant option is a \$3,000 grant for employers who hired a replacement worker to replace an employee taking PFMLI leave. The second grant option is a grant of up to \$1,000 for employers that incurred significant wage-related costs due to an employee's use of PFMLI leave.

RULE TEXT:

The amount paid for an approved assistance grant is as follows:

- (1) An employer that hired a replacement worker to replace an eligible employee on family leave, medical leave or safe leave receives a grant of \$3,000.
- (2) An employer that incurred significant additional wage-related costs due to an eligible employee's use of family leave, medical leave or safe leave receives a grant equal to the actual costs incurred and provided with the application approved by the department, up to \$1,000.
- (3) An employer that received a grant in accordance with section (2) of this rule may receive the difference between the amount received in section (2) of this rule and \$3,000, if the employee taking leave extended the period of leave beyond the initial expected period of the leave and the employer hires a replacement worker.

STATUTORY/OTHER AUTHORITY: ORS 657B.340, ORS 657B.200

STATUTES/OTHER IMPLEMENTED: ORS 657B.200

ADOPT: 471-070-3750

RULE TITLE: Assistance Grants: Employer Contributions

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Clarifies the duration during employer contributions are required for employers who are approved for assistance grants for the Paid Family and Medical Leave Insurance program. Clarifies if the employer receives an assistance grant, they will pay the employer-share of the contribution amount for eight quarters starting with the first calendar quarter that begins after the date the most recent grant is approved.

RULE TEXT:

(1) An employer that is approved for an assistance grant must also continue to pay employer contributions for a period of at least eight consecutive calendar quarters starting with the first calendar quarter that begins after the date the most recent grant is approved.

(2) The employer is liable for payment of the employer contribution and subject to penalties and interests in accordance with OAR 471-070-3030.

STATUTORY/OTHER AUTHORITY: ORS 657B.200, ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.200

ADOPT: 471-070-3850

RULE TITLE: Assistance Grants: Repayment of Grants

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Establishes a method for assistance grants to be repaid and when required for the Paid Family and Medical Leave Insurance program. Clarifies that an assistance grant will need to be repaid to the department if within three years of receiving the grant, the previous PFMLI wage reports are amended and the employer is not considered a small employer or inaccurate or fraudulent information was provided during the application process.

RULE TEXT:

Grants shall be repaid to the department if, within three years of receiving a grant:

- (1) Amendments to a previous wage report resulted in a reassessment of the employer size that determines the employer was a large employer at the time the eligible employee started the period of family leave, medical leave or safe leave used for the grant application; or
- (2) The department determines that the information or documentation included in the grant application was inaccurate, misleading or false and the employer was ineligible for the grant or did not meet the grant application requirements.

STATUTORY/OTHER AUTHORITY: ORS 657B.200, ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.200