

Presiding Officer's Report to Agency on Rulemaking Hearing

Date: July 19, 2022
To: David Gerstenfeld, Acting Director
From: Anne Friend, OED Rules Coordinator
Subject: Presiding Officer's Report on Rulemaking Hearing – Paid Leave Oregon Batch 3 Rules

Public Hearings and Public Comment Period

Meeting Type	Hearing Date and Time	Hearing Location
Public Hearing	May 19, 2022 – 9-11 am	Virtual via Zoom
Public Hearing	May 21, 2022 – 10 am - Noon	Virtual via Zoom
Public Hearing	May 24, 2022 – 4-6 pm	Virtual via Zoom
Public Comment Period	May 1, 2022 to May 31, 2022 at 5 pm	Submitted in writing via email.

Notice Filings (OAR 471-070-*)

Notice Number	Rule Numbers
Notice – Benefits	471-070-1000, 1010, 1020, 1030, 1100, 1110, 1120, 1130, 1200, 1210, 1220, 1230, 1310, 1320, 1420, 1440

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Summary of Comments Received on and Responses for Paid Leave Oregon Batch 3 Administrative Rules 3

Hearings Report

There were three rulemaking hearings on the proposed rules for the Paid Leave Oregon Division's Batch 3 administrative rules related to benefits. These hearings covered the one filing that the Department filed a notice of proposed rulemaking on April 27, 2022, with the Secretary of State's Office. All hearings were held virtually via the Zoom platform and recorded for the official record. At each hearing, I read the rulemaking information into the record and then began the hearings. Below, is a summary of each hearing and any comments received are outlined. The public comment period for this rulemaking effort was opened on May 1, 2022, and closed at 5 p.m. on May 31, 2022.

Public Hearing #1 – May 19, 2022

The first public hearing for the Batch 3 administrative rules took place on May 19, 2022, from 9 - 11 a.m. The public was asked to register through Zoom in order to attend the hearing and to raise their hands within the Zoom meeting if they wanted to comment on the proposed rules. Attendees were also informed of the procedures for taking comments and that the hearing was being recorded as part of the official record. There were 542 people registered to attend and 295 actually attended the hearing. Of the attendees, ten attendees provided testimony during the hearing on the administrative rules. 40 attendees asked general questions about the program not specific to the administrative rules. A summary of their comments can be found in the table below and the entire testimony can be found in "Exhibit 001" attached.

Public Hearing #2 – May 21, 2022

The second public hearing for the Batch 3 administrative rules took place on May 21, 2022 from 10 a.m. - Noon. The public was asked to register through Zoom to attend and to raise their hands within the Zoom meeting if they wanted to comment on the proposed rules. Attendees were also informed of the procedures for taking comments and that the hearing was being recorded as part of the official record. There were 64 people registered to attend and 12 actually attended the hearing. Of the attendees, three attendees provided testimony during the hearing on the draft administrative rules. Three attendees asked general questions about the program not specific to the administrative rules. A summary of their comments can be found in the table below and the entire testimony can be found in "Exhibit 002" attached.

Public Hearing #3 – May 24, 2022

The second public hearing for the Batch 3 administrative rules took place on May 24, 2022 from 4 – 6 p.m. The public was asked to register through Zoom to attend and to raise their hands within the Zoom meeting if they wanted to comment on the proposed rules. Attendees were also informed of the procedures for taking comments and that the hearing was being recorded as part of the official record. There were 195 people registered to attend and 77 actually attended the hearing. Of the attendees, six attendees provided testimony during the hearing on the draft administrative rules. Seven attendees asked general questions about the program not specific to the administrative rules. A summary of their comments can be found in the table below and the entire testimony can be found in "Exhibit 003" attached.

Public Comment Period – May 1, 2022 – May 31, 2022

The Notice of Proposed Rulemaking and Statement of Need and Fiscal Impact filing for the Batch 3 administrative rules was published in the Oregon Bulletin on May 1, 2022. Between May 1 and 5 p.m. on May 31, 2022, the public comment period was open to receive comments from the public, interested parties and groups, and legislators. Comments and questions were primarily received via the

OED_Rules@employ.oregon.gov email box where they were recorded by staff. Some comments did come in through the Paid Leave Oregon email address but those were subsequently forwarded to the OED Rules email box and recorded.

The Department received written testimony from 28 different individuals or groups. Of the 28 different written testimonies received, 10 were comments solely about the general program or other batches of draft administrative rules, and are not included in the summaries of this document. A summary of the testimony on specific Paid Leave Oregon Batch 3 administrative rules can be found in the table below under the rule(s) they provided testimony for. The exact comments can be found in the attached exhibits.

Summary of Comments Received on and Responses for Paid Leave Oregon Batch 3 Administrative Rules

Rule Number	Name Affiliation	Exhibit Number	Comment Summary	Responses	Rule Change – Yes/No
471-070-1000 – Benefits: Definitions	Cindy Goff, ACLI; Paloma Sparks, OBI; Lisa Bandelli-Virgona, The Standard	004, 011, 018	Recommend including provision that allows employers to advance benefits through salary continuation and be reimbursed by the state and private plans.	The statute doesn't authorize a reimbursement provision for an employer continuing payment of an employee's salary.	No
	Cindy Goff, ACLI; Lisa Bandelli-Virgona, The Standard	004, 018	(1) Request clarification that a claim is established once request for application is received. Decision to approve/deny is made once required information/documentation is received?	The claim is established when the application is approved. A denied application does not establish a claim.	No
	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	(1) Appreciate modification to "an individual" in the draft rule.	Support for administrative rule as written, no changes needed.	No

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	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	(2)-(4) Support proposed definitions.	Support for administrative rule as written, no changes needed.	No
	Cindy Goff, ACLI	004	(3) Recommend moving benefit year definition to Batch 4 to give more time to consider multiple employer scenarios with Equivalent Plan rules in Batch 4.	The benefit year definition aligns with the definition passed during the 2022 Legislative Session (SB 1515) and will eventually be removed from the rule when the bill goes into effect.	No
	Daris Freeman, Unum Insurance Co.	006	(3) Recommend including examples to demonstrate applicability of a 53-week benefit year.	The 53-week benefit year follows the same claim calendar as Unemployment Insurance and is only used on an as needed basis. Paid Leave Oregon Division feels it would create more confusion if an example was added to the rule and will take this comment into consideration when drafting guidebooks.	No
	Daris Freeman, Unum Insurance Co.; Lisa Bandelli-Virgona, The Standard; Paloma Sparks, OBI	006, 018, 011	(3) Recommend removing and moving to Batch 4 rules as have concerns with “claimant may only have one valid benefit year at a time”. Or modify to “one valid benefit year per respective plan”.	The claimant should only have one benefit year no matter if an employer has an equivalent plan or the state plan. Paid Leave Oregon Division feels this section of the rule fits best with Batch 3.	No

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	Lisa Bandelli-Virgona, The Standard	018	(5) Rule implies employee taking leave to provide therapy, counseling, etc. to family member. Suggest revising to specify providing transportation to services. Less specificity of what employee providing family member would be beneficial.	The definition clarifies an employee may take leave to provide comfort, companionship, etc. to a family member in addition to transportation to professional services. Transportation is already included in the draft rule.	No
	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	(5) Support definitions of “care” and “psychological assistance” but recommend amending “physical assistance” to eliminate condition that family member be unable to attend own needs.	Family leave allows employee to take leave from employment to provide assistance to a family member that is unable to care for themselves.	No
	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	(6)-(8) Support proposed definitions.	Support for administrative rule as written, no changes needed.	No
	Lisa Bandelli-Virgona, The Standard	018	(6) Unclear if adult dependent without physical or mental impairment is considered a child or family member.	The definition of “child” is specific to bonding and safe leave. An adult child is considered a family member for other leave types.	No
	Cindy Goff, ACLI	004	(8) Depending on who decides EEAWW, benefit amounts, benefit year, etc, this definition may need to be revised.	No change needed at this time. The EEAWW and benefit amount are decided by the Department.	No
	Lisa Bandelli-Virgona, The Standard	018	(8) Need to clarify “claimant” is different between	A claimant should be the same for the state plan or an	No

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			state plan and equivalent plans.	equivalent plan; therefore, no changes are necessary to the draft rule.	
	Melissa Erlbaum, Clackamas Women’s Services; Meg Garvin, NCVLI; J. Samples, D. Henretty, S. Hebb, L. Hoefler, Oregon Law Center; Dr. Martina Shabram, SASS; BB Beltran, SATF; Beth Hope, Tides of Change; Lisa Kwon and Andrea Paluso, Family Forward Oregon	005, 008, 012, 014, 015, 019, 020	(9), (10), (13), (14) - Definitions of domestic violence, harassment, sexual assault, and stalking should include threats or attempts at those crimes, as defined in ORS 659A.270.	Changed the rule to incorporate threat of abuse for domestic violence, sexual assault, and stalking to align with Oregon’s unpaid domestic violence leave law. Did not incorporate the changes in the harassment section of the rule, as it doesn’t align with Oregon’s unpaid domestic violence leave law.	Yes
	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	(11) Strongly encourage including doulas to the definition of “health care provider”.	The definition aligns with OFLA language (ORS 659A.150) with additional clarifications specific to family and medical leave insurance benefits. Oregon Health Authority defines “birth doula” as a birth companion providing <u>nonmedical support</u> (OAR 410-180-0305); therefore, Paid Leave Oregon Division does not	No

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				feel they should be included on the list.	
	Lisa Bandelli-Virgona, The Standard	018	(11) Recommend adding spiritual healers to list of providers. Of note, Christian Science Practitioners are licensed health care providers.	This definition aligns with OFLA language (ORS 659A.150) with additional clarifications specific to family and medical leave insurance benefits.	No
	Cindy Goff, ACLI; Daris Freeman, Unum Insurance Co.; Breanna Scott, New York Life	004, 006, 010	(11)(b) Expanded definition of Health Care Provider is not in OFLA. Recommend removing to keep same as OFLA for consistency in evaluation of the two programs and would be very difficult to validate.	This definition aligns with OFLA language [ORS 659A.150(b)] with additional clarifications specific to family and medical leave insurance benefits. Definition is consistent; therefore, no changes are needed.	No
	Cindy Goff, ACLI; Daris Freeman, Unum Insurance Co.; Breanna Scott, New York Life	004, 006, 010	(12)(a) Recommend mirror FMLA for definition of serious health condition to include leave for substance abuse treatment (including out-patient) which is distinctly different from inability to work due to active substance abuse.	This definition aligns with OFLA language (ORS 659A.150) with additional clarifications specific to family and medical leave insurance benefits. The program will continue to evaluate this policy and may amend the rule in the future.	No
	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	(12)(h) Recommend making clear periods of disability apply to pre and post miscarriage. Also strongly suggest including abortion as reason for leave.	The rule includes periods of disability due to pregnancy and miscarriage which covers conditions of pre and post miscarriage. If abortion causes a serious health condition that meets the disability threshold, it would	No

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				be included. No rule change needed.	
Lisa Bandelli-Virgona, The Standard	018	(12) Recommend adding “but not limited to” following instances of “such as” to avoid defining too narrowly.	Changed the rule to clarify that the items listed are not limited to just those items.	Yes	
Lisa Bandelli-Virgona, The Standard	018	(12) Is organ donation considered a “serious health condition”? Perhaps should be its own leave type.	No changes need to the rule as organ donation is already included in section (i) of this rule and is included in OFLA as a serious health condition.	No	
Cindy Goff, ACLI; Lisa Bandelli-Virgona, The Standard	004, 018	(15) Recommend moving “subject wages” definition to Batch 4 with further clarification of reporting requirements to Equivalent Plan rules in Batch 4.	Equivalent plan reporting requirements are addressed in Batch 4 rules and the definition of “subject wages” isn’t dependent on reporting requirements. Subject wages is used throughout the Batch 3 rules; therefore, fits best within Batch 3 rules.	No	
Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	(15) Support proposed definition.	Support for administrative rule as written, no changes needed.	No	
Cindy Goff, ACLI; Daris Freeman, Unum Insurance Co.; Gina Rutledge, MetLife; Paloma Sparks, OBI; Lisa Bandelli-	004, 006, 009, 011, 018	(16) Recommend moving work day definition to Batch 4 to consider simultaneous coverage scenarios with Equivalent Plan rules. Change “all employment” to “each employer”.	The statute provides for benefits in one work day increments; therefore, the claimant must take leave for the entire day. Paid Leave Oregon Division fills the definition fits	No	

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	Virgona, The Standard			best within the Batch 3 rules.	
	Lisa Bandelli-Virgona, The Standard	018	(16) Phraseology issue in last sentence - shifts extending over two calendars days count as one work day which is the day the shift began.	Changed the rule for shifts extending over two <i>work</i> days to two <i>calendar</i> days to clearly state a shift spanning two days counts as one work day, the day the shift began.	Yes
	Cindy Goff, ACLI; Daris Freeman, Unum Insurance Co.; Lisa Bandelli-Virgona, The Standard	004, 006, 018	(17) Recommend moving work week definition to Batch 4.	Paid Leave Oregon Division feels the definition fits best within the Batch 3 rules. Paid Leave Oregon will continuously work on developing policy even after the initial rules are complete and will be taking all feedback into consideration.	No
	Paloma Sparks, OBI	011	(17) Work week should be specific to the employer rather than encompass all employers.	The statute doesn't allow for leave to be employer specific as the employee can have a maximum leave amount per year, not per employer.	No
	Lisa Bandelli-Virgona, The Standard	018	(17) Recommend adding "to such an extent that an employer is unable to determine with any certainty how many days the claimant would otherwise have worked (but for taking of this leave)" after "schedule" in second sentence to align with OFLA and FMLA.	Paid Leave Oregon uses work week to determine the average work week and is not used the same was as FMLA and OFLA.	No

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	Lisa Bandelli-Virgona, The Standard	018	(17) Work week calculation for variable schedule doesn't work for equivalent plans where employee doesn't have full 12 weeks of employment.	Clarified in rule if an employee worked less than 12 weeks, the employee would divide by the number of weeks worked.	Yes
471-070-1010 – Benefits: Eligibility and Qualification for Benefits	J. Samples, D. Henretty, S. Hebb, L. Hoefer, Oregon Law Center	012	(1) Request clarification how employee of a temporary agency will be covered when waiting for assignment.	The Paid Leave Oregon Division is looking further into this topic and will either include additional information in instructions or create an additional rule to explain further how temporary or replacement employees' work.	No
	Cindy Goff, ACLI; Daris Freeman, Unum Insurance Co.; Paloma Sparks, OBI; Lisa Bandelli-Virgona, The Standard	004, 006, 011, 018	(1)(c) Request adding clarification for sections that do not apply to equivalent plans.	The intention of the benefit rules were to provide clarification for benefits specifically for the state plan. Equivalent plans may have different processes for benefits. The requirements for benefits are also included in statute.	No
	Lisa Bandelli-Virgona, The Standard	018	(1)(g) Eligibility dependent on not exceeding maximum leave and benefit amount in benefit year should not apply to equivalent plans.	The equivalent plan rules address simultaneous coverage. An equivalent plan employer may choose to allow more leave and benefit amounts; therefore, this rule doesn't apply to equivalent plans.	No

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	J. Samples, D. Henretty, S. Hebb, L. Hoefler, Oregon Law Center	012	(1)(h)(A) Potential eligibility for workers' compensation benefits should not disqualify someone from being eligible for PFMLI.	Per ORS 657B.030(3), if an employee is eligible to receive workers' compensation, even if they don't receive the worker's compensation payment, they are disqualified from receiving benefits.	No
	Lisa Bandelli-Virgona, The Standard	018	(1)(h)(B) should not apply to equivalent plans unless they can make a willful false statement determination.	The intention of the benefit rules were to provide clarification for benefits specifically for the state plan. Equivalent plans may have different processes for benefits. The requirements for benefits are also included in statute.	No
	Cindy Goff, ACLI; Daris Freeman, Unum Insurance Co.	004, 006	Request clarification whether qualifying event began prior to Sept. 3, 2023 is eligible for benefits.	Clarification will be provided in program materials instead of rule as the start of the program and eligibility begins is one time and is clear in statute when it begins.	No
	Daris Freeman, Unum Insurance Co.	006	(2) Recommend adding examples to clarify how 12 week bonding limit works when new benefit year begins during first 12 months.	Changed the rule to add a couple of examples to provide further clarification.	Yes
	Paloma Sparks, OBI; Lisa Bandelli-Virgona, The Standard	011, 018	(2) Suggest simpler wording, "An individual may not exceed 12 weeks of paid leave per child for purpose of caring for or bonding within the	Changed the language to make it clearer.	Yes

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			first year after birth or placement regardless if a new benefit year starts during the first year following birth and or placement.”		
	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	Support for rule as written to remove weekly leave report.	Support for administrative rule as written, no changes needed.	No
471-070-1020 – Benefits: Assignment of Wages and Income	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	Support proposed rule as written.	Support for administrative rule as written, no changes needed.	No
471-070-1030 – Benefits: Maximum Amount of Benefits in a Benefit Year	Cindy Goff, ACLI, Daris Freeman, Unum Insurance Co.	004, 006	(1)-(2) Recommend moving to Batch 4 to address simultaneous coverage issues, clarify limitations related to pregnancy, and documentation requirements.	The Paid Leave Oregon Division feels this rule fits best within the Batch 3 rules and ties to what is already in statute. The Paid Leave Oregon Division will continuously work on developing policy even after the initial rules are complete and will be taking all feedback into consideration.	No
	Cindy Goff, ACLI; Daris Freeman, Unum Insurance Co.	004, 006	Request more detail on additional 2-week pregnancy leave – does it run first or after the other 12 weeks are exhausted?	The additional two weeks can be used before or after the 12 weeks as the eligible individual can receive a total of 14 weeks. Because it can be used however, no need to expand the rule.	No
	Paloma Sparks, OBI; Lisa Bandelli-	011, 018	Equivalent plans should not be required to meet	Equivalent plans can offer more than the maximum benefit	No

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	Virgona, The Standard		administrative burdens that only relate to the state plan. Equivalent plans should be exclusively administered by the equivalent plan administrator.	amount; however, they can't offer less. However, the number of weeks an employee takes from an equivalent plan, will reduce the number of weeks if they later qualify for a state plan.	
	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	Appreciate expanded conditions which may qualify for additional two weeks of leave.	Support for administrative rule as written, no changes needed.	No
471-070-1100 – Benefits: Application for Benefits	Cindy Goff, ACLI	004	(1)(b) Recommend moving to Batch 4 to clarify this subsection is not applicable to equivalent plans.	The rule, as stated in (1), is for state plans. Equivalent plans can determine what they would like to require on their application for benefits.	No
	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	(1)(b) Suggest clarification of documentation required regarding claimant's identity.	The extensive list of documentation to verify a claimants identify will be included in the guidebooks and instructions and not within the rule.	No
	Paloma Sparks, OBI; Lisa Bandelli-Virgona, The Standard	011, 018	(1)(c)(B) conflicts with (1)(e)(A) where the application asks for info about all employers and later only employers where taking leave from. Rule suggests leave must be taken from all employers where other provisions in rule state otherwise. Employees should not be required to	Leave must be taken from all employers for that day. A claimant may work for one employer one day and another employer another day and leave is only needed for the first employer for that day.	No

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			take leave from all employers.		
	Cindy Goff, ACLI	004	(1)(e)(A) Recommend moving to Batch 4 to clarify this subsection is not applicable to equivalent plans.	The rule, as stated in (1), is for state plans. Equivalent plans can determine what they would like to require on their application for benefits.	No
	Cindy Goff, ACLI	004	(1)(h) Recommend moving this subsection to Batch 4 to clarify limitations related to pregnancy.	The Paid Leave Oregon Division feels the section of the rule fits best within the Batch 3 rules as it relates to documentation that is needed for the application for benefits for the state plan. Paid Leave Oregon will continuously work on developing policy even after the initial rules are complete and will be taking all feedback into consideration.	No
	Teresa Hoard-Jackson, SEIU	017	(1)(h) Urge reconsideration of documentation requirement as proof of pregnancy, significant to abortion care, an employee may be reluctant to seek care or leave if required to provide documentation.	The two additional week documentation would only be needed for the two additional weeks when the 12 weeks of leave has already been exhausted. The Department will need some type of documentation to make sure the claimant qualifies for the additional time.	No
	J. Samples, D. Henretty, S. Hebb, L.	012, 020	(1) Request remove requirement for SSN or ITIN.	Use of SSNs and ITINs for application of benefits is how	No

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	Hoefer, Oregon Law Center; Lisa Kwon and Andrea Paluso, Family Forward Oregon			the Department will match wages and identify claimants. The SSN is required for the Oregon Quarterly Combined Payroll Tax Report each quarter and does not provide a date of birth that the Department can match to.	
	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	(2) Recommend clarifying equivalent plans must comply with Department's rules.	Since an equivalent plan can be equal to or greater than the state plan, equivalent plans may require less information than the state plan; therefore, this rule only applies to state plans.	No
	Cindy Goff, ACLI	004	(3) Recommend moving this section to Batch 4 to clarify employees are not required to take leave from all employers.	Section (3) of the rule states if the claimant is simultaneously covered, they must apply for leave with the state plan and equivalent plan as the state plan isn't going to give the equivalent plan the application information. The Paid Leave Oregon Division feels it is appropriate to keep this section in this rule and not move to Batch 4.	No
	Lisa Bandelli-Virgona, The Standard	018	Recommend revise rules to not require employee take leave from all employers unless so chooses.	The statute requires the employee to be gone for one work day, which means from both jobs.	No

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<p>J. Samples, D. Henretty, S. Hebb, L. Hoefer, Oregon Law Center; Lisa Kwon and Andrea Paluso, Family Forward Oregon</p>	<p>012, 020</p>	<p>(4) 30-day application deadline is too short. If retain deadline then expand definition of “good cause”.</p>	<p>The approval of an application and claim begin the benefit payments and the Department wants to encourage the claimant to file the application close to the leave so job protection occurs and payments are received when the claimant is not working.</p>	<p>No</p>
<p>Cindy Goff, ACLI</p>	<p>004</p>	<p>(4)-(6) Recommend moving timelines for submitting application for benefits to Batch 4 to clarify job protections and make other improvements that will facilitate administration.</p>	<p>The Paid Leave Oregon Division feels this section of the rule best fits in the Batch 3 rules. The approval of an application and claim begin the benefit payments and the Department wants to encourage the claimant to file the application close to the leave so job protection occurs and payments are received when the claimant is not working.</p>	<p>No</p>
<p>J. Samples, D. Henretty, S. Hebb, L. Hoefer, Oregon Law Center; Lisa Kwon and Andrea Paluso, Family Forward Oregon</p>	<p>012, 020</p>	<p>(6) Propose broader definition of “good cause” to include: failure of employer to post notice; safety concerns of claimant or child; barriers to applying; inadequate notice posting.</p>	<p>The rule already allows for other items that are not listed currently in within the rule at the discretion of the Department.</p>	<p>No</p>
<p>Daris Freeman, Unum Insurance Co.</p>	<p>006</p>	<p>Recommend clarification to job protections when application for</p>	<p>Will take this comment into consideration for</p>	<p>No</p>

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			benefits is late for good cause. Potentially fits in Batch 4 job protections rule.	the job protection rule in Batch 4.	
	J. Samples, D. Henretty, S. Hebb, L. Hoefler, Oregon Law Center	012	Suggest application allow for explanation of answers, good faith estimate where claimant doesn't know, and that incomplete application not render claimant ineligible.	The rule explains what information is needed; however, it the rule isn't the entire application, which is still being built. The Division will take this feedback into consideration when building the application. Per OAR 471-070-1210, if leave time changes, the claimant must notify the Department within 10 days.	No
471-070-1110 – Benefits: Verification of Family Leave to Care for and Bond with a Child	Rep. Anna Williams, HD 52; Lisa Kwon and Andrea Paluso, Family Forward Oregon	013, 020	Appreciate inclusion of documentation provided by social worker to verify adoption or foster care placement.	Support for administrative rule as written, no changes needed.	No
471-070-1120 – Benefits: Verification of a Serious Health Condition	Cindy Goff, ACLI; Daris Freeman, Unum Insurance Co.; Lisa Bandelli-Virgona, The Standard	004, 006, 018	Recommend requiring a diagnosis of serious health condition be provided to verify leave, add frequency and duration of anticipated intermittent leave, add estimated treatment schedule for anticipated intermittent leave, and provide process for employee to authorize verification with	Clarified by adding additional language to the draft rule for intermittent leave. Per the recommendation of the RAC, we removed the requirement that a diagnosis be provided to better align with FMLA forms, so will continue to leave that requirement out of the rule. The rule prescribes the minimum	Yes

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			medical provider to expedite certification.	requirements to verify a serious health condition. Authorization to verify with a medical provider may be included when the Department creates the form, but it won't be included in the rule as a requirement at this time.	
	Breanna Scott, New York Life	010	(4) Recommend separating date condition started or created the need for leave from the estimated duration or frequency and duration.	Created a new section within the rule for estimated duration and new section for frequency and duration.	Yes
	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	Support information required to verify serious health condition. Suggest develop new form to verify medical leave instead of relying on existing OFLA/FMLA forms.	The Department will provide a healthcare verification form. The Department will also accept OFLA/FMLA forms if those forms capture what is requested for the Paid Leave Oregon program.	No
471-070-1130 – Benefits: Verification of Safe Leave	Cindy Goff, ACLI; Daris Freeman, Unum Insurance Co.	004, 006	Recommend reference to OAR 839-009-0362 to align with OR Safe Leave Law and remove self-attestation to eliminate possible abuse of leave.	The Paid Leave Oregon Division is trying to balance ease for the claimant while also balancing potential areas of misuse and has made the decision to have self-attestation available for good cause situations. For safety reasons, a claimant of safe leave may not seek assistance from a	No

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				person or entity that can provide documentation. The Department will monitor and can reevaluate this after implementation.	
Lisa Bandelli-Virgona, The Standard	018		Suggest reinserting “minor” child to stay aligned with Oregon Safe Leave Law.	OAR 471-070-1000 defines “child” and want to keep the terms consistent; therefore, not adding “minor”.	No
Melissa Erlbaum, Clackamas Women’s Services; Dr. Martina Shabram, SASS; BB Beltran, SATF; Beth Hope, Tides of Change	005, 014, 015, 019		Thank you for inclusion of self-attestation for verification of safe leave.	Support for administrative rule as written, no changes needed.	No
Meg Garvin, NCVLI	008		Self-attestation in place of documentation for verification of safe leave is unduly narrow by not including safety concerns of other family members or pets.	ORS 659A.272 provides safe leave to the employee when the employee or the employee’s child or dependent is victim to domestic violence, harassment, sexual assault or stalking Safe leave does not extend to family members generally or pets.	No
Samantha Brace, TIX Education Spec.	021		(1)(a) should include written reports/formal complaints to a school’s Title IX Coordinator. (1)(b) should include no-contact orders, admin leave, and	Changed the rule to include Title IX Coordinator	Yes

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			emergency removals issued by a school's Title IX Coordinator.		
	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	Strongly recommend consider self-attestation a standard method for verification of safe leave rather than only in cases of good cause for not providing documentation.	The Paid Leave Oregon Division is trying to balance ease for the claimant while also balancing potential areas of misuse and has made the decision to have self-attestation available for good cause situations. The Department will monitor and can reevaluate this after implementation.	No
	J. Samples, D. Henretty, S. Hebb, L. Hoefer, Oregon Law Center	012	(2) Appreciate inclusion of "good cause"	Support for administrative rule as written, no changes needed.	No
471-070-1200 – Benefits: Claim Processing; Additional Information	Cindy Goff, ACLI; Daris Freeman, Unum Insurance Co.	004, 006	Recommend expanding authorization to obtain information to employers or administrators of equivalent plan with response required in 14 days.	This administrative rule is specific for claimants. OAR 471-070-1320 relates to employers.	No
	Breanna Scott, New York Life	010	Recommend being consistent in time allowed (14 days) to respond to request for information regardless of the manner in which the request is made.	The Paid Leave Oregon Division is trying to juggle allowing enough time to respond along with the requirement that the Department provide payment of benefits within two weeks. The new modernization system will allow for	No

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				quicker turnaround by allowing claimants to receive letters instantly and respond electronically within the system.	
	J. Samples, D. Henretty, S. Hebb, L. Hoefer, Oregon Law Center	012	(1) 14 days is too short of time to respond.	The Paid Leave Oregon Division is trying to juggle allowing enough time to respond along with the requirement that the Department provide payment of benefits within two weeks. The new modernization system will allow for quicker turnaround by allowing claimants to receive letters instantly and respond electronically within the system.	No
	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	Suggest not specifying timeframe in which claimant must respond. If necessary to specify timeframe, suggest significantly longer (30 days) to respond regardless of the method of communication.	The Paid Leave Oregon Division is trying to juggle allowing enough time to respond along with the requirement that the Department provide payment of benefits within two weeks. The new modernization system will allow for quicker turnaround by allowing claimants to receive letters instantly and respond electronically within the system.	No

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	J. Samples, D. Henretty, S. Hebb, L. Hofer, Oregon Law Center	012	(4) "Good cause" exception needs to be more inclusive and equitable, provide for safety concerns.	The rule as drafted, includes good cause for a serious health condition and safe leave. The Department has discretion for other means not listed.	No
471-070-1210 – Benefits: Updates to a Claim for Leave	Lisa Bandelli-Virgona, The Standard	018	Should update to claim require employee's legal name?	Changed rule to specify changes to "first and last name" must be reported within 10 calendar days. This is consistent with the way name is referenced throughout Paid Leave Oregon rules.	Yes
	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	Failure to notify Department changes to contact info, employer, etc. is not grounds for denial or disqualification. Recommend deleting "denial" and "disqualification".	If the Department receives updated information from another source, it may result in a denial of a claim (i.e. no longer is taking Paid Leave Oregon leave); therefore, do not want to remove denial or disqualification from the rule.	No
471-070-1220 – Benefits: Cancellation of a Claim	Cindy Goff, ACLI	004	Request clarification that EEAWW is locked at same rate for all claims in benefit year.	The Paid Leave Oregon Division is looking to clarify this in future rulemaking.	No
	J. Samples, D. Henretty, S. Hebb, L. Hofer, Oregon Law Center; Lisa Kwon and Andrea Paluso, Family Forward Oregon	012, 020	Victims should not be penalized for failure to comply with deadlines if safety concerns delay notification.	Rule is intended to clarify when a claim may be cancelled by the claimant. There is no deadline for canceling a claim as long as the leave has not been taken, benefits have not been received, and	No

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				a disqualification has not been issued.	
471-070-1230 – Benefits: Administrative Decisions	Cindy Goff, ACLI; Daris Freeman, Unum Insurance Co.	004, 006	Recommend defining interested parties and include employers in that definition to receive notice of decisions related to claims.	The Paid Leave Oregon Division is still assessing who may be an interested party for a claim determination; however, employers typically do not have appeal rights for benefit determinations.	No
	Cindy Goff, ACLI; Breanna Scott, New York Life; Paloma Sparks, OBI; Lisa Bandelli-Virgona, The Standard	004, 010, 011, 018	Recommend including the benefit amount in the decision.	The benefit amount determination will be in a separate notice and will be included in future administrative rules.	No
	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	Appreciate removal of weekly leave report requirement.	Support for administrative rule as written, no changes needed.	No
	J. Samples, D. Henretty, S. Hebb, L. Hoefler, Oregon Law Center	012	(3) Decision must include date of decision and date must appeal by.	The date of the decision is already included in (3)(e) of the draft rule and the appeal timeframe is already included in (3)(f) of the draft rule; therefore, no additional changes are needed.	No
	Lisa Bandelli-Virgona, The Standard	018	(3)(b) Suggest changing “citing the laws and rules involved” to “citing the pertinent provisions of the PFMLI policy or plan”. Citing laws	Intention of citing the laws and rules is to clarify to any claimant that is denied why they were denied, the authority for the denial, and to allow	No

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			and rules will delay claims administration.	them to know what to appeal. Additionally, citing laws and rules aligns with notice requirements under ORS 183.415.	
<p>471-070-1310 – Benefits: Employee Notice to Employers Prior to Commencing Leave</p>	<p>Cindy Goff, ACLI; Daris Freeman, Unum Insurance Co.</p>	<p>004, 006</p>	<p>Encourage this rule to include requirement for notice of intermittent leave using FMLA and OFLA provisions.</p>	<p>FMLA and OFLA provisions do not specifically address intermittent leave. Intermittent leave would fall under a not foreseeable leave as currently written in the rule. If a claim is for intermittent leave, the claimant notifies the employer once and not each time; unless the need for intermittent leave changes, then the claimant would let the Department and employer know as stated in section (4) of the rule.</p>	<p>No</p>
	<p>Lisa Kwon and Andrea Paluso, Family Forward Oregon</p>	<p>020</p>	<p>Recommend explicitly state employer who fails to provide policy requiring written notice of leave is not entitled to such notice.</p>	<p>If an employer does not have a written policy requirement, the employer still needs some type of notice why the employee is not at work for job protection.</p>	<p>No</p>
	<p>J. Samples, D. Henretty, S. Hebb, L. Hofer, Oregon Law Center</p>	<p>012</p>	<p>(1) Concern oral and written notice requirements is confusing.</p>	<p>The oral and written requirement aligns with OFLA.</p>	<p>No</p>
	<p>J. Samples, D. Henretty, S. Hebb, L. Hofer,</p>	<p>012</p>	<p>(3) It is not clear how much/little detail an employee must share with</p>	<p>The claimant does not provide to the employer documentation but</p>	<p>No</p>

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Oregon Law Center		their employer. Role of the Division and the role of the employer should be clear. Maybe develop a sample form.	provides an explanation of the need for leave and time the eligible employee will be gone. The Paid Leave Oregon Division will collect the documentation to verify the leave meets the qualification; which is discussed in the application rule (OAR 471-070-1100). The Paid Leave Oregon Division will consider developing a sample form for employees to use.	
Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	(3) Recommend explicitly state employee need not expressly assert PFMLI leave using specific words or terms; employer cannot require the employee to mention PFMLI to take leave.	Clarified in rule that the employee does not need to expressly state PFMLI with the employer.	Yes
J. Samples, D. Henretty, S. Hebb, L. Hoefer, Oregon Law Center	012	(4) Need to require employer to identify "proper individual" is and how to contact for notice of leave.	Removed proper individual from the rule and clarified it should be the employer's known, reasonable, and customary policies.	Yes
Cindy Goff, ACLI	004	(5) Request employers be allowed to provide link to intranet site where electronic version of policy is stored and provide employees with	The Department is not putting a limit on how the written policy needs to be delivered within the rule, so the updated policy could be provided	No

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			changes or updates via email.	electronically or by other means.	
	Cindy Goff, ACLI; Daris Freeman, Unum Insurance Co.	004, 006	(6) Request Paid Leave Oregon notify employers when intermittent absence is reported.	The Paid Leave Oregon Division is still researching privacy concerns and system limitations of what we can and cannot provide the employer and may be addressed in a future rule.	No
	Cindy Goff, ACLI; Daris Freeman, Unum Insurance Co.; Paloma Sparks, OBI	004, 006, 011	(8) Recommend Paid Leave Oregon specify job protections do not apply if an employee has not provided proper notice to employer.	Further research is needed on this topic and may be addressed in a future rule.	No
	J. Samples, D. Henretty, S. Hebb, L. Hoefler, Oregon Law Center; Lisa Kwon and Andrea Paluso, Family Forward Oregon	012, 020	(8) Penalty rate should be reconsidered; penalty is discretionary not mandatory.	As currently written, the Department may impose the 25% penalty, but does not have to impose the penalty. The penalty amount will not be a different amount but the Department will take everything into consideration before imposing it.	No
	Lisa Bandelli-Virgona, The Standard	018	(8) Employee notice that is later than one week would only be penalized for the first week of benefits.	As stated in section (11) of the rule, if the Department finds out later that a penalty should have been imposed, the Department will consider the payment already received an erroneous overpayment and will collect accordingly.	No

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	J. Samples, D. Henretty, S. Hebb, L. Hoefler, Oregon Law Center	012	(10) Should allow “as soon as practicable” for cases of incapacitating or serious health condition and safe leave and not require a waiver.	The Department may not have enough information from the employee to know they qualified for good cause before the penalty was imposed; therefore, there is a need for a waiver. If the Department did have enough information, the penalty would likely not be imposed in the first place.	No
	Melissa Erlbaum, Clackamas Women’s Services; Meg Garvin, NCVLI; J. Samples, D. Henretty, S. Hebb, L. Hoefler, Oregon Law Center; Dr. Martina Shabram, SASS; BB Beltran, SATF; Beth Hope, Tides of Change	005, 008, 012, 014, 015, 019	Advance notice cannot be provided for abuse, violence, or harassment because it is not known. Additionally, it may not be possible or safe for the survivor to give notice immediately after taking leave. Notice to employer should be provided as soon as practicable without disqualification or penalty to the survivor.	Section (2) of the rule provides for an unforeseeable event, including safe leave, and leave commenced without advance notice. Under ORS 657B.040(3), if an advanced notice cannot be given, then the employee must still give 24 hours oral notice and three days written notice after the start of leave.	No
	Teresa Hoard-Jackson, SEIU	017	Employees should not be penalized for late notice if employer did not properly provide notice of policy.	The Department has the discretion to impose the penalty and will take all factors into consideration before imposing the penalty.	No
471-070-1320 – Benefits: Communication to Employers about	Cindy Goff, ACLI	004	(1)-(4) Recommend moving sections to Batch 4 to give more time to consider	The Paid Leave Oregon Division will continuously work on developing policy	No

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Employee Application for Benefits			multiple employer scenarios.	even after the initial rules are complete and will take all feedback into consideration. However, the program feels the rule is best in the Batch 3 rules.	
	Lisa Bandelli-Virgona, The Standard	018	(1)&(4) Strongly recommend Department not notify employers of employee's employment with other employers.	For an employee with multiple employers, the Department is not currently planning to notify other employers that the employee has taken leave.	No
	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	(2) Strongly recommend remove allowance for employer to provide additional information on employee's benefit claim.	Allowing the employer to provide relevant information helps the Department identify errors on a claim or errors in the Department records.	No
	Gina Rutledge, MetLife; Paloma Sparks, OBI; Abigail O'Connell, Sun Life; Lisa Bandelli-Virgona, The Standard	009, 011, 016, 018	Recommend deleting (3) from rule. Proration of benefits between simultaneous coverage plans can be easily managed using hours an employee works for each employer. Additionally, (3) could cause strife where employers prohibit outside employment.	Section 3 is necessary to help the Department establish whether a claimant has coverage through an equivalent plan. This is important for determining coverage in portability situations under ORS 657B.250 and for simultaneous coverage proration under ORS 657B.210(10) and leave already taken through the equivalent plan employer and how	No

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				much leave time is left.	
Lisa Bandelli-Virgona, The Standard	018	(3) If this section is not deleted as suggested, then request response time be extended from 10 days to 14 days. Also recommend specifying the information that will be requested.		The Department must make a reasonable effort to issue payments within two weeks after receiving a claim. Extending the timeframe for employers to 14 days would mean that the Department would need to process claims before receiving any information from employers. The Department is still evaluating the specific information that will be provided to employers after an employee files a claim.	No
Daris Freeman, Unum Insurance Co.	006	(4) Recommend including notice of approved benefit amount to employers.		The Department is still assessing the precise information that will be provided to employers, including the weekly benefit amount, after an employee files a Paid Leave Oregon benefit application.	No
Lisa Bandelli-Virgona, The Standard	018	(4) Prefer notice be to an equivalent plan administrator if also covered by an equivalent plan.		This could potentially also include an equivalent plan administrator if the employee's employer requested the information is sent to an administrator.	No

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	Leslie Martin, Marion County HR	007	Employer may not respond timely if notification is not sent to the proper person at the employer. I.e. UI claims person is not necessarily the same person who handles leave.	Employers will most commonly be notified either through electronic services or regular mail. The Department will review how to ensure employer contact is correct for Paid Leave Oregon claims when designing the system.	No
	Breanna Scott, New York Life	010	Request notification from Department to employer include intermittent leave days that will be approved.	The Department is still assessing the precise information that will be provided to employers after an employee files a Paid Leave Oregon benefit application and as the employee continues claiming benefits and may be added in a future rule.	No
471-070-1420 – Benefits: Leave Periods and Increments	Cindy Goff, ACLI	004	(1)-(4) Recommend moving sections to Batch 4 to give more time to consider multiple employer scenarios. Several provisions will create undue hardship for employers and need more time to suggest modifications.	The Paid Leave Oregon Division will continuously work on developing policy even after the initial rules are complete and will take all feedback into consideration. The Paid Leave Oregon Division feels this rule best fits in Batch 3.	No
	Gina Rutledge, MetLife	009	(2) Recommend employer’s records of employee work hours should control over employee’s reported hours, consistent with 471-070-1440.	Modified the rule to remove language that the information is only based on what the claimant reports, since the average work week could also be based	Yes

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				on information that the employer or another party provides to the Department.	
	Daris Freeman, Unum Insurance Co.	006	(3)-(4) Recommend moving simultaneous coverage sections to Batch 4 rules.	The Paid Leave Oregon Division will continuously work on developing policy even after the initial rules are complete and will take all feedback into consideration.	No
	Daris Freeman, Unum Insurance Co.; Gina Rutledge, MetLife; J. Samples, D. Henretty, S. Hebb, L. Hoefer, Oregon Law Center; Teresa Hoard Jackson, SEIU; Lisa Kwon and Andrea Paluso, Family Forward Oregon	006, 009, 012, 017, 020	(4) Encourage allowing employee to take leave from one employer rather than all. As written it will create undue hardship for employees and employers.	Language in ORS 657B.090(4)(a) indicates that the minimum increment of leave is a work day. Not requiring that the employee to take leave from all employers in a work or calendar day would introduce administrative complexity into the application and benefit proration processes.	No
	Gina Rutledge, MetLife	009	(4) If want state plan to require leave from all employers, then include exception for equivalent plans.	At the moment, the Paid Leave Oregon Division believes an employee may also have to take leave from an equivalent plan employer in certain situations. This is something that the Division is still assessing and may be clarified in future rulemaking.	No

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	Lisa Bandelli-Virgona, The Standard	018	(3) Strongly recommend department not notify employers of employee's employment with other employers. Employees should not be required to take leave from an employer if doesn't want to.	Language in ORS 657B.090(4)(a) indicates that the minimum increment of leave is a work day. Not requiring that the employee takes leave from all employers in a work or calendar day would introduce administrative complexity into the application and benefit proration processes. Notifying employers is addressed in other rule.	No
471-070-1440 – Benefits: Weekly Benefit Proration	Cindy Goff, ACLI	004	(1)-(3) Recommend moving sections to Batch 4 to give more time to consider multiple employer scenarios.	The Paid Leave Oregon Division will continuously work on developing policy even after the initial rules are complete and will take all feedback into consideration and may amend the rule at a later time.	No
	Paloma Sparks, OBI	011	Rule creates excessively complicated reporting requirement. Suggest looking at simpler approach to reimburse equivalent plan for overpayment if requested.	This rule only deals with how an employee's benefit amount is calculated when the claimant does not take a full week off. The rule does not apply to equivalent plan reimbursements. It does not specify that employers must report to the Department.	No
	Abigail O'Connell, Sun Life	016	Suggest amending the rule to make clear proration is done per plan.	ORS 657B.030(2) and 657B.210(10)(a) indicate that an employee only has a	No

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				single “eligible employee’s average weekly wage” rather than multiple under different employers. The Paid Leave Oregon Division is considering future rules to clarify simultaneous coverage situations.	
	Lisa Bandelli-Virgona, The Standard	018	If definition of “work day” is amended in Batch 4 as previously recommended, then concerns with this rule would be resolved.	The Paid Leave Oregon Division will further clarify equivalent plan and state plan interactions in future rulemaking.	No
	Lisa Kwon and Andrea Paluso, Family Forward Oregon	020	Support proposed rule.	Support for administrative rule as written, no changes needed.	No
General Benefit Rule Comments	Cindy Goff, ACLI; Daris Freeman, Unum Insurance Co.	004, 006	Need detailed rules regarding PFMLI interaction with OFLA.	The Paid Leave Oregon Division is currently working with the Oregon Bureau of Labor and Industries to determine how best to clarify the interactions with OFLA and Paid Leave Oregon leave. This may be addressed in future rulemaking.	No
	Cindy Goff, ACLI; Daris Freeman, Unum Insurance Co.	004, 006	Need clarification about non-working periods such as school breaks, holidays, manufacturing shut-downs, etc.	The Paid Leave Oregon Division is currently researching this topic further and is considering this for potential future rulemaking.	No

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<p>Melissa Erlbaum, Clackamas Women’s Services; Meg Garvin, NCVLI; Dr. Martina Shabram, SASS; BB Beltran, SATF; Beth Hope, Tides of Change</p>	<p>005, 008, 014, 015, 019</p>	<p>Information and forms should be available in a variety of languages and formats designed to reach culturally specific communities.</p>	<p>Information and forms will be made available in a variety of languages and formats; however, this will not be added into rule in order to allow the Department the flexibility to add new languages or formats without requiring an administrative rule change.</p>	<p>No</p>
<p>Melissa Erlbaum, Clackamas Women’s Services; Dr. Martina Shabram, SASS;</p>	<p>005, 014</p>	<p>Exemption to administrative requirements for good cause should be generally provided for accessing safe leave to address safety concerns.</p>	<p>A blanket exemption would conflict with notice statutes and may present administrative challenges. Current rules do allow for exceptions to advance notice, documentation, and late submission of an application in certain cases for safe leave.</p>	<p>No</p>
<p>Melissa Erlbaum, Clackamas Women’s Services; Meg Garvin, NCVLI; J. Samples, D. Henretty, S. Hebb, L. Hoefler, Oregon Law Center; Dr. Martina Shabram, SASS; BB Beltran, SATF; Beth Hope, Tides of</p>	<p>005, 008, 012, 014, 015, 019, 020</p>	<p>Confidentiality provisions in ORS 659A.280(5) are critical to ensure victims of domestic violence, harassment, sexual assault, or stalking are able to access safe leave.</p>	<p>The Department does not have the authority to enforce employer-employee confidentiality provisions added into administrative rules. However, confidentiality protection does exist in ORS 657B.400 for any information provided to the Department.</p>	<p>No</p>

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	Change; Lisa Kwon and Andrea Paluso, Family Forward Oregon				
	Paloma Sparks, OBI	011	Urge Department to balance policy impacts to employees and employers; consider challenges to employers with this program.	The Paid Leave Oregon Division will continue considering challenges that employers face and look for ways to ease those challenges; however, no changes are needed to these rules.	No

EXHIBIT 001

Commenter	Commenter Affiliation	Rule Number	Comment Summary
Gina Rutledge	Metlife	471-070-1000 - Benefits: Definitions	471-070-1000 (16) "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. Recommendation to remove the sentence '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'.
		471-070-1320 - Communication to Employers about Employee Application for Benefits	We learned a lot from WA's plan. Employee's take a really long time to get enough together. Asking for someone to file for benefits with every single employer is going to be really confusing for employee/employer and hard for all administrators. We do believe each individual plan can follow the statute that can be simplified, whether it's EP or state.
		General Program Comment	Can the benefit examples also explain how OFLA and the extra four weeks will apply, especially if they are on or have an open OFLA leave extending into September 2023?
Anonymous Attendee		471-070-1000 - Benefits: Definitions	Please elaborate on Rules Batch 3, 14 (d) the definition of "incapacity". In example, could an employee ill with Covid19 for more then 3-consecutives days who seeks additional therapy treatment fall under "incapacity" and is eligible for Paid Leave Oregon?
Anonymous Attendee		471-070-1000 - Benefits: Definitions	How do you plan to verify the "related by blood or affinity" relationship?
Jan Peterson		471-070-1000 - Benefits: Definitions	How do you confirm the close association? Will sick service dogs or loss of service dog fall under a close association, including "companion animals"?

EXHIBIT 001

		General Program Comment	Are server tips or indirect tips considered wages in the SAWW calculation?
Anonymous Attendee		471-070-1010 - Benefits: Eligibility and Qualification for Benefits	I am unclear as to when the employee can apply for paid leave. The draft states that the employee has to earn at least \$1,000 in wages. The Paid Leave Overview states an employee has job protection if they have worked for the employer for more than 90 days. So this isn't eligibility? An employee could possibly contribute week one if paid on a weekly basis. Please clarify when the employee is eligible to apply for paid leave - after they have earned \$1,000 (for some people that will be after one week) or after 90 days?
Padrice Stewart		471-070-1130 - Benefits: Verification of Safe Leave	Support for keeping 1c and 2a,b in this section. Is there guidance on how these verifications will be reviewed/approved? Does OED give training to reviewers on domestic violence/sexual assault?
		General Program Comment	Is the AWW calculated when determining benefits?
Anonymous Attendee		471-070-1310 - Benefits: Employee Notice to Employers Prior to Commencing Leave	What if the employee doesn't notify the employer? Does the state notify us? What part do we as employer take in this as the employee is applying? I understand that we will have to follow through with some paperwork. Sorry if this is confusing. I was involved in the process at my other job, helping my employees sign up and use PFMLI.
Holly Pharms		471-070-1310 - Benefits: Employee Notice to Employers Prior to Commencing Leave	For clarification, the employer may notify the employer that they have applied for Paid Leave Oregon, but the employer is not requesting medical certification or has anything to do with approval? Also, will any of the 12 weeks taken under paid leave Oregon be deducted from 12 weeks under FMLA/OFLA when eligibility for those leaves are in place at 6 months and one year?

EXHIBIT 001

Susan Murphy		471-070-1320 - Benefits: Communication to Employers about Employee Application for Benefits	For 1320, I did not see mention of providing the benefit amount in the communication to employers and I'd think that would be beneficial.
Leslie Martin		471-070-1320 - Benefits: Communication to Employers about Employee Application for Benefits	Does the employer contact for notices have to be the same person who receives unemployment claim notices? I ask because in my organization these are two different people and could significantly delay employer response.
Minh Luu		General Program Comment	Will you go over how employers join the program process?
Dana Bryce		General Program Comment	Do we select: <i>Subscribe to Our Mailing List</i> on your website for future updates?
Kellie Preheim		General Program Comment	Is that supplement up to the employer?
Aga Luptak		General Program Comment	Do employees who reside in CA, WA and NY but work for an OR employer have to participate in the OR plan? Also, employers residing in states that do not have paid leave, do they have to participate in this plan? What about cross coverage? Can you opt out?
Carol Williams		General Program Comment	I have question about retroactivity of benefits and how it applies with other statutorily required paid leave. Can an employee can file a claim if they have used up all of their other leaves? Think about 659a.270.
Sherri Willetts		General Program Comment	Am I correct that if an employer's policy "requires" an employee to utilize their available accrued leave, that the PFMLI cannot change that employer's policy?
Heidi Quintela		General Program Comment	If an employee is on an approved Short Term Disability (STD) leave, and receives 66 2/3 % of their weekly wage, could they still be approved for Paid Leave Oregon?

EXHIBIT 001

EXHIBIT 001

Sally Pope		General Program Comment	Is there a formula used to decide the percentage of pay each person receives for Oregon Paid Leave?
Ashley McCanna		General Program Comment	In Washington, the employer cannot require the employee to use the state paid family leave, is this the same for Oregon? Therefore, employees could be able to stack leaves, is that correct? Remote employee- is this eligible for part time, etc.
Daris Freeman	Unum Group	General Program Comment	For clarification, it's 100% of EEAWW as calculated by OED which could actually be more than they currently earn (e.g. they've recently taken a new job with reduced salary or wages). Is that correct?
Ivelisse Figueroa		General Program Comment	Large company 300+. Question on Short term Disability. If they can get both, is it up to 100 % of benefit amount?
Jill Faughender		General Program Comment	How long will it take to reimburse the employee for the approved leave and how are doctors submitting health care certifications?
Mark Cardoos		General Program Comment	Regarding protection - with current Oregon protected sick would it be a requirement to exhaust protected sick PTO prior to taking protected leave?
Alyssa Alexander		General Program Comment	Is there any concern whether the 9 months will allow for enough time to create a sufficient bank of available funds for paid leave requests?
Inga Anderson-Baggett		General Program Comment	After we get the determination of the employee receiving leave, will we be able to go to a site to see when and what the payment amounts are? Or does this payment stay the same for the duration of leave and we receive notice of this amount by snail mail? Will the benefit amount be the same amount throughout their whole benefit year?
Sue Story		General Program Comment	Would an employer have a private plan and the state plan?

EXHIBIT 001

EXHIBIT 001

Joanne Lehman		General Program Comment	What happens if an employee qualifies for PFMLI and has worked for more than one employer? Let's say one of the employers was a small business (under 25 employees) and was not subject to FMLI contributions. Who tracks this information to ensure only the qualifying wages are considered? I hope that makes sense.
Debbie Laszlo		General Program Comment	<p>I don't see reference to a penalty if the employee receives more than 100% of their regular wage due to multiple sources (PFMLI + disability benefits or employer sick leave.) Are employers required to report wages paid to employees during the same time period? This is problematic if an employee doesn't notify us that they have applied for paid leave, or if the claim hasn't been processed yet.</p> <p>So the State will look up each claimant's wages on the employer's quarterly report and compare them to benefits paid under PFMLI?</p>
Sandi Obrist		General Program Comment	<p>We are a PERS employer, will these payments from the State Paid Leave program be subject to PERS contributions?</p> <p>If an applicant is denied, when can an applicant reapply?</p>
Nicole Pyshny		General Program Comment	<p>If employer covers wages with Short Term Disability/internal paid leave and then gets notice after the fact that the employee submitted a Paid Leave Oregon claim and is getting paid to the beginning of the leave. Are we required to take back the STDI/leave hours retroactively so that they aren't paid more than 100%?</p> <p>If the State calculation of weekly wages is over 100% of their current wage will it be reduced to what they are making currently or will they just be paid over 100%.</p>

EXHIBIT 001

Sarah Mitchell		General Program Comment	How are employees paid for their eligible leave? Also, will employees receive an annual statement of leave taken and their balances? I'm asking for employees who have multiple jobs.
			If an employee works more than one job and makes over \$132,900, how do you manage the additional contributions? Do they receive a refund when they file their taxes?
Anonymous Attendee		General Program Comment	Will an employee be required to use their PTO first before using PFMLI?
Anonymous Attendee		General Program Comment	If Paid OR Leave does cover 100% would the employee be able to take PTO? If it doesn't cover 100% does the PTO only cover what it would take to get them to 100% or just the full amount?
			If an employee may choose to use their PTO for in addition to the PFMLI to make up the difference of their salary, can they only use up to their current full salary or if they use their PTO, can it go above their regular salary? If it can only go to the maximum of their regular salary, who monitors this?
Anonymous Attendee		General Program Comment	If someone lives in another state but works remotely for a company in Oregon, do they qualify for Paid Leave Oregon?
Anonymous Attendee		General Program Comment	As a government agency we don't pay state unemployment tax unless a former ER has applied and successfully receives unemployment benefits - how would this plan affect this?
Anonymous Attendee		General Program Comment	Is this a voluntary program for employers?
Anonymous Attendee		General Program Comment	If an employee is out on Paid Leave Oregon; how are their benefit premiums paid? Their health insurance would be protected, so would this just be something they pay arrears on when they return?

EXHIBIT 001

Anonymous Attendee		General Program Comment	If a FT salaried employee is receiving PFML, does the employer pay the entire salary or deduct the days they are receiving PFML for from the salaried wage? How will the employer know that PFML leave is approved? How long does the determination take?
Anonymous Attendee		General Program Comment	In Washington, the employer cannot require the employee to use the state paid family leave, is this the same for Oregon? Therefore, employees could be able to stack leaves, is that correct?
Anonymous Attendee		General Program Comment	What if the leave is not covered under FMLA or OFLA as in an affinity whose close association with a covered individual now being a family member. Does this mean the employee's OFLA and FMLA and Oregon sick time do NOT run concurrent and they still have this in a bank to use for further time off for eligible reasons related to those protected leaves?
Anonymous Attendee		General Program Comment	Is Paid Leave Oregon an added protected leave from FMLA/OFLA? I heard you say they qualify to file a claim after 90 days if they have earned \$1000 and it protects their job but for OFLA they would qualify for job protection if they work at least 25 hours in the last 180 days.
Anonymous Attendee		General Program Comment	If I am a Washington based business with an employee working remotely in Oregon, does that mean that I would need to initiate the tax withholding for this one employee?
Anonymous Attendee		General Program Comment	Are Federal Work Study employees covered?
			Does the gross include the hourly wage as well a certification and other pay like education?
			Schools pay monthly annualized balanced pay through the year how would that work if they are out of leave but still receiving they balance of contract pay would that pay reduce their Paid Leave Oregon benefit?

EXHIBIT 001

Anonymous Attendee		General Program Comment	<p>How do employers evaluate OFLA and FMLA without the Serious Health Condition form if they are to run concurrently with the PFMLI form?</p> <p>I understand that the state will be receiving the medical certification information for qualification for PFMLI, but if we, as the employer are trying to qualify for OFLA/FMLA, then how do we do that if they are sending the doctor certification to the state and not us, the employer?</p>
Anonymous Attendee		General Program Comment	<p>Remember Paid Leave Oregon has included family members (siblings) who are not eligible under OFLA/FMLA. So, there is a chance that OFLA/FMLA cannot run consecutively. So in this situation the employee still has OFLA/FMLA available.</p>
Anonymous Attendee		General Program Comment	<p>Does the employee contribute regardless of whether the employer does? If for instance the employer has an equivalent plan, is the employee still required to contribute to the state plan?</p>
Anonymous Attendee		General Program Comment	<p>Once employee was approved for Paid Leave Oregon, will there be a site we can access to find the benefit amount?</p>

EXHIBIT 002

Commenter	Commenter Affiliation	Rule Number	Comment Summary
Lisa Kwon	Family Forward Time to Care	471-070-1000 - Benefits: Definitions	1110 (h) - Serious health condition- pre/post miscarriage care including abortion related conditions/complication.
		471-070-1100 - Benefits: Application for Benefits	(b) What kind of documentation will be required? WA has a really good list that we can gather from.
			Verification of family leave- request social worker be authorized.
		471-070-1130 - Benefits: Verification of Safe Leave	(1) Kinds of documentation required- recommending adding dependent to the list.
		471-070-1310 - Benefits: Employee Notice to Employers Prior to Commencing Leave	Concerns with penalty for delay in employee notification. This needs reconsideration and more improvement. Workers should be able to get the full amount.
		471-070-1420 - Benefits: Leave Periods and Increments	Concerns with taking leave from all employers. The serious health condition might not be applicable to all of the worker's jobs so why would they need to take leave from all of the jobs?
		471-070-1440 - Benefits: Weekly Benefit Proration	471-070-1450 and 1460 (benefit payments and lost stolen/destroyed benefit checks have been removed from the filed rules— will this be added in batch 4 rules?
		General Program Comment	Really appreciate the weekly report was removed.
Eric Wolke		471-070-1230 - Benefits: Administrative Decisions	Benton County. An administrative decision will be issued from an Adjudicator on timely submitted applications. What is the timeframe for adjudication to make their decisions?

EXHIBIT 002

Carol Williams		471-070-1320 - Benefits: Communication to Employers about Employee Application for Benefits	Application for benefits. Ongoing communication about payments being made to employees, how will how employers know of this info?
Johnpaul Simonet	Five Star Guitars	General Program Comment	We have approximately 25 employees. Do the employees have the option to opt in- would employer have to still contribute 40%?
			Will the worker see the deduction in their paycheck or quarterly?
			1% deduction is pre-taxed from gross wages?
			If there are two partners in a paternity situation, if both are eligible- will both be eligible for benefits?
			Small business calculation
			Regarding Equivalent Plans- some of this is already determined, how will this process work?
Jacob Kierstead	Kaiser Permanente	General Program Comment	Are the rule numbers that are displayed the ones being discussed today? How is the department going to notify people of timelines? Benefits? These are huge gigantic systems that are interjecting. He navigates employer through programs: ADA, disability. State of WA sends letter and 30 days letter causes issues. This will impact customer service, employees and their experience.
			FMLA/OFLA allow for a 2nd opinion / 3rd opinion process. Will Oregon Paid Family leave have a similar section? What happens if an employer proceeds under a 2nd /3rd under FMLA/OFLA? What impacts are there for OR Paid Family leave if it's determined that there is a reduction of parameters under FMLA/OFLA through this process?
			What are you planning to do with providers and education for them? The company I work for has a system that determines appropriate time loss.

EXHIBIT 002

EXHIBIT 002

			We used to have a 30 day leave of absence. We changed it because people would forget it. We changed our policy to 24 hours.
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EXHIBIT 003

Commenter	Commenter Affiliation	Rule Number	Comment Summary
Cassie Purdy	International Union Local 503 (SEIU)	471-070-1000 - Benefits: Definitions	(Planned Parenthood of Oregon) Healthcare provider- includes licensed out of state providers, need to include doulas.
			(14) Serious Health Condition- period of disability that pre/post/abortion care.
		471-070-1120 - Benefits: Verification of a Serious Health Condition	Recommend using WA care provider form- best access for people.
		471-070-1130 - Benefits: Verification of Safe Leave	Self-attestation would be a standard verification method.
Christel Allen	Pro-Choice Oregon	471-070-1000 - Benefits: Definitions	I would like to provide testimony on the following sections specific to the needs of pregnant people and other employee populations in our state: Benefits: Definitions (471-070-1000) — (11) Health care provider; (14) Serious health condition; Benefits: Verification of a Serious Health Condition (471-070-1120); and [Disconnection]
Teresa Hoard-Jackson	Service Employees International Union Local 503 (SEIU)	471-070-1100 - Benefits: Application for Benefits	1100(1)(h) provide abortion care (highly contested moral issue) this could be a barrier. Reconsider reporting requirements.
		471-070-1310 - Benefits: Employee Notice to Employers Prior to Commencing Leave	If workers are not aware of rule, they should not be penalized for this rule.
		471-070-1420 - Benefits: Leave	Choose leave from which job they wish to take leave from.

EXHIBIT 003

		Periods and Increments	
Jackie Sandmeyer		471-070-1130 - Benefits: Verification of Safe Leave	Regarding title 9, sexual harassment, dating, and domestic violence. Ensure employees have a way to access safe employment space. Intersection of trauma. Historical/cultural trauma, privacy, needs focalized re: employment space-harassment. Federal/State law. Not only have access- protective orders, as many options as possible. (1)(a) currently only allows for civil/criminal reports. Requests that Title 9 reports be an option.
			(1)(b) provide protective order as documentation, *include title 9 investigation process, civil protective order through criminal order.
		471-070-1310 - Benefits: Employee Notice to Employers Prior to Commencing Leave	Please, take into consideration general privacy. Concerns about what if an employer might find out about a traumatic situation.
Linda Herrera	PCUN	471-070-1310 - Benefits: Employee Notice to Employers Prior to Commencing Leave	Penalty: Per ORS this is supposed to be discretionary. Strongly recommend re-evaluating, this will hurt workers. Provide clear guide lines when/how/timeline of how penalty will be applied.
		471-070-1420 - Benefits: Leave Periods and Increments	(3) & (4) remove leave taken from all employers. Recommends that the worker can determine which job they would need to take leave from. The demands of jobs might differ and should not be required to take leave.
Abigail O'Connell	Sunlife	471-070-1440 - Benefits: Weekly Benefit Proration	Proration of benefits- made available to each employee. Clarifying 1440- proration will occur per respective plan (proration). Also submitted written comment.
Al Barton		General Program Comment	Is this mandatory and if it is what does it cost small business?

EXHIBIT 003

Barbara Slinger		General Program Comment	Based on a previous statement, what is the donation amount that the percentages are based on?
			If an employer finds or creates an equivalent plan, what is the timeframe to submit the information for approval? If plan is submitted for approval, how do we know if it is equivalent to the state plan if the plan is not fully formed yet?
Pam Hickson		General Program Comment	What is the size for business? What is a small employer? Why would outside Oregon be included?
Leanne Hartman		General Program Comment	Are nonprofit organizations treated any differently?
Nicole Cunningham		General Program Comment	Does that include contracted employees but receiving benefits?
Holly McKinney		General Program Comment	Is government participating? Will the taxpayer be paying 40% in addition to every public employee's pay?
Jennifer Wylie	Independent voluntary agent in Hermiston.	General Program Comment	How will this program affect individuals who have short term disability that they are paying for? Are there independent plans again?
			Claim payments

Cindy Goff

Vice President, Supplemental Benefits and Group Insurance
101 Constitution Ave. NW, Suite 700
Washington, DC 20004

May 31, 2022

Oregon Employment Department/Paid Leave Oregon
P.O. Box 14151
Salem, OR 97311
via email: to OED_Rules@employ.oregon.gov.

RE: Comments regarding PLO's draft PFML Regulations – Batch 3

To whom it may concern,

I am writing on behalf of the American Council of Life Insurers and our member companies that are stakeholders in the development of paid family and medical leave programs in Oregon and throughout the country. ACLI is the leading trade association representing the life insurance industry in the United States. Financial security is ACLI members' core business. 90 million families rely on the life insurance industry for financial protection and retirement security. We very much appreciate the robust and thoughtful process the Paid Leave Oregon Division has created to develop the myriad policies and regulations required to build a successful PFML program, and we are especially grateful for the open process of taking comments and suggestions.

Below you will find a compilation of comments from our member companies regarding the latest version of the draft "Batch 3" regulations. We know that you may receive other more detailed comments from individual ACLI members and we hope that these general comments will assist you as you finalize Batch 3.

Provisions We Request Be Moved to Batch 4

We would like to recommend that certain provisions from Batch 3 be removed from Batch 3 and instead placed in Batch 4. Since these provisions are closely associated with the function of the Batch 4 provisions, we believe this will allow those that will offer and administer equivalent plans more time to submit thoughtful comments and will give the State more time to consider how to align with Batch 4 and the key considerations for equivalent plans raised thereon. The specific provisions we recommend moving to Batch 4 are:

471-070-1000 - Benefits: Definitions

- Subsection 3 – Benefit Year (*we suggest more time to consider multiple employer scenarios*)
- Subsection 15 – Subject Wages (*we suggest further clarification of reporting requirements*)
- Subsection 16 – Work Day (*we suggest more time to consider multiple employer scenarios and to change "all employment" to "each employer"*)
- Subsection 17 – Work Week (*we suggest more time to consider multiple employer scenarios*)

471-070-1030 – Benefits: Maximum Amount of Benefits in a Benefit Year

- Subsections 1 – 2 (*we suggest more time to address simultaneous coverage issues, and to clarify limitations related to pregnancy and documentation requirements*)

471-070-1100 Benefits: Application for Benefits

- Subsection 1(b) *to clarify this provision is not applicable to equivalent plans (employer does this)*
- Subsection 1(e)(A) *to clarify this provision is not applicable to equivalent plans (info not available to them)*
- Subsection 1(h) *to clarify limitations related to pregnancy*
- Subsection 3 *(to clarify that employees are not required to take leave from all employers they work for)*
- Subsections 4 - 6 - *timelines for submitting an application for benefits (to address and clarify job protection intersection and make other improvements that will facilitate administration)*

471-070-1320 – Benefits: Communication to Employers About Employee Application for Benefits

- Subsections 1 – 4 *(we suggest more time to consider multiple employer scenarios)*

471-070-1420 – Benefits: Leave Periods and Increments

- Subsections 1 – 4 *(we suggest more time to consider multiple employer scenarios. We note several provisions that will create an undue hardship for employers and would like more time to suggest modifications)*

471-070-1440 – Benefits: Weekly Benefit Proration

- Subsections 1 – 3 *(we suggest more time to consider multiple employer scenarios)*

The following are ACLI's other comments related to provisions found in proposed "Batch 3" regulation.

471-70-1000 - Benefits: Definitions

- We recommend including a provision that allows employers to advance PFML benefits through salary continuation while employees are on leave and to allow the state and private plans to reimburse employers for the advanced benefits. We could make further recommendations on this in Batch 4 but suggest acknowledging it in this section as well.
- Subsection (1) – Application. Approvals/denials are separate from claims establishment. We request clarification that a claim should be established/set up one a request for application is received. A decision on the claim is made once all required information and documentation is received.
- Subsection (8) – Claimant. This definition might need to be revisited depending on what decisions are made related to who determines EEAWW, benefit amounts, weekly allotment and benefit year.
- Subsection (11) (b) creates a new definition for Health Care Provider that is not included in Oregon Family Leave Act (OFLA). This would be very difficult to validate at time of application. We recommend removing this definition to keep the definition the same as that of OFLA. This allows for consistency in evaluation of certification forms synchronization of the two programs.
- Subsection (12) (a) creates a new definition of "serious health condition" that does not fully capture situations where leave related to substance abuse may be appropriate. We recommend Paid Leave Oregon mirror the language used in the Family Medical Leave Act (FMLA) related to leave for purposes of substance abuse treatment. This allows a distinction between those taking leave for substance abuse treatment versus those actively abusing a substance and as a result, are unable to work. We also suggest that any of these listed items that call out a possible disease form that would qualify should reference "such as but not limited to".

471-070-1010 Benefits: Eligibility and Qualification for Benefits

- Subsection (1)(c) – We request that this section be qualified with additional language to clarify that this provision is not applicable to equivalent plans. For example: “(c) Except for employees covered by an equivalent plan, 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;”

471-070-1120 Benefits: Verification of a Serious Health Condition

- We recommend reinserting the requirement that a diagnosis be provided as a regular practice in verifying leaves triggered by serious health conditions.
- We recommend adding the frequency and duration of anticipated episodes of incapacity when leave request is intermittent.
- We recommend adding estimated treatment schedule. Both episodes and treatment are reasons for intermittent leave and are easily abused if not appropriately certified and managed.
- We recommend providing a mechanism by which the employee can authorize contact with their physician to obtain the information permitted in this section in order to expedite the certification process.

471-070-1130 Benefits: Verification of Safe Leave

- We recommend referencing OR Admin. R. 839-009-0362 (the unpaid leave for the same reasons) for the requirements, including reinserting the qualification that children triggering eligibility for safe leave are “minor children or dependents” to stay aligned with the OR Safe Leave Law.

471-070-1200 - Benefits: Claim Processing; Additional Information

- This section authorization “the department” to obtain additional information when needed. We recommend this be expanded to include employers or their administrators when there is an equivalent plan.
- We recommend providing the same time period (up to 14 days) to respond to requests for more information regardless of how the information was requested. We think having the same time period will alleviate unnecessary confusion.

471-070-1220 Benefits: Cancellation of Claim

- Subsection (5) – we request clarification that the employee’s AWW is locked in at the same rate for all claims in the benefit year (this clarification could be made in Batch 4).

471-070-1230 Benefits: Administrative Decisions

- For purposes of this section “interested parties” is not a defined term. We recommend employers be an interested party and receive notice of decisions on both initial applications as well as subsequent updates to a claim, *including the reporting of intermittent absences*. This enables them to manage concurrent leave programs (e.g. FMLA and OFLA), coordinate pay, and manage attendance policies.
- Subsection (3)(c) – We recommend including the benefit amount in the department’s decision.

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

- We encourage Paid Leave Oregon to clarify that this section includes requirements for notice to employers for individual intermittent leave. Since intermittent leave is widely considered the most difficult for employers to manage and consistency will be extremely important, we recommend using the FMLA and OFLA provisions regarding notice and enforcement of employer’s policies as models (see OAR 839-00900250 and 29 CFR 825.303).
- Subsection (5) We request clarification that this provision allows employers to provide a link to their intranet site where an electronic version of the full policy is stored and notify employees via email of any changes or updates.

- Subsection (6) - We encourage Paid Leave Oregon to clarify that they will notify employers when intermittent absences are reported. This gives the employer the opportunity to notify Paid Leave Oregon if the employee did not provide proper notice of an absence.
- Subsection (8) - We recommend Paid Leave Oregon specify that the protections outlined in 657B.060 do not apply if an employee has not provided proper notice to their employer. We suggest referring to the FMLA regulatory language for this (see 29 CFR §825.303(c)).

Additional rules or guidance recommended:

We recommend that the state add additional items to their rulemaking agenda in this round or the next. Those items include:

- Detailed rules regarding how PFMLI interacts with OFLA.
- More details on how the 2-week pregnancy entitlement will work, what is required, does it run first or only if the other 12 weeks has been exhausted, etc.
- Clarification on non-working periods, for example school breaks, holidays, manufacturing shut-downs, etc.
- Clarification on whether qualifying events that began prior to the effective date of Paid Leave Oregon will be eligible for benefits starting September 3, 2023.

We stand ready to gather further information that you might need to illustrate how our member companies calculate accurate benefit amounts in order to give assurance that this can be done independently without requiring the state to take on this burden. Please don't hesitate to contact me if you need me to gather such information or bring additional questions on this matter to our members.

Thank you again for this excellent process and I look forward to our continued participation in this important work.

Sincerely,



Cindy Goff
(612) 242-3390

cc: John Mangan, ACLI
Steve Clayburn, ACLI

May 31, 2022

Anne Friend
OED_Rules@employ.oregon.gov
875 Union Street NE
Director's Office
Salem, OR 97311

Re: Public Comment Administrative Provisions related to Paid Safe Leave for Survivors of Domestic Violence, Harassment, Sexual Assault, and Stalking

To the Oregon Employment Department:

On behalf of Clackamas Women's Services, below please find our comments on the proposed rules implementing Paid Safe Leave for Survivors of Domestic Violence, Harassment, Sexual Assault, and Stalking as part of the Paid Family and Medical Leave Insurance (PFMLI) program.

The mission of Clackamas Women's Services (CWS) is to break the isolation of domestic and sexual violence. Incorporated in 1985 as Clackamas County's first domestic violence shelter, CWS is one of the most comprehensive community-based organizations in the state providing services to survivors of domestic/dating violence, sexual assault, elder and vulnerable adult abuse, human trafficking and exploitation, and stalking. The wide-ranging slate of services provided by CWS includes emergency shelter, transitional housing, a 24/7 crisis line, mobile advocacy, mental health counseling, support groups, legal advocacy, youth violence prevention education, Camp HOPE Oregon, and community education. At our Village emergency shelter, rural outreach offices, Public/Behavioral Health and DHS offices, Camp HOPE Oregon, and A Safe Place Family Justice Center, CWS coordinates services with other public and private agencies to best serve survivors seeking support.

For nearly a decade CWS has advocated for a State-wide Paid Leave program supporting a multitude of purposes. We are proud to have been one of handful of community based non-profit agencies in our size category leading the way through implementing paid parental leave several years ago. **As an employer and as a service provider we seek to elevate the importance of Paid Safe Leave.**

Domestic and sexual violence are critical public health and safety concerns impacting all communities in Oregon. Oregon has had some of the highest rates of sexual violence in the nation in recent years. In Clackamas County our Sheriff's Office has reported over a 25% increase in calls since the onset of the pandemic. Nationally, women of color and Native women are at heightened risk of abuse and assault. It is well documented that incidences and severity of domestic violence have increased during and as a result of the COVID pandemic. The need for paid safe leave has never been more acute.

Without economic resources, victims cannot achieve safety for themselves and their children.

Economic independence is a primary indicator of whether a victim will be able to maintain safety from abuse. Without economic security, some victims may feel compelled to return to abusive situations as an alternative to homelessness or to support their children. Access to paid leave is critical to allow survivors to take the safety steps they need without jeopardizing their ability to pay rent and meet basic needs.

In support of strong Paid Safe Leave provisions, we offer the following feedback regarding Batch 3 of the proposed rules implementing PFML published April 12, 2022:

- **Language access:** Access to information and forms should be available in a variety of languages. Information and outreach should be widely provided in formats designed to reach culturally specific communities.
- **Definitions:** The definitions of domestic violence, harassment, sexual assault, and stalking should all reference threats or attempts at those crimes. The purpose of paid safe leave is to ensure that employees who are victims can take pro-active steps to ensure safety for themselves and their families without risking their financial security. If victims are not able to react after a threatened or attempted assault, their ability to protect themselves and their families is limited. It is in the best interests of survivors as well as their employers and coworkers if safety steps can be pro-active and preventative.
- **Exemption from administrative requirements for good cause when safety is at issue:** There should be a general provision providing for waiver of documentation, timeline, and other technical requirements for accessing safe leave whenever necessary to address safety concerns. To leave safety considerations out of the rules would defeat the purpose of the safe leave program. Specifically:
 - **Verification of eligibility for safe leave:** It is well-documented that domestic violence victims often face greater safety risks when trying to leave or seek safety services. It is often the case that seeking a protection order, or police assistance, or other services could put the victim in greater danger. In order to ensure that the paid safe leave program achieves its goal of allowing victims to access safety without risking economic hardship, the self-attestation option is necessary. Thank you for the inclusion of this important language.
 - **Advance requests and notice of leave:** The threat of abuse, violence, or harassment is never within the victim's control, and is therefore not foreseeable. Advance notice cannot be provided of the need for emergency protection or assistance due to abuse. Additionally, in many cases, a victim may not be able to give notice right after taking leave, depending on the nature and severity of the abuse or the danger. Notice to the employer should be provided as soon as practicable and safe for the survivor, and a delay due to safety concerns should never disqualify or penalize a survivor from accessing safe leave benefits.
- **Confidentiality of Records regarding Safe Leave:** This is perhaps the single most important point. Confidentiality of information pertaining to safe leave is critical to ensure that victims of domestic violence, harassment, sexual assault, or stalking can take the paid leave they need to access services to protect themselves. Stigma, embarrassment, fear of retribution or retaliation, and safety concerns are a significant barrier to survivors coming forward to seek assistance. Without confidentiality protections, survivors will simply be unable to access the protections of the program. For this reason, survivor advocates worked hard to ensure that passage of the first unpaid safe leave law (ORS 659A.270 et seq) had strict confidentiality protections. ORS 659A.280(5) provides that "All records and information kept by a covered employer regarding an eligible employee's leave under ORS 659A.270 to 659A.285, including the fact that the employee has requested or obtained leave under ORS 659A.272, are confidential and may not be released without the express permission of the employee, unless

EXHIBIT 005

otherwise required by law." Without these strong confidentiality protections, survivors will not be able to access safe leave, defeating the purpose of the statute. This language must be included in order to ensure that victims have the same confidentiality protections when accessing paid safe leave as when accessing unpaid safe leave.

Thank you for the opportunity to provide comments, and please do not hesitate to contact me if I can provide further information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Melissa Erlbaum". The signature is fluid and cursive, with the first name "Melissa" and last name "Erlbaum" clearly distinguishable.

Melissa Erlbaum
Executive Director

May 25, 2022

Oregon Employment Department

To Whom it May Concern:

We appreciate the opportunity to provide feedback on Paid Leave Oregon's draft Paid Family and Medical Leave regulations.

Unum Group is a publicly owned insurance holding company committed to providing financial protection to workers and their families. Unum is one of the leading providers of employee benefits products and services and is one of the largest providers of group disability income protection benefits in the United States. Unum employs more than 11,000 professionals worldwide who are dedicated to helping nearly 182,000 companies in the U.S. and U.K., including 57% of the Fortune 100. In addition, Unum provides leave administration services for over 850 employers representing almost 3 million covered employees.

Our employer customers rely on our knowledge of federal, state, and municipal leave laws to understand eligibility rules, leave entitlements, and administrative requirements. With the introduction of PFML programs in several states over the past few years, Unum has continued to develop our expertise in paid leave administration to ensure employers have compliant coverage options and employees receive benefits in a timely manner, while integrating with any existing leave requirements and employer benefit plans. We have worked closely with the individual state regulators as they develop the administrative rules to implement their PFML programs. We've shared our expertise regarding the challenges and best practices for developing a program and administering complex claims.

We want to emphasize that all recommendations are consistent with the OR PFMLI statute. Our comments are meant to offer clarity where we would like additional guidance from Paid Leave Oregon or suggest certain edits based on our experience with other state programs and employer benefit plans.

Thank you for your consideration. I look forward to the opportunity to discuss our comments and suggestions with you directly and/or through the rulemaking hearing process. Please contact me at dfreeman3@unum.com or 423/294-4763 if you have questions.

Sincerely,

Daris Freeman
AVP, Legal Counsel
Unum Insurance Company

EQUIVALENT PLANS

471-070-1000 Benefits: Definitions

“(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.”

- We recommend Paid Leave Oregon include examples to demonstrate when a 53-week benefit year applies.
- We also have concerns with the last sentence of this definition, which is not included in the statutory definition. Since this related to simultaneous coverage, an issue currently being evaluated in Batch 4, we recommend removing this sentence (or the entire definition if needed) from Batch 3 and incorporating into Batch 4.
- In the alternative, we ask that text be added as follows: “A claimant may only have one valid benefit year at a time *per respective plan*.”

“(11) “Health care provider” means:

(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, ...*”

- This is a new definition for Health Care Provider (not included in Oregon Family Leave Act (OFLA)). How does Paid Leave Oregon plan to validate at time of application? We recommend removing this definition to keep the definition the same as that of OFLA. This allows for consistency in evaluation of certification forms and running of the two programs concurrently when appropriate.
- In the alternative, we recommend adding guidance for evaluating that someone meets this definition.

“(12) “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 a hospital, hospice, or residential facility such as a nursing home or inpatient substance abuse treatment center;*”

- The additional of this language is helpful. However, it does not fully capture situations where leave related to substance abuse may be appropriate. For example, intensive outpatient programs. We recommend Paid Leave Oregon mirror the language used in the Family Medical Leave Act (FMLA) related to leave for purposes of substance abuse treatment. This allows leave for treatment an employee needs without allowing leave for an employee who is actively abusing a substance and as a result, is unable to work. See [§ 825.119 Leave for treatment of substance abuse](#).

“(16) “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 work 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.”

- We recommend this definition be pulled from Batch 3 and included with Batch 4 as it impacts issues of simultaneous coverage, which are addressed more fully in Batch 4.
- In the alternative, we recommend that an employee’s work day be defined on a per employer basis. With this, an employee could take leave from one employer and not another based on the circumstances (e.g. have an alternate caregiver for a weekend job but not during the week). Absent this, coordination between multiple equivalent plans or an equivalent plan and Paid Leave Oregon would be burdensome for all parties and delay the ability to get an employee their benefits.
- We also recommend Paid Leave Oregon look at unusual work schedules to ensure the current definitions of work day and work week will translate appropriately for calculation of benefits.
- Example: Employer’s workweek for scheduling and payroll runs Wednesday to Tuesday. Employee works 40 hours per week based on that workweek:

WEEK Number	Wednesday	Thursday	Friday	Saturday	Sunday	Monday	Tuesday	TOTAL HOURS Scheduled
1	10	10	10	10				40
2				10	10	10	10	40
3	10	10	10	10				40
4				10	10	10	10	40
5	10	10	10	10				40

When translating the employee’s work schedule into the workweek as defined for PFMLI, the employee alternates between working 70 hours one week and 10 hours the next:

WEEK Number	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total Hours Worked
1	10	10	10	10	10	10	10	70
2							10	10
3	10	10	10	10	10	10	10	70
4							10	10
5	10	10	10	10	10	10	10	70

- We encourage Paid Leave Oregon to work through examples like this to determine how an employee would be paid when they file benefits for a full week or a single work day in a week to ensure they receive equitable benefits.

“(19) “Work week” means seven days beginning on a Sunday at 12:01 a.m. and ending on the following Saturday at midnight. If a work day spans two work weeks, such as a shift beginning on Saturday of one work week and ending on Sunday of the next work week,

then the work day is included in the work week in which the shift began. 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.”

- Since the definition of Work Week is closely tied to the definition of Work Day, we recommend pulling this definition from Batch 3 and including with Batch 4. That allows flexibility for revision should any be needed related to Work Day.

471-070-1010 Benefits: Eligibility and Qualification for Benefits

It appears this section may be specific to applications files with Paid Leave Oregon based on the reference to individuals being “eligible to receive Paid Family and Medical Leave Insurance (PFMLI) benefits” and the requirement that the individual “(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;”

- We recommend this be made explicit to eliminate any confusion regarding requirements for employees covered by equivalent plans. One way to do that would be to change the introductory language to: “For an individual to be eligible to receive benefits from Paid Leave Oregon, the individual must:”
- Absent this clarification, we recommend Paid Leave Oregon evaluate subsections (c) and (g) in light of equivalent plans and potential simultaneous coverage.

“(2) An individual may not exceed 12 weeks of paid leave per child when taking family leave for the purpose of caring for and bonding with a child during the first year after the child’s birth or during the first year after the placement of the child through foster care or adoption, regardless of whether a new benefit year starts during the first year following birth or initial placement.”

I think examples would be helpful as there may be confusion about how this will work.

- Employee’s benefit year began September 15, 2023 due to leave for pregnancy complications, using 8 weeks of medical leave (6 weeks medical leave plus 2 weeks additional for limitations due to pregnancy). Employee gave birth February 5, 2024 and used the remaining 6 weeks of family leave. The employee can use another 6 weeks of family leave between September 15, 2024 and February 4, 2025 (12 months from date of birth).
- Same scenario as above except the employee gives birth to twins. The employee can use the remaining 6 weeks of family leave for the second child.

471-070-1030 - Benefits: Maximum Amount of Benefits in a Benefit Year

We recommend this section be moved to Batch 4 as it impacts issues of simultaneous coverage, which are addressed more fully in Batch 4. In the alternative, similar to the provision addressed above, we recommend changing the language referencing Paid Family and Medical Insurance benefits to instead specify benefits received directly from Paid Leave Oregon (“In any given benefit year, a claimant shall not receive benefits from Paid Leave Oregon, established under ORS 657B.340 ...”).

471-070-1100 Benefits: Application for Benefits

Subsections (4) and (5) provides timelines for submitting an application for benefits. We have no specific issues with allowing claimants to file up to 30 days after the event (or one year for good cause), Paid Leave Oregon should make it clear that although an employee may receive benefits when applications are delayed, job protection provisions may not attach. I believe this may be best addressed in Batch 4 where new rules related to job protection have been included.

471-070-1120 Benefits: Verification of a Serious Health Condition

We recommend adding the frequency and duration of anticipated episodes of incapacity when leave request is intermittent. We also recommend adding estimated treatment schedule. Both episodes and treatment are reasons for intermittent leave and are easily abused if not appropriately certified and managed.

We recommend providing a mechanism by which the employee can authorize contact with their physician to obtain the information permitted in this section. It could expedite the certification process, especially in situations where medical has been submitted but it is missing one small piece of information. In addition, many employees are incapacitated or otherwise occupied caring for a family member so trying to get medical from the physician is an added burden that could be alleviated if the employer, administrator or state were authorized by the patient to make direct contact. The authorization can be limited in scope to only permit obtaining the information specified in the rule.

471-070-1130 Benefits: Verification of Safe Leave

We recommend referencing 839-009-0362 (the unpaid leave for the same reasons) for the requirements. This would enable concurrent administration for employers. It also would eliminate the employee attestation option which could be easily abused.

471-070-1200 - Benefits: Claim Processing; Additional Information

"In addition to the information required from a claimant under OAR 471-070-1100 and OAR 471-070-1430, *the department* may request that a claimant provide additional information necessary to establish facts relating to eligibility or qualification for benefits."

- This section specifically authorization "the department" to obtain additional information when needed. We recommend this be expanded to include employers or their administrators when there is an equivalent plan.

471-070-1230 Benefits: Administrative Decisions

This rule indicates that interested parties will receive written notice of administrative decisions, however interested parties is not a defined term. We recommend employers be an interested party and receive notice of decisions on both initial applications as well as subsequent updates to a claim, *including the reporting of intermittent absences*. This enables them to manage concurrent leave programs (e.g. FMLA and OFLA), coordinate pay (e.g. paid parental leave or PTO as "top up"), and manage their attendance policies.

This has been a significant issue in other states as neither Washington nor Massachusetts provide employers with information regarding ongoing intermittent absences. It has created problems as employers are unable to determine if absences are protected or subject to an attendance policy. For employers with high hourly populations and high turnover (e.g. retail, restaurants, etc.), intermittent usage is widespread and there are typically no other

protections available to employees. As a result, an employee's employment status can be dependent on whether they received Paid Leave Oregon benefits for the absence.

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

We commend Paid Leave Oregon on ensuring that employees provide proper notice to their employers when they will be absent from work for a PFMLI qualifying reason. However, the current rule appears focused on the initial application for leave ("... before commencing a *period of paid family ...leave*"). We strongly encourage Paid Leave Oregon to make clear this section includes requirements for notice to employers for individual intermittent absences. Intermittent leave is extremely disruptive to organizations and is the most difficult for employers to manage. Both the FMLA and OFLA have provisions relative to notice and enforcement of employer's policies that could be used as models here (see [OAR 839-009-0250](#) and [29 CFR §825.303.](#))

"(6) The department will notify the employer pursuant to OAR 471-070-1320(1) when a claimant has been approved for paid family, medical, or safe leave benefits. The employer may respond to the notice from the department within ten calendar days from the date of the notice to report if the claimant did not provide the required notice per the employer's written policy and procedures."

- We strongly encourage Paid Leave Oregon to notify employers when intermittent absences are reported. This gives the employer the opportunity to notify Paid Leave Oregon if the employee did not provide proper notice of an absence.

"(8) If the department determines that the claimant did not provide the required leave notice to the employer, the department may impose a penalty by issuing a decision and reducing the first weekly benefit amount payable under ORS 657B.090 by up to 25 percent. The penalty will be a 25 percent reduction, except when it would reduce the weekly benefit amount below the minimum benefit amount provided in ORS 657B.050(2)(b)."

- The penalty for not providing proper notice is a reduction in benefits, which is consistent with the statute. However, we recommend Paid Leave Oregon also specify that the protections outlined in 657B.060 do not apply if an employee has not provided proper notice to their employer. Absent that, employees could be a "no call, no show" at work, but receive benefits and be protected from adverse action based on attendance policies. Even worse, if the action was termination and Paid Leave Oregon approves benefits retroactively (an employee has 30 days to file for benefits), an employer could be subject to having to reinstate the employee, paying past wages, benefits, etc. to an employee who just didn't show up to work. We strongly encourage Paid Leave Oregon to include rules related to the enforcement of an employer's attendance policies in relation to proper notice and that an approval decision for PFMLI benefits would not render those policies moot. The FMLA has good regulatory language for this that can be used as a model (see 29 CFR §825.303(c)).

471-070-1320 - Benefits: Communication to Employers about Employee Application for Benefits

"(4) After a claimant's application for benefits has been processed by the department and a decision is issued to the claimant, the department shall notify the claimant's employers and administrators, if applicable, whether the claimant's application for benefits was approved or

denied by the department, and, if approved, the dates and period of leave that the claimant is approved for.”

- We recommend Paid Leave Oregon also advise employers and/or administrators of the benefit amount being paid to the employee. This allows employers to accurately calculate additional pay (e.g. paid parental leave or PTO as a “top up” to the state benefit).

471-070-1420 - Benefits: Leave Periods and Increments

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

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

- Subsections (3) and (4) are related to simultaneous coverage under an equivalent plan. Since this is an issue currently being evaluated in Batch 4, we recommend removing these sections (or the entire rule if needed) from Batch 3 and incorporating into Batch 4.
- When evaluating for Batch 4, we encourage Paid Leave Oregon to allow an employee to take leave from only one employer. There are many circumstances where requiring leave from all employers would be detrimental to the employee because they are able to work one of their jobs and receive full wages from that position.
- Examples: Employee with an orthopedic injury can’t work their day job loading trucks but can work their second job answering phones in a contact center. Employee needs leave from the job they work during traditional work hours (Monday through Friday) to care for a family member but can work their evening/weekend job as other caregivers are available.

Additional rules or guidance recommended:

There are some items we encourage the state add to their rulemaking either in this round or the next. Those items are:

- Detailed rules regarding how PFMLI interacts with OFLA. 657B.020(2) indicates there will be limitations placed on PFMLI if OFLA is also taken but it’s not clear how that will work considering OFLA can provide up to 36 weeks of leave depending on the circumstances.
- More details on how the 2-week pregnancy entitlement will work, what is required, does it run first or only if the other 12 weeks has been exhausted, etc. Here are some scenarios to consider:
 - On January 1, 2024, employee requires 8 weeks of leave for a serious health condition with a pregnancy that results in incapacity. On May 1, 2024, the same employee requires 5 weeks of leave for back surgery & recovery. How and when does the extra 2-week pregnancy entitlement run?
 - On January 1, 2024, employee requires 6 weeks of leave for a serious health condition with a pregnancy that results in incapacity (i.e. standard post-partum recovery). The employee then requests as much

bonding/parental leave as is available. Does the employee have 6 weeks of leave remaining or 8 weeks?

- Clarification on non-working periods, for example school breaks, holidays, manufacturing shut-downs, etc. Employees are not scheduled to be at work during that time so would there be no benefits? Or are there still benefits if the employee is losing income during that period (e.g. employer does not provide holiday pay if the employee isn't actively at work on the day before and after the holiday)?
- Clarification on whether qualifying events that began prior to the effective date of Paid Leave Oregon will be eligible for benefits starting September 3, 2023. For example:
 - Employee had a baby February 1, 2023. She took 24 weeks of unpaid leave under Oregon Family Leave Act and concurrently received 6 weeks of paid parental leave from her employer. Can the employee take 12 weeks of family leave under Paid Leave Oregon as long as she takes leave between September 3, 2023 and January 31, 2024 (12 months after birth)?
 - Employee had knee replacement surgery August 15, 2023 and is medically supported to be out of work for 12 weeks. Can the employee begin receiving benefits from Paid Leave Oregon as of September 3, 2023?

From: Leslie Martin <LMartin@co.marion.or.us>
Sent: Thursday, May 19, 2022 9:28 AM
To: OED_RULES * OED <OED_RULES@employ.oregon.gov>
Subject: 471-070-1320 Comment

I have a question regarding PLO administrative rule 471-070-1320 Benefits: Communication to Employers about Employee Application for Benefits

How will employers be notified, and who at the employer will be notified? Does it have to be the same person who handles unemployment claims? If so, I'd like to request you reconsider this. Many organizations, such as mine, have a leave administrator who should handle PLO requests - and the person or entity handling UI claims would not have access to the info, therefore delaying any reply from the employer in an already short period.

Thank you,

Leslie Martin
Leave Administrator
Marion County Human Resources
Direct Line: (503) 373-4422
Fax: (503) 588-5495
Human Resources Intranet: <https://intra.co.marion.or.us/HR/>

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VIA EMAIL ONLY

May 31, 2022

OED_Rules@employ.oregon.gov
875 Union Street NE
Director's Office
Salem, OR 97311

Re: Public Comment on Administrative Provisions related to Paid Safe Leave for Survivors of Domestic Violence, Harassment, Sexual Assault, and Stalking

To the Oregon Employment Department:

The following comments are submitted on behalf of the National Crime Victim Law Institute (NCVLI) regarding the proposed rules implementing Paid Safe Leave for Survivors of Domestic Violence, Harassment, Sexual Assault, and Stalking as part of the Paid Family and Medical Leave Insurance program.

NCVLI is a nonprofit educational and advocacy organization located in Portland, Oregon at Lewis & Clark Law School. NCVLI works nationally to promote victims' voices and rights in our justice systems. While we work with victims of all crimes, a substantial portion of our work involves victims of domestic and sexual violence, and stalking.

It well-documented that domestic, sexual violence, stalking and harassment are pervasive in our communities and data further provides clarity that these crimes have significant the negative impacts on survivors' ability to secure, maintain and thrive in employment. A key to mitigating these impacts is paid safe leave. This leave allows victims better opportunities to achieve safety. Consequently, the rules you are crafting are critical to our community and we are grateful that you are undertaking this important work. A few specific comments:

- Access to information. One can only exercise rights or activate benefits when one is aware of them and meaningfully understands them. To that end, information regarding Safe Leave must be made readily available in myriad ways, from a variety of languages to a variety of communication modalities (e.g., written, video).
- Covered conduct. As drafted, the definitions of domestic violence, harassment, sexual assault, and stalking do not include threats or attempts to commit these crimes and yet survivors often endure threats and attempts prior to (and in addition to) executed crimes. These behaviors of threat and attempt can have just as weighty of an impact on a survivors' employment. Consequently, threats and attempts should be included in the definitions.
- Verification of reason for leave. The inclusion of a self-attestation option for verification, and explicit inclusion that safety concerns for the claimant or their child

constitutes good cause for not providing the otherwise required verification documentation is a positive and critical inclusion. That said, it is unduly narrow as often there are safety concerns related to other members of the family or a claimant's pets. Broadening the safety concerns exemption within the self-attestation would ensure the benefits of the program are available to all survivors.

- Notice of leave. While certainly employers need to know of leave, as drafted the notice requirements do not align with the lived experiences of survivors and will be unlikely to be able to be complied with. The rules should require notice to the employer be provided as soon as practicable and safe for the claimant.
- Confidentiality. There is an oft quoted statement in victim services "Privacy is like oxygen for survivors". Safety, stigma, and fear of retribution or retaliation are well-documented barriers to survivors accessing services and justice. All records and information related to requests for, and provision or denial of, Safe Leave must be covered by absolute confidentiality, releasable only with the express written, informed consent of the claimant.

Thank you for the opportunity to provide comments on these critical rules. If I can provide any additional information, please contact me at garvin@lclark.edu or 503.768.6953.

Sincerely,



Meg Garvin, MA, JD, MsT

From: Rutledge, Gina <grutledge@metlife.com>
Sent: Thursday, May 19, 2022 4:55 PM
To: OED_RULES * OED <OED_RULES@employ.oregon.gov>
Cc: Iskra, Daniel <diskra@metlife.com>; Dulgerian, Tony <tony.dulgerian@metlife.com>
Subject: Batch 3 - Benefits rulemaking comments supporting our MetLife public statements today.

On behalf of MetLife, we would like to thank you for the time and the forum to provide feedback on the Rulemaking drafts for Batch 3-OR PFML Benefits. Here is the simplified bullets that surround my public statements today.

471-070-1000 Definitions (16) “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**

Recommendation to remove the sentence ‘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.’ It is confusing when the first sentence is tied to one employer. In addition, the definition of “work day” should be limited to an employee’s work at each employer. Including all employers in the definition of work day would render administration of this benefit extremely complicated, not only for the state plan, but for equivalent employer plans.

471-070-1320 - Benefits: Communication to Employers about Employee Application for Benefits

(3) The department may need to determine whether a claimant has coverage under an equivalent plan approved under ORS 657B.210 and the effective dates of any coverage the claimant has, or information about a claim for benefits that the claimant has filed under an equivalent plan. The department may request additional information from the claimant’s equivalent plan employer and administrator, if applicable, after the claimant files an application with the department. When this information is requested, equivalent plan employers or administrators must respond to the department’s request within 10 calendar days from the date on the request for additional information.

Recognizing Section 42 Equivalent Plans in the statute,

- (10) The director shall adopt rules:
 - (a) To prevent the payment of benefits in excess of 100 percent of an eligible employee’s average weekly wage to an employee who is simultaneously covered under more than one employer-offered plan or who has additional coverage under the program established under section 33 of this 2019 Act; and
 - (b) That require that the benefits made available to an eligible employee who is covered under more than one plan shall be prorated under each respective plan.

We believe that the state plan and equivalent plans can more easily and naturally prorate benefits since they only consider the wages earned and work schedule to determine benefits. For example, if an employee works 30 hours per week for one employer and 10 hours per week for another employer, and each employer has a separate equivalent plan, one employer can pay ¾ of a week worth of benefits and the other employer can pay ¼ of a week in benefits. This results in the same intended outcome without the administrative burden on the state and the equivalent plan employer. Also, an employee will never receive benefits in excess of 100% of the employee’s average weekly wage paid by the equivalent plan employer or administrator. Therefore, we recommend that this provision be deleted from the rules. This rule also impacts some of the Batch 4 rules related to this topic.

Our additional rationale, and learning from WA PFML’s start up, individuals do not always apply for benefits with complete applications, and it takes time, sometimes months, for the administrators to receive this information to approve the one claim. If the state is asking individuals to file for any and all programs for all their employers – even when some may not apply – when the individual is already going through a life event qualifying them for benefits, then there will be a backlog and confusion, specifically:

- employees may think they have sent the information, sending different sets of information to each plan
- additional escalations from their employers to understand the delay in getting their employee’s benefit paid
- extra accounting due to the late filing penalties
- added appeals and court hearings due to incorrect benefit payments

471-070-1420 - Benefits: Leave Periods and Increments

(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 reported by the claimant in their application for benefits.

Q: What if the claimant incorrectly reports their average number of work days per week?

As a best practice, we recommend that the employer’s records regarding the employee’s work hours should control over the employee’s recollection, which is consistent with wage and hour laws. This provision should also be consistent with Rule 471-070-1440, which refers to the number of work days that a claimant would “typically work in their work week.” There is arguably an inconsistency between these two rules, because the term “typically” is undefined.

(4) When benefits are claimed in an increment that is equivalent to one work week, leave must be taken from all employers and from all self-employed work for the entirety of the work week to receive benefits. We believe this will create an undue hardship for the employee and their employer. If this is the way the state administration wants to coordinate benefits, can we recommend adding a statement that this does not apply to equivalent plans.

Our rationale is that requiring an employee to request leave from every job may provide an undue hardship on claimants for paid family leave, when the qualifying reason may not overlap with the 2nd job. It can even apply to medical leaves as well. There are many people who have to work 2 jobs to make ends meet. Below are some examples of how this issue could impact employees:

- This provision assumed PML and the employee will be incapacitated for any job. However, many people have jobs that are different and may not all have the same physical requirements. (i.e. day job working at an online fulfillment center, afternoon job telemarketer). Each application for benefits should be evaluated based on the absence for each employer based on the employee’s capabilities to perform the duties under employment.
- What about the PFL claimant, who needs to take time to take their loved one to radiation treatments, dialysis, or physical therapy appointments scheduled only during 1 job’s work schedule. There is no reason why the employee should be harmed and not allowed to earn full wages at the job when they can.
- This also puts undue hardship on employers, where they have to find staffing replacements for someone who could work, but not for this rule.

Section 43 (2)(b) The benefits afforded to employees covered under the plan are equal to or greater than the weekly benefits and the duration of leave that an eligible employee would qualify. for under sections 1 to 51 of this 2019 Act.

We believe that the statute intended equivalent plans to be separate from the state administered plan since it allows these plans to have a 'greater than' benefits whereas the state's program contains the minimum standard.

We are happy to elaborate on any point, please feel free to contact me at grutledge@metlife.com.

Thanks

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From: Scott, Breanna C. <Breanna_C_Scott@newyorklife.com>

Sent: Monday, May 30, 2022 10:48 AM

To: OED_RULES * OED <OED_RULES@employ.oregon.gov>

Subject: Comments on Batch 3 rules

Good morning,

I have a handful of comments to share regarding the Batch 3 rules that are still open for public comment. Please see the attached. If you have any questions regarding my comments, please feel free to reach out for more discussion.

Thank you!

Breanna Scott



Breanna Scott

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March 3, 2022

**Paid Family and Medical Leave Insurance (PFMLI)
Proposed Oregon Administrative Rules - Batch 3**

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March 3, 2022

Benefits

ORS 657B.010 through ORS 657B.120 establishes benefit claim administration for Paid Family and Medical Leave Insurance (PFMLI). The below rules provide further details on aspects of benefits, like who is eligible for benefits, how to file an application, how to file a weekly leave report, what verification is needed, required communication to employers, and penalty amounts. The definition section may be expanded and reorganized before formal rulemaking. We recognize that not all the rules related to benefits are included in this compilation and additional rules related to PFMLI benefits are needed.

471-070-1000 - Benefits: Definitions

- (1) "Application" means the process in which a covered 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; and
 - ~~(b)~~ Applied for the calculation of weekly benefit amounts for benefit years starting the first full week following July 1;
 - ~~(b)(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, hygienic, 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, ~~counseling~~ companionship, or therapy to a family member, or completing administrative tasks for the family member, or arranging for changes in the family member's care, such as 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 (PFML) 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 that has submitted an application or established a claim for benefits.

~~(9) "Covered Income" means taxable income from self-employment, as defined in OAR 471-070-2000, that is paid to and reported by a self-employed individual for periods for which the individual elected coverage under ORS 657B.130 and in accordance with OAR 471-070-2010. The covered income is included in the base year or alternate base year and is used for determining the self-employed individual's weekly benefit amount.~~

~~(10) "Covered Wages" means 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. Covered wages are included in the base year or alternate base year and are used for determining the employee's weekly benefit amount.~~

~~(11)~~(9) "Domestic violence," as the term is used for a safe leave purpose described in ORS 659A.272, means abuse as defined in ORS 107.705

~~(12)~~(10) "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.

~~(11)~~(3) "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 PFML 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 PFML leave, including but not limited to a Christian Science practitioner.

~~(12)~~(4) "Serious health condition" means an illness, injury, impairment, or physical or mental condition of a claimant or their family member that:

Commented [SBC1]: Recommend using the same definition as provided in OFLA for consistency between laws. Seems unnecessarily complex to introduce a new definition.

Commented [SBC2]: Could this be aligned to the definition contained within the FMLA? It would be less confusing for employers that are already subject to the FMLA to have these definitions align

- (a) Requires inpatient care in a medical care facility such as a hospital, hospice, or residential facility such as a nursing home or inpatient substance abuse treatment center;
- (b) In the medical judgement 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 asthma, diabetes, or epilepsy;
- (f) Involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as 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 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.

~~(135)~~ "Sexual Assault," as the term is used for a safe leave purpose described in ORS 659A.272, means any sexual offense described in ORS 163.305 to 163.467, 163.472 or 163.525.

~~(146)~~ "Stalking," as the term is used for a safe leave purpose described in ORS 659A.272, means:

- (a) The crime of stalking 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.

~~(17) "Weekly Leave Report" means the report submitted by a claimant to the department for each week in which leave is taken during a claim, which provides the amount of leave taken in the work week and any other information needed by the department to determine the eligibility for and the amount of PFMLI benefit payments for that work week.~~

~~(15) "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.~~

~~(168) "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 work days, such as a shift beginning on day one at 10 p.m. and ending on the next day at 5 a.m. the next work day will count on the calendar day in which the shift began. day, which counts as one work day.~~

~~(19) "Work week" means seven days beginning on a Sunday at 12:01 a.m. and ending on the following Saturday at midnight. if a work day spans two work weeks, such as a shift beginning on Saturday of one work week and ending on~~

~~Sunday of the next work week, then the work day is included in the work week in which the shift began.~~ 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.

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

471-070-1010 - Benefits: Eligibility and Qualification for Benefits

(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 that 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 ~~covered subject~~ wages, as defined in OAR 471-070-1000, in either the base year or alternate base year;
- (B) \$1,000 in ~~covered 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 ~~covered subject~~ wages and ~~covered 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 Oregon employment or self-employment for which they are requesting leave from work;

(f) Submit an application ~~claim~~ for benefits in accordance with all requirements under ORS 657B.090 ~~and~~, OAR 471-070-1100, ~~and submit the required weekly leave reports in accordance with OAR 471-070-1430;~~

(g) Have not reached 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 when taking family leave for the purpose of caring for and bonding with a child during the first year after the child’s birth or during the first year after the placement of the child through foster care or adoption, regardless of whether ~~that individual has started~~ starts during the first year following birth or initial placement, ~~and is otherwise eligible.~~

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



March 3, 2022

471-070-1020 - Benefits: Assignment of Wages and Income

- (1) For purposes of Paid Family and Medical Leave Insurance (PFMLI) benefits, covered-subject wages shall be assigned to the calendar quarter in which they are paid, in the same manner that PFMLI contributions are payable pursuant to ORS 657B.150.
- (2) For purpose of PFMLI benefits, covered-taxable income from self-employment shall be assigned to the quarters in which the contributions are paid in accordance with OAR 471-070-2030.
- (3) Covered-Subject wages and covered-taxable income from self-employment in a calendar quarter that is included in the base year or alternate base year of a claim for benefits may not be included in a different base year or alternate base year of any subsequent claim.

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

471-070-1030 - Benefits: Maximum Amount of Benefits in a Benefit Year

In any given benefit year, a claimant shall not receive Paid Family and Medical Leave Insurance benefits established under ORS 657B.340 that exceed an amount equal to:

- (1) The employee's weekly benefit amount multiplied by 12 for any combination of family, medical, or safe leave; or
- (2) The employee's weekly benefit amount multiplied by 14 for any combination of family, medical, or safe leave for 12 weeks combined with two additional weeks of leave for limitations related to pregnancy, childbirth or related medical condition, including but not limited to lactation for a total of 14.

[Stat. Auth.: 657B.340; Stats. Implemented: ORS 657B.020, 657B.050]

471-070-1100 - Benefits: Application for Benefits

(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) Information about the claimant, 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 verifying 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 nonconsecutive, 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 leave; and
 - (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 that 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 that 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 (6) of this rule.
 - (5) In cases where a claimant demonstrates good cause for the late submission of an application, the department may accept the application up to 180 calendar days one year after the start of leave.

(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.

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

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

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

- (a) The child's birth certificate;
- (b) A Consular Report of Birth Abroad;
- (c) A document issued by a health care provider of the child or pregnant parent;
- (d) A hospital admission form associated with delivery; or
- (e) Another document approved by the department for this purpose.

(2) A claimant applying for PFMLI benefits to care for and bond with a child during the first year after the placement of the child through foster care or adoption must provide one of the following forms of verification:

- (a) A copy of a court order verifying placement;
- (b) A letter signed by the attorney representing the prospective foster or adoptive parent that confirms the placement;
- (c) A document from the foster care, ~~or~~ adoption agency, or social worker involved in the placement that confirms the placement;
- (d) A document for the child issued by the United States Citizenship and Immigration Services; or
- (e) Another document approved by the department for this purpose.

(3) The verification required in sections (1) and (2) of this rule must show the following:

- (a) Claimant's first and last name as parent or guardian of the child after birth or placement of the child through foster care or adoption;
- (b) Child's first and last name; and
- (c) Date of the child's birth or placement.

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

471-070-1120 - Benefits: Verification of a Serious Health Condition

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; ~~(3) A brief description of the diagnosis;~~

(4) The approximate date on which the serious health condition commenced, or when the serious health condition created the need for leave, and reasonable estimation of the duration of the condition or recovery period for the patient; and

Commented [SBC3]: Recommend breaking this into two – 1) when did the condition start or when did this SHC create the need for leave and 2) what is the anticipated frequency and duration of incapacity?

- (5) 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; or
 - (b) For family leave, information sufficient to establish that the claimant's family member has a serious health condition.

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

471-070-1130 - Benefits: Verification of Safe Leave

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

- (a) A copy of a federal agency or state, local, or tribal police report indicating that the claimant or the claimant's ~~minor~~ child as defined in OAR 471-070-1000(6) was a victim of domestic violence, harassment, sexual assault, or stalking;
- (b) A copy of a protective order or other evidence from a federal, state, local, or tribal court, administrative agency, or attorney that the claimant of the claimant's child appeared in or was preparing for a civil, criminal, or administrative proceeding related to domestic violence, harassment, sexual assault, or stalking; or
- (c) Documentation from an attorney, law enforcement officer, health care provider, licensed mental health professional or counselor, member of the clergy, or victim services provider that the claimant or the claimant's child was undergoing treatment or counseling, obtaining services, or relocating as a result of domestic violence, harassment, sexual assault, or stalking.

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

- (a) Difficulty obtaining verification due to a lack of access to services; or
- (b) Concerns for the safety of the claimant or the claimant's child.

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

471-070-1200 - Benefits: Claim Processing; Additional Information

In addition to the information required from a claimant under OAR 471-070-1100 and OAR 471-070-1430, 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) ~~Seven~~ 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.

Commented [SBC4]: Recommend providing the same time period (up to 14 days) to respond to requests for more information regardless of how that information was requested. Seems to introduce unnecessary confusion to have two different time periods

(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]

471-070-1210 - Benefits: Updates to Application for Leave; Additional Claims

(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, if applicable, including, but not limited to, changes to the claimant's:

(a) ~~Contact information;~~Name;

(b) ~~Employer(s) or self-employment;~~Mailing address;

(c) Telephone number;

(d) Current employment or self-employment;

~~(b)~~(e) Average number of work days worked per week;

~~(c)~~ Average number of work days worked per work week;

(f) Leave schedule;

~~(d)~~(g) Type of leave taken; or

~~(e)~~(h) Qualifying purpose for benefits; Eligibility to receive Workers' Compensation under ORS 656 or Unemployment Insurance benefits under ORS chapter 657.

(2) 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.

~~(3) A claimant shall notify the department if the duration of leave is shorter than originally requested in order for the leave to be used for a future claim within the same benefit year.~~

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

471-070-1220 - Benefits: Cancellation of a Claim

A claim may be cancelled at any time provided:

(1) A request to cancel has been submitted online or in another method approved by the department;

(2) ~~A weekly leave report has not been submitted; No leave was taken under the claim;~~

(3) Benefits have not been paid for the claim. Benefits are considered paid if a payment has been mailed or electronically sent to the claimant's bank or other financial institution, or the payment was distributed but intercepted; ~~in accordance with (overpayment rules);~~ and

~~(4) No disqualification has been assessed-issued by the department and no appeal of a disqualification or denial~~

has been requested. [Stat. Auth.: ORS 657B.090, 657B.340; Stats.

Implemented: ORS 657B.090]

Commented [SBC5]: Calendar

(4)(5) Example: Solomon was approved for 3 weeks of consecutive leave for a scheduled surgery starting on March 1, 2024. The claim started a new benefit year and established the weekly benefit amount for the benefit year. However, Solomon decides to postpone the surgery until August 1, 2024 and requests to cancel the claim. No leave was taken and no benefits were paid. The request is cancelled by the department. The benefit year and weekly benefit amount are also cancelled. When Solomon applies again for benefits for the surgery in August, a new benefit year is started and a new weekly benefit amount is established.

471-070-1230 - Benefits: Administrative Decisions on Applications and Weekly Leave Reports

- (1) An administrative decision shall be made on timely submitted applications and ~~weekly leave reports~~ claims in accordance with ORS 657B.100 and shall be based on information available from the following sources: the department’s records, information provided or obtained from the claimant, employers, or other sources as appropriate, including, but not limited to, health care providers and other state agencies.
- (2) Written notice of administrative decisions shall be provided to the interested parties and delivered to the ~~party’s claimant’s~~ last known address as shown in the department’s records or delivered electronically when permitted, if the ~~individual claimant~~ has opted for electronic notification, as shown in the department’s records.
- (3) The administrative decision shall contain, at a minimum:
 - (a) Identification of the ~~parties~~ claimant;
 - (b) Identification of the issues, citing the laws and rules involved;
 - (c) The department’s conclusion and the facts and reasons underlying those conclusions;
 - (d) A statement allowing ~~or denying~~ benefits, including the frequency and duration, or denying benefits;
 - (e) The date of the decision; and
~~The date the decision will become final; and~~
 - (f) A statement advising the ~~parties~~ claimant of their appeal rights and the manner in which an appeal may be submitted. [Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.090, 657B.100]

Commented [SBC6]: Recommend if approving – adding in the following –employee average weekly wage and approved benefit amount.

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

- (1) If the leave is foreseeable, 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 includes, 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.
- (2) If the leave is not foreseeable, an eligible employee may commence leave without 30 calendar days advance notice. However, the employer may require that the eligible employee 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. The oral notice that may be required can be given by any other person on behalf of the eligible employee taking 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.

(3) An employer may require written notice to include:

- (a) Employee’s full name;
- (b) Type of leave;
- (c) Explanation of the need for leave; and
- (d) Anticipated timing and duration of leave.

(4) 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 policies and sent to the proper individual. Whether leave is to be continuous or is to be taken intermittently, notice need only be given one time, but the employee shall advise the employer as soon as practicable if dates of scheduled leave change, are extended, or were initially unknown.

(5) An employer that requires eligible employees to provide a written notice before the eligible employee commences leave, or immediately thereafter, as applicable, 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 under section (8) of this rule that may be imposed by the department for not complying with the employer’s notice requirements.

(6) The department will notify the employer pursuant to OAR 471-070-1320(1) when a claimant has ~~been approved~~ applied for paid family, medical, or safe leave benefits. The employer may respond to the notice from the department within ~~seven~~ 10 calendar days from the date of the notice to report if the claimant did not provide the required notice per the employer’s written policy and procedures. The employer may respond to the department’s notice either online or by another method approved by the department. The response must include:

- (a) A description of the notice, if any, that was provided by the employee to the employer about the leave and the date it was provided;
- (b) A copy of the written policy and procedure provided to employees under section (5) of this rule; and
- (c) The date when the written policy and procedure was provided to the employee.

(7) If the employer does not respond to the department’s notice as described in section (6) of this rule within ~~seven~~ 10 calendar days from the date of the notice, the claimant’s application for benefits shall be processed using the information available in the department’s records.

(8) If the department determines that the claimant did not provide the required leave notice to the employer, the department may impose a penalty by issuing a decision and reducing the first weekly benefit amount payable under ORS 657B.090 by up to 25 percent. The penalty will be a 25 percent reduction, except when it would reduce the weekly benefit amount below the minimum benefit amount provided in ORS 657B.050(2)(b).

Example 1: Sanomi did not provide the required notice to their employer about taking 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 their first weekly benefit amount would be reduced to \$105 ($\$140 - \35). However, the minimum weekly benefit amount is \$120, so Sanomi’s first weekly benefit payment would be \$120 instead.

(9) 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.

Example 2: Joy did not provide the employer with the required leave notice. Joy normally works an average of four work days in a work week and was unable to work the entire 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 (\$100 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.

(10) 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.

(11) 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 may be collected from the employee in accordance with ORS 657B.120.

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

471-070-1320 - Benefits: Communication to Employers about Employee Application for Benefits

(1) After a claimant has filed an application or updated their claim for Paid Family and Medical Leave Insurance (PFMLI) benefits, the department shall notify any employers that the claimant is requesting leave from and provide information about the employee's claim.

(2) Employers may respond to the notice from the department within ~~seven~~10 calendar days of the date on the notice to report any additional information about the employee's PFMLI claim. Employers shall respond to the department's notice online or through another method approved by the department. If the employer fails to provide information within ~~seven~~10 calendar days, the claimant's application for benefits shall be processed using the information available in the department's records. If the employer later provides additional information, the department may reprocess the claim, taking into account the additional information.

(3) The department may need to determine whether a claimant has coverage under an equivalent plan approved under ORS 657B.210 and the effective dates of any coverage the claimant has, or information about a claim for benefits that the claimant has filed under an equivalent plan. The department may request additional information from the claimant's equivalent plan employer and administrator, if applicable, after the claimant files an application with the department. When this information is requested, equivalent plan employers or administrators must respond with information to the department's request within ~~seven~~10 calendar days from the date on the request for additional information.

(4) After a claimant's application for benefits has been processed by the department and a decision ~~is~~ issued to the claimant, the department shall notify the claimant's employers and administrators, if applicable, whether the claimant's application for benefits was approved or denied by the department, and, if approved, the dates and period of leave that the claimant is approved for. [Stat. Auth.: ORS 657B.040, 657B.340; Stats. Implemented: ORS 657B.040]

471-070-1420 - Benefits: Leave Periods and Increments

(1) A claimant may request family, medical, or safe leave provided under ORS chapter 657B in either consecutive, or nonconsecutive, 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 ~~w~~ 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 reported by the claimant in their application for benefits.

(3) When benefits are claimed in an increment that is equivalent to one work day, leave must be taken from all employers and from all self-employed work for the entirety of the work day 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 her work day and the architecture firm in the evenings on the same work day. Kelsey

Commented [SBC7]: Can this include notification of each leave day taken when intermittent so employers are provided info from the department that additional days will be approved?

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.

(4) When benefits are claimed in an increment that is equivalent to one work week, leave must be taken from all employers and from all self-employed work for the entirety of the work week to receive 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.: 657B.340; Stats. Implemented: ORS 657B.020, 657B.090]

471-070-1430 - Benefits: Weekly Leave Report

~~(1) In addition to submitting a complete application for benefits, to receive benefits the claimant shall submit a weekly leave report to declare the family, medical, or safe leave taken from employment during the work week. The weekly leave report must be submitted online or by another method approved by the department. For the weekly leave report to be approved, the report must be complete and include the following:~~

- ~~(a) The dates of the work week being claimed;~~
- ~~(b) The amount of family, medical, or safe leave taken during the week in an increment or increments equivalent to work days or a work week;~~
- ~~(c) Whether the claimant is eligible for or received Workers' Compensation under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657 during the work week;~~
- ~~(d) Any changes to the information provided on the application for benefits as outlined in OAR 471-070-1210; and~~
- ~~(e) A written or electronically signed statement declaring under oath that the information provided in support of the weekly leave claim for Paid Family and Medical Leave Insurance benefits is true and correct to the best of the claimant's knowledge.~~

~~(2) A claimant may submit a weekly leave report for a work week only after that work week has ended.~~

~~(3) A weekly leave report must be submitted no later than four weeks following the end of the work week in which the family, medical, or safe leave was taken. Weekly leave reports submitted after four weeks will be denied and weekly benefits will not be paid for those weeks, except in cases where a claimant can demonstrate that a weekly leave report was submitted late for reasons that constitute good cause as stated in section (5) of this rule.~~

~~(4) In cases where a claimant can demonstrate good cause for the late submission of a weekly leave report, the department may accept the weekly leave report and benefits may be payable up to 180 calendar days after the start of leave.~~

~~(5) Reasons constituting good cause for the late submission of a weekly leave report is determined at the discretion of the department and include, but are 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 the timely filing a weekly leave report; or~~
- ~~(b) A demonstrable inability to reasonably access a means to file a weekly leave report in a timely manner, such as an inability to file a leave report due to a natural disaster or a significant and prolonged department system outage.~~

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

471-070-1440 - Benefits: Weekly Benefit Proration

(1) A claimant ~~that who~~ takes leave in work day increments 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 would typically work in their work week.

(3) The total benefit amount paid for leave taken in increments is calculated by multiplying the benefit amount paid for a work day 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.

Example 1: Allison submits an application that states their typical work week consists of five work days during the work week. The weekly benefit amount is \$1,000.00. Allison ~~states on the application that [they/she] will take leave files a weekly leave report stating leave was taken~~ for three of the five days that were Allison typically worked in the work week for six weeks. The weekly benefit amount paid to Allison for this week ~~the six 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) x 6 weeks].

Example 2: Lamar submits an application that states their typical work week consists of three work days during the work week and will take leave for one of the three days in each of the four weeks. The weekly benefit amount is \$400.00. ~~Lamar files a weekly leave report stating they took leave for one of the three days that they typically worked in the work week.~~ The weekly benefit amount paid for this 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) x 4 weeks].

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

~~471-070-1450 Benefits: Benefit Payments~~

~~(1) Benefits shall be paid by such method as the director may approve.~~

~~(2) The department's primary payment method to any claimant approved to receive Paid Family and Medical Leave Insurance benefits shall be through direct deposit as an electronic funds transfer. "Electronic funds transfer" has the same meaning as provided in ORS 293.525.~~

~~(3) Individuals who do not apply for direct deposit will be paid by a stored value card.~~

[Stat. Auth.: ORS 293.525, 657B.340; Stats. Implemented: ORS 293.525]

~~471-070-1460 Benefits: Lost, Stolen, or Destroyed Benefit Checks~~

~~(1) 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.~~

~~(b) A benefit check is "stolen" if the claimant never received an issued check, or it was received and 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 sworn statement that the benefit check was lost, stolen, or destroyed; the check will be reissued 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, the director will notify the claimant by letter and no replacement check will be issued;~~

~~(b) In the case of forgery, or an unauthorized, non-valid, or lack of endorsement, 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 benefited from the funds.~~

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

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

May 31, 2022

To: Anne Friend, Paid Leave Oregon
From: Paloma Sparks, Oregon Business & Industry
RE: OBI Comments on Batch 3 Rules

Thank you for the opportunity to comment on the proposed rules related to benefits under the paid family and medical leave law on behalf of Oregon Business & Industry members. OBI is Oregon’s most comprehensive business association representing over 1,600 businesses that employ over 250,000 people. We represent multiple sectors and serve as the state’s Retail and Manufacturing Councils.

First, we urge you to make sure that any rule adopted is not just beneficial to employees, but also addresses the needs of employers as they administer and track leaves. Even if an employer is operating with the state program, there will be various issues that need to be addressed. For example, employers need to get clear notice from employees who plan to go out on leave so that they can prepare. A leave that lasts four weeks is quite unlike a leave that lasts three days. Employers who are subject to the federal Family and Medical Leave Act (FMLA) and/or Oregon Family Leave Act (OFLA) will face unique challenges. We simply ask that OED and Paid Leave Oregon staff consider the challenges employers, both large and small, will face with this program.

We ask that you build some flexibility into how benefits are administered. Some hybrid approaches may make sense when it comes to benefit administration. For example, can an employer advance benefits through salary continuation and then seek reimbursement for the allowed benefit amount from the state or private plan? While this may not be a frequent occurrence, it would ease some of the burden on both employees and employers.

471-070-1000

This section is an example of where there may be confusion. The definitions here may work for the state plan administration but may not fit for equivalent plans. For example, in many situations a claim is established separate from application for equivalent plans. The process then begins and approval or denial happens after the initial notice of claim. The same is likely true where the need for leave is not foreseeable.

We remain concerned about the approach that the division is taking to the “benefit year” definition and how it applies to employers and equivalent plans. This definition may make sense for employees covered by the state plan but it creates unnecessary complications for employees covered under an equivalent plan. For both those employers and employees, the benefit year should be specific to the employer.

The definition of “work day” needs revision. It likely doesn’t matter if the employee is working hours at another job if they are not seeking leave for that job. So, it should be employer-specific,

rather than encompassing all employers. We are also similarly concerned about the definition of "work week".

471-070-1010

In some meetings the division has been clear that 471-070-1010 only applies to individuals operating under the state plan. It could create a lot of confusion as currently written. We ask that you specifically state that this rule only applies to claims filed with the state plan. Additionally, the intent behind (2) of this rule is unclear. For simplification purposes, we suggest: "An individual may not exceed 12 weeks of paid leave per child for purpose of caring for or bonding within the first year after birth or placement regardless if a new benefit year starts during the first year following birth and or placement."

471-070-1030

As noted in OBI's comments on the batch 4 rules from the rulemaking advisory committee process, we have significant concerns about how the division is approaching benefit allotments. In particular, we are alarmed by the extent to which the division proposes to control those issues even when an employee has a single employer and is covered by an equivalent plan. We believe the proposals in this rule create needless complexity. At a minimum, we believe that claims of under an equivalent plan should ensure employees get access to full benefits and rights but should be exclusively administered by the equivalent plan administrator. Equivalent plans should not be required to meet administrative burdens that are really only strictly related to state plan administration.

471-070-1100

This rule needs revision to clearly note that the application need only provide information related to the employer that the employee is going to be taking leave from. The way the rule is currently written suggests that employees would have to take leave from all employers at the same time despite the fact that other provisions of the rule state otherwise. Section (1)(c)((B) requirements seem to be in conflict with the intent under (1)(e)(A). Additionally, section (3) creates confusion and duplicative efforts that may be completely unnecessary.

471-070-1230

Administrative decisions that allow benefits to go forward should also contain the benefit amount in addition to the benefit duration as described in (3)(d).

471-070-1310

The penalty provisions in (8) of this rule presume notification after failing to notify within the first week. We ask that if an employee does not provide notice, by themselves or through a representative, the employer's obligation to restore the individual to their former position are relieved. If an employee no-shows for a week and doesn't inform the employer that they are taking leave, the employer should be protected if they replace that employee. While employers are concerned about costs, having to hold jobs open for employees who are indistinguishable from employees who simply walk off the job is truly problematic.

471-070-1320

This rule is a prime example of how the realities of employer-employee relations must be recognized. Some employers have rules about outside employment – it probably doesn't make sense to notify the employer unless the employee is requesting leave from that employer. Additionally, it could create unnecessary strife if an employer is informed that the employee has another job. Section (3) of the rule creates needless burdens and complications. If there is a circumstance where an employee has a complicated employment or leave scenario, we urge the division to create an exception process rather than requiring all employers and employees engage in a complicated process that provides no real benefit to either. We ask that you delete (3) from the rule.

471-070-1440

Rather than requiring this complicated process, we think a simpler approach makes more sense. If an employee's benefits are paid out of multiple equivalent plans or an equivalent plan and the state plan, there should be a way for the equivalent plan to get reimbursement for overpayment if they demand it rather than creating an excessively complicated reporting requirement. In most cases, the equivalent plan or employer isn't likely to care if the employee has gotten more payment than they might have otherwise if only employed by one employer. While the statute says you must adopt rules, it is not so prescriptive that you could not explore other ways of achieving the same essential goal.

Thank you for considering our comments. I am happy to discuss them in more detail if needed.



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May 30, 2022

Via electronic submission only

Anne Friend
OED_Rules@employ.oregon.gov
875 Union Street NE
Director's Office
Salem, OR 97311

Re: Public Comment Administrative Provisions related to Paid Family Medical Leave
Insurance program benefits

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 Family and Medical Leave Insurance Division's proposed rules regarding program benefits filed April 27, 2022.

Both 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 who have limited access to affordable health care for themselves and/or their family members. Both organizations prioritize services to survivors of domestic violence and sexual assault, for whom access to paid safe and sick leave is critical. 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 or for safe leave. It is with this background that we offer our comments below.

1. **Racial Equity Impact**

Recognizing and addressing the unique barriers that low-wage immigrant workers, particularly agricultural workers, face in accessing benefits is critical to the equitable implementation of this program. See also our previous public comments.

2. **Racial Equity Impacts of this Particular Set of Rules**

Access to paid leave is one way to ensure that Oregonians have equitable opportunities to care for the health and safety of themselves and their families. It is well-documented that there are significant economic and health disparities for people of color in Oregon. Without access to paid leave, workers with health conditions or safety risks may struggle to take time off to when they need it. Assuring that workers have access to health and safety supports without risking their jobs is especially important to workers of color. It will be important to ensure that information about paid family, medical, and safe leave is available in a variety of languages



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and formats designed to reach culturally specific communities. It is also critical that employers who employ low-wage workers of color and those who speak English as a Second Language understand how the law applies to them and their staff and that enforcement agencies equitably ensure that these employers are following the law, including its anti-retaliation provisions.

3. Are there strategies to mitigate the unintended consequences?

The PFMLI Division indicates that there will be a “widespread and targeted program of education and varied, accessible user support services.” (p.4). Because the Division has not released a detailed plan, it is unclear how information will be distributed, and how people will be able to access information. While instructional videos, FAQs, and other tools will likely be helpful, there must be several access points for these tools to be useful. We previously submitted comments on the proposed Outreach Plan and repeat those comments here.

We will provide specific comments on the self-attestation proposal below.

Finally, this section notes that employees will be able to submit applications via online or paper, but there should also be a way to do so by phone. In the unemployment benefits context, claimants apply by phone without signing an application. If a signature is required, the agency could mail a copy of the application to the applicant who filed the application by telephone to request review and signature.

4. Fiscal and Economic Impact

No comments.

5. Cost of Compliance

No comments.

6. Small Business Involvement

No comments.

CHANGES TO RULE:

471-070-1000

Benefits: Definitions

Sections 9, 10, 13, and 14:

The statute makes it clear that Oregon Paid Leave program is intended to implement benefits for safe leave from work that is authorized ORS 659A.272. It is therefore important that the definitions in the Paid Leave program are consistent with the definitions applicable to ORS



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695A.272, which are outlined in ORS 659A.270. The definitions of victim of "domestic violence," "harassment," "sexual assault," and "stalking" are found in ORS 659A.270(4), (5), (6), and (7), and each of these definitions is broader than the definitions in this proposed rule. The 659A.270 definitions each refer to rules promulgated under ORS 659A.805, which expand the definitions to include threats or attempts of domestic violence, harassment, sexual assault, or stalking, and include those crimes if they are directed at immediate family members. It is important that the two statutes be applied consistently, so the definitions here should be expanded to include the reference to rules as promulgated under ORS 659A.805.

471-070-1010

Benefits: Eligibility and Qualifications for Benefits

Section 1:

We have questions regarding how the disqualification of Section (1)(h)(A) "eligible to receive workers' compensation benefits" may be applied. Injured employees may have applied for workers' compensation benefits but may not know whether their claim will be accepted for months. Some employees do not know whether their employer or doctor has filed for workers' compensation benefits. We recognize the need to avoid duplicative payments, but the claimant usually will not have the information needed at the time of application. The issue is not whether the claimant is "eligible" to receive the benefits but whether they have an accepted claim and are receiving time loss benefits. The potential eligibility for workers' compensation benefits should not "disqualify" the work from eligibility. Actual receipt of time loss benefits for the same period for which PFMLI benefits have been received could be considered an overpayment.

We also request additional clarification regarding how employees of temporary agencies and farm labor contractors will be protected by the statutes and regulations. It is important that workers who are waiting for assignments are considered employed. It is important that workers who have worked the requisite number of days for a temporary agency but less than the requisite number of days for the placement employer remain protected under the anti-retaliation provisions.

471-070-1020

Benefits: Assignment of Wages and Income

No comments

471-070-1030

Benefits: Maximum Amount of Benefits in a Benefit Year

No comments



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471-070-1100

Benefits: Application for Benefits

All Sections:

The application process requires a lot of detailed information. Many claimants may not know this information at the time of application. Some may have an estimate about the information requested. Claimants may need the ability to indicate that the information being provided is a good faith estimate. They often need the ability to have space on the application to explain part of their answers or particular special circumstances that may exist. We suggest that the application have the ability for claimants to indicate estimated answers or that they do not know the answer to a question and to supplement their answers. The application process should allow claimants to later verify or supplement answers. While failure to provide such detailed information in the application may cause delay in processing, this failure should not render an applicant “ineligible” if eligible based on reason for leave and adequate contribution.

Section 1:

The proposed rule requires that a claimant must provide either a social security number (SSN) or an Individual Taxpayer Identification Number (ITIN) as part of the application process. (1)(a)(C). We ask the agency not to require applicants to provide either a SSN or ITIN to complete the application process. The statute does not require this. This requirement will mean that some employees are unable to apply. Some people do not have either a SSN or ITIN at the time of application. The federal IRS controls the process of issuance of an ITIN. Applying for and receiving an ITIN may take months, and ITINs expire and need to be renewed. Proving a claimant’s identity and tracking the claimant during the application process are two different things. The paid leave program in Washington does not require a SSN or ITIN.¹ Requiring a SSN or ITIN will serve only to dissuade eligible claimants from applying for benefits for which they have paid. Oregon can track claimants to their contributions through other means including by requiring the claimant’s full name and date of birth; a SSN or ITIN is not necessary to do this and there are other ways claimants can prove their identity, as the Washington program shows. The workers’ compensation division eliminated its optional request for a social security number to apply for workers’ compensation benefits to reduce the inequitable discouragement of applications from those who may not have a social security number.

¹ Washington allows someone to prove their identity through a variety of ways and provides a paper application for those claimants without a SSN. <https://paidleave.wa.gov/app/uploads/2019/12/Identification-document-list-and-instructions.pdf>; <https://paidleave.wa.gov/apply-now/>



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Section 4:

The limit of applying within 30 days is too short. This is true for many workers such as those who may not have access to information about their right to these benefits, do not know how to apply and/or do not have the capacity or resources to apply. If the regulations keep this time limit, it is imperative that the “good cause” definition be broader to achieve equitable application. Please see our good cause comments below.

Section 6:

There are only two proposed circumstances that would constitute good cause. For all the uses of “good cause” in the rules, we propose a broader definition to work towards equitable access of these protections. We propose additional circumstances:

- When a claimant’s employer did not post or provide information about Paid Family Medical Leave and the employee did not learn about it within the 30 days of being eligible to take it;
- Safety concerns impacting the claimant or the claimant's child. This would be consistent with the good cause provision in Or. Admin. R. 471-070-1130 (2) and is an important factor to include in any provision related to requirements for accessing safe leave. To leave such a consideration out would defeat the purpose of the benefit;
- Inadequate or lack of notice, non-language compliant notices, and thwarted attempts to file due to technological, disability- related or language access barriers, and
- If adequate notice was required but not provided or if notice is not adequate and/or language compliant, any hearing request, application, notice to employer or response to request for information (including otherwise untimely requests), shall be deemed timely.

471-070-1110

Benefits: Verification of Family Leave to Care for and Bond with a Child

No comments

471-070-1120

Benefits: Verification of a Serious Health Condition

No comments other than we like the simple forms the Washington program has developed.²

² <https://paidleave.wa.gov/question/where-can-i-find-the-certification-of-serious-medical-condition-form/>



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471-070-1130**Benefits: Verification of Safe Leave**

Section 2:

The inclusion of good cause in this section for not providing one of the otherwise required forms of documentation is of critical importance in ensuring access to safe leave for victims at risk. It is well-documented that domestic violence victims often face greater safety risks when trying to leave or seek safety services.³ It is often the case that seeking a protection order, or police assistance, or other services that could provide the verification requested by Section 1 of this rule, could put the victim in greater danger. For example, a survivor may need to relocate in an emergency to establish safety from violence and may need to do so without seeking assistance from one of the named providers authorized to provide documentation of the safety risk. To ensure that the paid safe leave program achieves its goal of allowing victims to access safety without risking economic hardship, the good cause provisions of Section 2 are necessary. Thank you for the inclusion of this important language.

471-070-1200**Benefits: Claim Processing: Additional Information**

Section 1:

We believe that the 14 days to respond to requests is too short of a time.

Section 4:

At the very least, the good cause exception needs to be more inclusive and equitable and must provide for safety concerns. Please see our good cause comments above.

471-070-1210**Benefits: Updates to a Claim for Leave**

No comments

³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447915/> Campbell JC, Webster D, Koziol-McLain J, Block C, Campbell D, Curry MA, Gary F, Glass N, McFarlane J, Sachs C, Sharps P, Ulrich Y, Wilt SA, Manganello J, Xu X, Schollenberger J, Frye V, Laughon K. Risk factors for femicide in abusive relationships: results from a multisite case control study. *Am J Public Health*. 2003 Jul;93(7):1089-97. doi: 10.2105/ajph.93.7.1089. PMID: 12835191; PMCID: PMC1447915.



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471-070-1220

Benefits: Cancellation of a Claim

Section 2:

The proposed rule should be changed so that a victim of domestic violence, harassment, sexual assault, or stalking accessing safe leave should not be penalized for failure to comply with these deadlines if timely notification was not feasible due to safety concerns.

471-070-1230

Benefits: Administrative Decisions

Section 3:

The decision also must include the date of the decision and the date by which the claimant must appeal the decision.

471-070-1310

Benefits: Employee Notice to Employers Prior to Commencing Leave

Section 1:

We understand the reasoning for providing notice for foreseeable circumstances. Our concern is the confusing nature of the proposed rule regarding the oral and written notice that may be required and how and when the employer must relay that information to employees.

Section 2:

It is important that the rule specifies that safe leave is not foreseeable. Thank you for that inclusion. However, in many cases, a victim seeking safe leave may not be able to give oral notice within 24 hours or written notice within 3 days, depending on the nature and severity of the case. In implementing ORS 659A.272, Or. Admin. R. 839-009-0362 provides that employees must give oral or written notice as soon as is practicable. We recommend using a consistent standard for accessing safe leave here – if notice is provided as soon as practicable, it should be sufficient to meet the eligibility standard.

Section 3:

It is not clear to us how much an employee must share with their employer about their health condition or why they need safe leave. The Washington program has a simple, sample form, that lets claimants know that they do not have to provide details about why they are taking leave.⁴ We agree with this approach. It should be clear to employees the role of the Division and the role of the employer.

⁴ <https://paidleave.wa.gov/app/uploads/2019/12/30-day-notice-to-employer.pdf>



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Section 4:

Section 4 states that the employee under certain circumstances must provide written notice within 3 days to the “proper” individual; our concern is that some employees will not know who the “proper” individual is and then will suffer retaliation because they told the wrong person. The employer must be required to identify in multiple places and format who the proper individual is and how to contact that person and what to do if that person is not available, like the rules implementing ORS 659A.270 which refer to the employer’s “reasonable, known, and customary procedures.” Or. Admin R. 839-009-0350(3).

Section 8:

Given our concerns with how the proposed rule is written, we believe the penalty of 25% should be reconsidered.

Section 10:

Notice as soon as practicable in cases of any incapacitating or serious health condition, and any safe leave, should be allowed as a matter of course as an element of eligibility. These situations should not require a good cause waiver to avoid a penalty. The structure of section 10 as currently written imposes a barrier and burden on those who have the highest need. In addition, more detailed information about good cause determination is needed; the proposed rule as written is too general to provide meaningful information to an employee/claimant.

471-070-1320

Benefits: Communication to Employers and Employee Application for Benefits

No comments.

471-070-1420

Benefits: Leave Periods and Increments

Section 3:

It is not clear to us why leave must be taken from all employers. A claimant might have one job that is more physical than another and the claimant could perform one job but not a second. Or a claimant could be taking care of someone during the day and able to work at night. Additionally, a claimant could have a periodic need for safe leave for accessing medical appointments over a course of time, impacting only one employer.

471-070-1440

Benefits: Weekly Benefit Proration

No comments



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Additional Comments:

Confidentiality of Records regarding Safe Leave:

Confidentiality of information pertaining to safe leave is critical to ensure that victims of domestic violence, harassment, sexual assault, or stalking do not suffer privacy or safety violations because of accessing the paid leave they need to protect themselves. In referencing ORS 659A.272 as the statute governing safe leave authorized as eligible for the Paid Leave program, we urge you to consider the attendant statutes that govern employees and employers implementing 659A.272. There are strict confidentiality requirements applicable to all employers in providing safe leave. ORS 659A.280(5) provides that "All records and information kept by a covered employer regarding an eligible employee's leave under ORS 659A.270 to 659A.285, including the fact that the employee has requested or obtained leave under ORS 659A.272, are confidential and may not be released without the express permission of the employee, unless otherwise required by law." This protection should be reflected in the rules and should apply to application for benefits, documentation, verification, and all other records pertaining to safe leave. Without these strong confidentiality protections, survivors will not be able to access safe leave, defeating the purpose of the statute. This language must be included in order to ensure that victims have the same confidentiality protections when accessing paid safe leave as when accessing unpaid safe leave.

Thank you for your consideration of these comments. Should you have any questions, we can be reached at the email addresses listed below.

Sincerely,

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LEGAL AID SERVICES OF OREGON

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From: Rep Williams <Rep.AnnaWilliams@oregonlegislature.gov>
Sent: Thursday, May 26, 2022 10:06 AM
To: OED_RULES * OED <OED_RULES@employ.oregon.gov>
Subject: Commentary re: Proposed PFMLI Rule

Dear Ms. Friend,

Thank you for the opportunity to submit comments on Batch 3 of PFMLI rules related to benefits. I appreciate that the agency has amended Rule 471-070-1110 (Verification of Family Leave to Care for and Bond with a Child), paragraph (2)(c) to specify that a social worker may provide needed documentation to verify an adoption or foster care placement.

As a former social worker, I have been able to work closely with children and families. I can attest that social workers are important and appropriate professionals to verify the need for leave to bond with a child during the first year after their placement through foster care or adoption.

I support this change.

My Best,

Anna Williams



State Representative, House District 52
900 Court Street, H-473, Salem OR, 97301
(503) 986-1452 (Capitol of
Rep.AnnaWilliams@oregonlegislature.gov
www.oregonlegislature.gov/williams

Please note that this is not a private email. Staff have access to this account and all messages to and from this address may be considered a public record.



May 31, 2022

Via electronic submission only

Anne Friend
OED_Rules@employ.oregon.gov
875 Union Street NE
Director's Office
Salem, OR 97311

Re: Public Comment Administrative Provisions related to Paid Safe Leave for Survivors of Domestic Violence, Harassment, Sexual Assault, and Stalking

To the Oregon Employment Department:

On behalf of Sexual Assault Support Services (SASS) of Lane County, below please find our comments on the proposed rules implementing Paid Safe Leave for Survivors of Domestic Violence, Harassment, Sexual Assault, and Stalking as part of the Paid Family and Medical Leave Insurance (PFMLI) program.

Since 1991, SASS has provided support for survivors of sexual violence (past and present) as well as their families, friends, partners, and community. We operate a 24/7 Crisis and Support Line, 24/7 emergency medical advocacy, legal advocacy, support groups and education programs in English and Spanish, help accessing housing and economic resilience, and more. We serve people of all ages, genders, backgrounds, and abilities throughout the Lane County region and beyond.

From our experience working with survivors of interpersonal violence, we see firsthand the public health and safety crisis that domestic and sexual violence cause. And of course, we see the intersection of these crises with other crises; our experiential data reflects the national data showing that women of color, indigenous people, trans and gender-diverse people, disabled people, and unhoused people are disproportionately at risk of being victimized. As the pandemic decreased stability for many, we also saw an increase in sexual violence, particularly amongst people who are unhoused, the majority of whom have not reported their assaults to law enforcement and are therefore unlikely to be reflected in official crime statistics. Oregon's housing crisis is undoubtedly driving this silent phenomenon, the ripple effects of which we will be seeing for years to come. In these times, the need for paid safe leave has never been more acute or obvious.

Access to paid safe leave will help people stay employed, housed, able to get their kids to school, able to access mental and physical healthcare, and (above all) able to stay alive. Financial concerns keep people trapped in unsafe situations, a fact that many perpetrators know and exploit; if a person's options are houselessness or abuse, many will be coerced into abuse. Access to paid leave is critical to allow survivors to take the safety steps they need without jeopardizing their ability to pay rent and meet basic needs. And for people who are already experiencing marginalization, abuse compounds their experience of oppression; people who have been historically made more vulnerable through economic disparities and systemic



oppression are particularly in need of support, as they are less likely to have other avenues for external support.

On behalf of survivors in the state of Oregon, we offer the following feedback regarding Batch 3 of the proposed rules implementing PFMLI published April 12, 2022:

- **Language access:** Access to information and forms should be available in a variety of languages. Information and outreach should be widely provided in formats designed to reach culturally specific communities and accessible to people of varying levels of literacy.
- **Definitions:** The definitions of domestic violence, harassment, sexual assault, and stalking should all reference threats or attempts at those crimes. The purpose of paid safe leave is to ensure that employees who are victims have the ability to take pro-active steps to ensure safety for themselves and their families without risking their financial security. If victims are not able to react after a threatened or attempted assault, their ability to protect themselves and their families is limited. It is in the best interests of survivors as well as their employers and coworkers if safety steps can be pro-active and preventative.
- **Exemption from administrative requirements for good cause when safety is at issue:** There should be a general provision providing for waiver of documentation, timeline, and other technical requirements for accessing safe leave whenever necessary to address safety concerns. To leave safety considerations out of the rules would defeat the purpose of the safe leave program. Specifically:
 - **Verification of eligibility for safe leave:** Not all people experiencing domestic and sexual violence want to engage the legal system through protective orders, police assistance, etc. Making engaging law enforcement a prerequisite to gaining the support of safe leave would create a barrier that disproportionately affects those who are already at highest risk. In order to ensure that the paid safe leave program achieves its goal of allowing victims to access safety without risking economic hardship, the self-attestation option is necessary. Thank you for the inclusion of this important language.
 - **Advance requests and notice of leave:** The threat of abuse, violence, or harassment is never within the survivor's control, and is therefore not foreseeable. Advance notice cannot be provided of the need for emergency protection or assistance due to abuse. Additionally, in many cases, a survivor may not be able to give notice right after taking leave, depending on the nature and severity of the abuse or the danger. Notice to the employer should be provided as soon as practicable and safe for the survivor, and a delay due to safety concerns should never disqualify or penalize a survivor from accessing safe leave benefits.
- **Confidentiality of Records regarding Safe Leave:** This is perhaps the single most important point. Confidentiality of information pertaining to safe leave is critical to ensure that victims of domestic violence, harassment, sexual assault, or stalking can take the paid leave they need to access services to protect themselves. Stigma, embarrassment,



fear of retribution or retaliation, and safety concerns are a significant barrier to survivors coming forward to seek assistance. Without confidentiality protections, survivors will simply be unable to access the protections of the program. For this reason, survivor advocates worked hard to ensure that passage of the first unpaid safe leave law (ORS 659A.270 et seq) had strict confidentiality protections. ORS 659A.280(5) provides that "All records and information kept by a covered employer regarding an eligible employee's leave under ORS 659A.270 to 659A.285, including the fact that the employee has requested or obtained leave under ORS 659A.272, are confidential and may not be released without the express permission of the employee, unless otherwise required by law." Without these strong confidentiality protections, survivors will not be able to access safe leave, defeating the purpose of the statute. This language must be included in order to ensure that victims have the same confidentiality protections when accessing paid safe leave as when accessing unpaid safe leave.

Thank you for the opportunity to provide comments, and please do not hesitate to contact me if I can provide further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Martina Shabram", with a long horizontal line extending to the right.

Dr. Martina Shabram, PhD
Interim Executive Director, Sexual Assault Support Services



Oregon Attorney General's Sexual Assault Task Force

Anne Friend

OED_Rules@employ.oregon.gov

875 Union Street NE

Director's Office

Salem, OR 97311

Re: Public Comment Administrative Provisions related to Paid Safe Leave for Survivors of Domestic Violence, Harassment, Sexual Assault, and Stalking

To the Oregon Employment Department:

On behalf of the Oregon Attorney General's Sexual Assault Task Force (SATF), below please find our comments on the proposed rules implementing Paid Safe Leave for Survivors of Domestic Violence, Harassment, Sexual Assault, and Stalking as part of the Paid Family and Medical Leave Insurance (PFMLI) program.

The Oregon Attorney General's Sexual Assault Task Force (SATF) is a non-profit organization based in Keizer, Oregon. The mission of the SATF is to facilitate and support a collaborative, survivor-centered approach to the prevention of and response to sexual violence. The SATF accomplishes its mission by advancing primary prevention and providing multi-disciplinary training and technical assistance to responders in Oregon and beyond. The SATF facilitates cross-discipline collaboration and cultivates victim-centered approaches to sexual assault primary prevention, victim advocacy, medical forensic care, criminal prosecution and sex offender management and treatment. We believe a society free of sexual violence is a basic human right, and that we all must work to end sexual violence.

We also believe that sexual violence is never the victim's fault, and therefore, requires a community and system-wide response that is victim-centered, trauma informed, and supports victim privacy, confidentiality and autonomy. ***As an employer and organization that works with community partners to improve system responses to sexual violence, we seek to elevate the importance of Paid Safe Leave for survivors in Oregon.***

Domestic and sexual violence are critical public health and safety concerns impacting all communities in Oregon. Oregon has had some of the highest rates of sexual violence in the nation in recent years. Nationally, women of color and Native women are at heightened risk of

abuse and assault. It is well documented that incidences and severity of domestic violence have increased during and as a result of the COVID pandemic. **The need for paid safe leave has never been more acute.**

Without economic resources, victims cannot achieve safety for themselves and their children. Economic independence is a primary indicator of whether a victim will be able to maintain safety from abuse. Without economic security, some victims may feel compelled to return to abusive situations as an alternative to homelessness or to support their children. **Access to paid leave is critical to allow survivors to take the safety steps they need without jeopardizing their ability to pay rent and meet basic needs.** Assuring that victims have access to health and safety supports without risking their jobs is especially important to workers of color, who have suffered significant disparities of economic opportunity for centuries, and who were particularly hard hit by the economic and health impacts of the COVID pandemic.

On behalf of survivors in the state of Oregon, we offer the following feedback regarding Batch 3 of the proposed rules implementing PFMLI published April 12, 2022:

- **Language access:** Access to information and forms should be available in a variety of languages. Information and outreach should be widely provided in formats designed to reach culturally specific communities.
- **Definitions:** The definitions of domestic violence, harassment, sexual assault, and stalking should all reference threats or attempts at those crimes. The purpose of paid safe leave is to ensure that employees who are victims have the ability to take pro-active steps to ensure safety for themselves and their families without risking their financial security. If victims are not able to react after a threatened or attempted assault, their ability to protect themselves and their families is limited. It is in the best interests of survivors as well as their employers and coworkers if safety steps can be pro-active and preventative.
- **Exemption from administrative requirements for good cause when safety is at issue:** There should be a general provision providing for waiver of documentation, timeline, and other technical requirements for accessing safe leave whenever necessary to address safety concerns. To leave safety considerations out of the rules would defeat the purpose of the safe leave program. Specifically:
 - **Verification of eligibility for safe leave:** It is well-documented that domestic violence victims often face greater safety risks when trying to leave or seek safety services. It is often the case that seeking a protection order, or police assistance, or other services could put the victim in greater danger. In order to ensure that the paid safe leave program achieves its goal of allowing victims to

access safety without risking economic hardship, the self-attestation option is necessary. Thank you for the inclusion of this important language.

- **Advance requests and notice of leave:** The threat of abuse, violence, or harassment is never within the victim's control, and is therefore not foreseeable. Advance notice cannot be provided of the need for emergency protection or assistance due to abuse. Additionally, in many cases, a victim may not be able to give notice right after taking leave, depending on the nature and severity of the abuse or the danger. Notice to the employer should be provided as soon as practicable and safe for the survivor, and a delay due to safety concerns should never disqualify or penalize a survivor from accessing safe leave benefits.
- **Confidentiality of Records regarding Safe Leave:** This is perhaps the single most important point. Confidentiality of information pertaining to safe leave is critical to ensure that victims of domestic violence, harassment, sexual assault, or stalking can take the paid leave they need to access services to protect themselves. Stigma, embarrassment, fear of retribution or retaliation, and safety concerns are a significant barrier to survivors coming forward to seek assistance. Without confidentiality protections, survivors will simply be unable to access the protections of the program. For this reason, survivor advocates worked hard to ensure that passage of the first unpaid safe leave law (ORS 659A.270 et seq) had strict confidentiality protections. ORS 659A.280(5) provides that "All records and information kept by a covered employer regarding an eligible employee's leave under ORS 659A.270 to 659A.285, including the fact that the employee has requested or obtained leave under ORS 659A.272, are confidential and may not be released without the express permission of the employee, unless otherwise required by law." Without these strong confidentiality protections, survivors will not be able to access safe leave, defeating the purpose of the statute. This language must be included in order to ensure that victims have the same confidentiality protections when accessing paid safe leave as when accessing unpaid safe leave.

Thank you for the opportunity to provide comments, and please do not hesitate to contact me if I can provide further information.

Sincerely,

BB Beltran

BB Beltran
Executive Director



Abigail O'Connell
Senior Counsel
Sun Life U.S.

Sun Life
1 Sun Life Executive Park
Wellesley Hills, MA 02481

May 18, 2022

Anne Friend
OED Rules Coordinator
State of Oregon Employment Department

SENT VIA EMAIL

To Anne Friend:

On behalf of Sun Life, we respectfully submit this letter in response to the Oregon Paid Family and Medical Leave (PFML) Batch 3 rules. As one of the largest leave administration providers in America, Sun Life provides income security and leave management services for employees who need to take time off from work because of their own medical condition or for family care reasons, including birth of a new child and care for a family member who is ill. In our day-to-day work, we regularly witness first-hand the profound importance and personal impact of providing paid family and medical leave benefits to employees, and we applaud your work to create a PFML program for Oregonians.

Sun Life is a provider of private paid family and medical leave plans (i.e., equivalent plans) to employers in Massachusetts, Connecticut, and Washington. In designing Oregon's program, we respectfully ask that you leverage our experience with other states' PFML programs, specifically in regard to providing employers with flexibility to meet the statutory PFML requirements and creating a sustainable pricing model.

Sun Life's biggest concern relates to the independence of Equivalent Plans which are often sought by employers in order for the employer to exceed the state plan benefits and offer equitable benefits to employees regardless of work state.

- **Equivalent Plans are separate from and independent of the state plan for benefit calculations and funding purposes.** An equivalent plan can meet or exceed the benefits offered through the state plan [OR Revised Statutes §657B.210] and benefit calculations and payments within an equivalent plan should be handled independently from the state plan by the equivalent plan administrator or insurer. OR's PFML program is structured to permit exemption from the state plan in alignment with PFML laws in MA, CT, and WA. Once exempted, the equivalent plan will work to administer benefits directly with covered employees and funding of the equivalent plan will occur through insurance or self-administration with the employer owning the financial risk associated with claim payments. The solvency of equivalent plans is separate and apart from the solvency of the state program which will rely on the state-run experience and participation. Many employers seek exemption in order to provide enhanced benefits including

016Sun Life Assurance Company of Canada
is a member of the Sun Life Financial group of
companies.

- making benefits available to more employees and paying benefits for longer durations and higher maximums. We suggest that you amend 471-070-1320(3) as the department would not need information from the claimant's equivalent plan employer and the employer with a state plan will have no knowledge of their employee's other employer's plan.
- **Proration of benefits is per plan.** Where simultaneous coverage between the state program and equivalent plans exists, the director must adopt rules requiring, "...that the benefits made available to an eligible employee who is covered under more than one plan shall be prorated under each respective plan." [OR Revised Statutes §657B.210(1)(10)(b)]. A proration specific to each respective plan indicates a difference in claims administration between plans, namely between the state plan and equivalent plan(s). The proration requirement means that each plan would calculate the employee's average weekly wage based on total wages earned for the specific plan from which benefits are being drawn. We suggest you amend 471-070-1440 to make clear that the proration will occur per respective plan.

Exemption from the state plan should enable employers to be more generous to employees and operate benefits related to their employee's employment with them, without the need for coordination with outside employers or the state program. Employers may not realize their employee's have separate employment and a forced integration of state and equivalent plans may upset moonlighting issues, slow down decision times as the state struggles to gather all relevant information and result in less flexibility for hard working Oregonians. Regarding flexibility, employees may not wish to take time off from all their jobs to receive benefits for a single workday.

We appreciate the opportunity to provide our comments and look forward to continuing to work with you on this important initiative. Our industry stands ready to help build a program that works for Oregon employers and employees.

If we can assist in any way, please do not hesitate to reach out to us.

Warm regards,

Abigail O'Connell
Senior Counsel
Sun Life



Service Employees International Union Local 503

72,000 public services workers, care providers, and non-profit employees in Oregon.

To: Paid Family and Medical Leave Insurance (PFMLI) Rulemaking Committee

On: May 24, 2022

Re: Sixteen Proposed Rules for PFMLI Benefits

Director Humelbaugh, Rules Coordinator Friend, and members of the committee,

My name is Teresa Hoard-Jackson. I am a Senior Researcher for SEIU Local 503, a Union of 72,000 public services workers and care providers in Oregon. We envision a just and vibrant society where everyone is treated with dignity and respect, and where all people can provide for themselves and their families. SEIU enthusiastically supports portions of the proposed rules (e.g., the removal of the weekly leave reporting requirement for workers in favor of agency notification if employee circumstances change) and would like to suggest changes to the proposed rules in favor of worker well-being.

In a moment post-global pandemic when inflation is high and markets are crashing, it is important to prioritize worker concerns and needs (which may include caregiving responsibilities for gravely ill family members and monetary concerns when caring for a gravely ill or injured self). Among many things, the pandemic has revealed structural inequities, such as classism and racism, that severely affect the lowest paid workers with little to no benefits. For example, lowest paid workers may not have consistent or *any* access to paid leave which forces them to rely on aptly designed governmental programs that remedy this need. Thus, the State has a strong duty to help the most vulnerable workers.

We have three major concerns with the proposed rules:

1. In line with the PMFL statute in ORS 657B.040 (4), 471-070-1310 states that a worker may get their first weekly benefit amount reduced by 25% if they fail to give timely notice to their employer. This rule should be reevaluated because employees are supposed to be notified of this rule by their employer and if workers are not properly aware of this rule, then they should *not* be penalized for the fault of others. As an alternative, we strongly recommend that the State provide clear criteria for how and when the department will choose to exercise its discretion, including factoring in how late the worker's notice was (if given) and when the worker received their employer's policy.
2. Paragraphs 1 and 2 of 471-070-1420 state that when benefits are claimed in an increment equivalent to a work day or week, leave should be taken from *all* employers. There are many instances where a worker may want to take leave from only one job (which is more common due to the pandemic where many jobs allow workers flexible, work-from-home schedules), and they should be allowed to choose which job from which they want to take leave. These rule sections should be reconsidered to prevent requiring workers to take leave they do not need (and may not qualify for) or forfeit the leave they do need.
3. 471-070-1100 1(h) would require people accessing leave for abortion care to provide documentation regarding proof of pregnancy. Though the right to get an

PO Box 12159, Salem, OR 97309-0159 | seiu503.org | 1-844-503-SEIU (7348)

abortion and other reproductive healthcare is protected in Oregon law (HB 3391, or Reproductive Health Equity Act), abortion care is still considered a highly contested moral issue which may make some employees very reluctant to provide the required documentation – making this requirement tantamount to a significant barrier to protected reproductive healthcare. Further, additional leave may even be needed to receive care because some people in the state must travel far distances to access protected care. So, we are gravely concerned that this reporting requirement may discourage people from getting the care they need, or from accessing the paid family leave they are entitled to in order to receive that care. We urge you to reconsider these reporting requirements.

Thank you for the opportunity to testify. I would be happy to answer any questions I can.

From: Lisa Bandelli <Lisa.Bandelli-Virgona@standard.com>
Sent: Tuesday, May 31, 2022 4:41 PM
To: OED_RULES * OED <OED_RULES@employ.oregon.gov>; OED_RULES * OED <OED_RULES@employ.oregon.gov>
Subject: Oregon PFML draft Batch 3 comments

Dear OED. Please find Standard Insurance Company's comments included within the draft Batch 3 rules. If you have any questions or think it would be helpful to discuss in greater detail, please contact me.

Thank you
Lisa

Lisa M. Bandelli-Virgona | Senior Attorney
The Standard
Standard Insurance Company
900 SW Fifth Avenue | Portland, OR 97204
Phone 971.321.3708
Lisa.bandelli-virgona@standard.com
www.standard.com

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OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

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

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 471
EMPLOYMENT DEPARTMENT

FILED
04/27/2022 6:49 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Administrative provisions related to Paid Family Medical Leave Insurance program benefits

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/30/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Anne Friend
503-947-1471
OED_Rules@employ.oregon.gov

875 Union Street NE
Director's Office
Salem,OR 97311

Filed By:
Anne Friend
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 05/19/2022

TIME: 9:00 AM - 11:00 AM

OFFICER: Anne Friend

ADDRESS: Virtual
Oregon Employment Department
Salem, OR 97311

SPECIAL INSTRUCTIONS:
Please see our webpage for registration instructions:
<https://www.oregon.gov/EMPLOY/Agency/Pages/OED%20Administrative%20Rules.aspx>

DATE: 05/21/2022

TIME: 10:00 AM - 12:00 PM

OFFICER: Anne Friend
ADDRESS: Virtual
Oregon Employment Department
Salem, OR 97311

SPECIAL INSTRUCTIONS:
Please see our webpage for registration instructions:
<https://www.oregon.gov/EMPLOY/Agency/Pages/OED%20Administrative%20Rules.aspx>

DATE: 05/24/2022

TIME: 4:00 PM - 6:00 PM

OFFICER: Anne Friend
ADDRESS: Virtual
Oregon Employment Department
Salem, OR 97311

SPECIAL INSTRUCTIONS:

Please see our webpage for registration instructions:

<https://www.oregon.gov/EMPLOY/Agency/Pages/OED%20Administrative%20Rules.aspx>

NEED FOR THE RULE(S)

In order to implement and administer the PFML program, the Oregon Employment Department is promulgating permanent administrative rules in accordance with ORS chapter 657B.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

- PFML statute – ORS chapter 657B (https://www.oregonlegislature.gov/bills_laws/ors/ors657B.html);
- Oregon Labor, Employment, and Unlawful Discrimination statutes – ORS chapter 659A (https://www.oregonlegislature.gov/bills_laws/ors/ors659A.html);
- Oregon Family Leave Act (OFLA) statutes and administrative rules – ORS chapter 659A and OAR chapter 839, Division 9 (https://www.oregonlegislature.gov/bills_laws/ors/ors659A.html);
- Family and Medical Leave Act (FMLA) statute and regulations – 29 USC Ch. 28 and Treas. Reg. 29 CFR part 825 (<https://uscdoj.gov/fmla/>);
- Oregon Employment Department Unemployment Insurance Taxes statute and administrative rules – ORS chapter 657 and OAR chapter 839, Division 7 (<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=2338>);
- Oregon sick time administrative rules – OAR chapter 839, Division 7 (<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=2338>);
- Workers’ Compensation statutes and administrative rules – ORS chapter 656 and OAR chapter 436 (https://www.oregonlegislature.gov/bills_laws/ors/ors656.html);
- Oregon sexual offenses statutes – ORS chapter 163 (https://www.oregonlegislature.gov/bills_laws/ors/ors163.html);
- Washington State’s PFML administrative rules (WACs Chapter 192-500 through 192-810) (<https://app.leg.wa.gov/WAC/default.aspx?cite=192-500>);
- California Disability Insurance/Paid Family Leave (UIC 2601 to 3308 and rules and regulations 22 22R) (https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=UIC&division=1.&title=&part=2.&chapter=22&path=/UIC/22/22R);
- Connecticut Paid Family & Medical Leave Act statute and regulations (https://www.cga.ct.gov/current/pub/chap_557.htm#sec);
- District of Columbia (DC) Paid Family Leave statutes and rules and regulations – (<https://code.dccouncil.us/us/dc/council/codes/compendium/Title16-Chapter01>);
- Massachusetts Paid Family and Medical Leave statutes and rules and regulations (<https://www.mass.gov/law-library/mass-general-laws-chapter-151B>);
- New Jersey Temporary Disability and Family Leave Insurance statutes and rules and regulations (<https://casertext.com/statute/4321> and <https://casertext.com/regulation/new-jersey-administrative-code/title-12-labor-and-workforce-development>);
- New York Short-Term Disability/Paid Family Leave statutes and rules and regulations [<https://www.nysenate.gov/legislation/laws/227>];
- Rhode Island Temporary Disability/Caregiver Insurance statutes and rules and regulations (<http://webserver.rilin.state.ri.us/states/000000227>);

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

By providing paid and job protected leave, PFML will allow those who do not currently have access to and cannot afford to care for themselves or their ailing family members, deal with the challenges of domestic violence and similar challenges, or bond with a new child in their family, to take that time off and still receive an income. This program will provide a much needed benefit to underserved populations and help to combat the insidious impact of historical and current injustice and inequities that families of color face when trying to access government programs. While adopting our administrative rules for processing of claims applications, decisions on claims, and payment of benefits, the PFML Division looked at the racial equity impact of the administrative rule and answered the below questions.

A commitment to equity acknowledges that not all people, or all communities, are starting from the same place due to historic and current systems of oppression. Equity is the effort to provide different levels of support based on an individual’s or group’s needs in order to achieve fairness in outcomes. Equity actionably empowers communities most

impacted by systemic oppression and requires the redistribution of resources, power, and opportunity to those communities.

What are the racial equity impacts of this particular rule, policy, or decision and who will benefit from or be burdened?

In accordance with ORS 657B.010 through ORS 657B.120, the PFMLI Division administrative rules are intended to provide details on aspects of PFMLI benefits, like who is eligible for benefits, how to file an application, what verification is needed, what communication is required to employers, and penalty amounts. The administrative rules on the state plan's PFMLI benefits seeks to ensure that employees have timely and equitable access to benefits when an eligible employee has made contributions to the PFMLI Trust Fund established under ORS chapter 657B. The PFMLI Division recognizes the administration of benefits is the heart of the program and the administrative rules were developed with a focus on accessibility and compensation as well as a racial equity lens into potential structural barriers that may hinder use of the PFMLI program.

An equitable program requires identification of and strategies to overcome structural barriers or burdens. PFMLI Division started by using universal language that is consistent with terms and processes used for Unemployment Insurance, Oregon Family Leave Act (OFLA), Family Medical Leave Act (FMLA), and the Oregon Department of Revenue where appropriate, and simplified complexities where possible within the PFMLI benefit administrative rules. The consistency of the language helps employees and employers in understanding and use of the program and helps the PFMLI Division in its ability to translate consistently into other languages.

Historically marginalized groups face systemic barriers in accessing and coverage of health care systems. Those barriers include racism and discrimination that can result in underdiagnoses of serious health conditions, limited access to local health care services, and prohibitive costs for health care services. This impacts in particular Black, Indigenous, Latin/o/a/x people, Asian, Pacific Islander, women, people with disabilities, LGBTQIA+ communities, migrant workers, socio-economically disadvantaged people, individuals with limited English proficiency, and new immigrant communities.

Safe leave benefits are new to paid family leave programs in general. While there is not current PFMLI program data to reflect this, victims of Domestic Violence, Harassment, Sexual Assault, or Stalking (DVHSAS) face a number of structural barriers in reporting abuse and accessing support services, such as safety and privacy concerns, economic concerns/dependency, religious or cultural beliefs, bias or anticipated bias by police services or the court system, limited access to services, and fear of repercussions. Such barriers exist not only for accessing existing victim services, but potentially for accessing PFMLI benefits. The rates of DVHSAS among historically marginalized groups are higher, including Black, Latin/o/a/x, American Indian, and non-Hispanic multiracial women and men, lesbian and bisexual women and bisexual men, transgender individuals, and women with disabilities.

These are just a few examples of potential racial equity impact from the benefit administrative rules. The requirements established in these benefit rules could also have an equity impact for employees access to the state PFMLI plan, potentially impacting Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander, women, people with disabilities, LGBTQIA+ communities, migrant workers, socio-economically disadvantaged people, individuals with limited English proficiency, new immigrant communities, and individuals with non-technical experience or resources to navigate these requirements due to systemic and institutional barriers. While the rules aim to ensure equitable benefits for employees, these may not be sufficient to prevent all barriers for those employees, who may have an equity impact as identified above.

Are there strategies to mitigate the unintended consequences?

The PFMLI Division seeks to mitigate the possible barriers identified primarily through widespread and targeted program of education and varied, accessible user support services. Instructions, Frequently Asked Questions (FAQ) and resource pages will be created to assist with explanation of the rules and the claim process. Requirements will be written in plain language, and the PFMLI Division will seek to provide these materials in multiple languages for employers and employees. The guidebooks will be supplemented with frequently asked questions, instructional videos, and other tools. The PFMLI Division and agency staff are committed to being accessible to both employees and employers through various forms of communication, such as phone, email, mail, online, and an automated chat bot. Staff will be trained to support employees, employers, health providers, insurers, and community members, with the aim of enabling all to understand the PFMLI program and complete the application and administration requirements and thus help mitigate the potential equity impact.

In an attempt to mitigate some of the potential systemic barriers in accessing and coverage of health care systems, the benefit administrative rules were written broadly for verification requirements; including a vast list of acceptable documents for demonstrating eligibility, which meets or exceeds other PFMLI programs; provides for out of state and out of country health providers to complete verification forms; and refrains from asking non-necessary medical questions.

In order to address safe leave structural barriers, the benefit administrative rules allow covered individuals to provide a self-attestation when unable, for good cause, to provide a verification document from a third party and provide an expanded timeframe for submitting benefit applications. This allows victims of DVHSAS to prioritize their safety and wellbeing first and apply for benefits when feasible without losing access to those benefits.

In addition, the division will be conducting focused outreach and engagement activities from now until implementation with employers and employees, with a focus on immigrant or non-English speaking individuals, Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander, and other people of color owned businesses, and rural or small businesses, which will include awareness raising about PFMLI benefits.

The PFMLI benefit rules aim to establish straightforward and streamlined processes for submitting claim applications and receiving benefits for eligible employees. Examples of such processes include establishing a benefit qualification at \$1,000 in subject wages or taxable income from self-employment, the ability to submit applications online or via paper, and document options for leave verification. These support access for employees who could face barriers completing the application online or if faced with a complex application process.

FISCAL AND ECONOMIC IMPACT:

Any fiscal or economic impact for PFMLI benefits is the result of the statute being implemented. There is no fiscal or economic impact associated with these new administrative rules.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The administrative rules on PFMLI benefits will likely have an impact on state agencies, local governments, and other

public bodies because their employees (claimants) may be eligible for PFMLI benefits. The state agencies, units of local government, and the public may need to provide additional information requested by the department to verify claimant information and accept leave notices from their employees.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number and type of small businesses subject to the rule:

Oregon has approximately 126,000 small businesses with fewer than 50 employees that employ 33.62 percent of the state's workforce. Oregon has approximately 120,000 small businesses with fewer than 25 employees that employ 24.19 percent of the state's workforce.* It is likely that all small businesses will have employees take PFMLI leave at some point; therefore, the benefit rules will apply to their employees.

*Based on Unemployment Insurance 2020 Tax Wage file.

b. Projected reporting, recordkeeping, and other administrative activities required for compliance, including costs of professional services:

The two benefit rules related to employee notice to employers prior to commencing leave and communication to employers about employee application for benefits gives businesses the opportunity to notify the department within ten calendar days of receiving a notice from the department. A response is not mandatory but the business can let the department know if the claimant did not provide the required notice per the business's written policy and procedures or any additional information. The department estimates the administrative cost to respond to the notice adds minimal administrative costs and should take well under an hour to respond.

Changes to an employer's handbook would likely need to be made based on the PFMLI statutory enactment, regardless of what the rule states as employees will need to know the employers requirements for PFMLI. However, the department estimates the administrative cost to expand current written policies and procedures for PFMLI leave notice will take approximately two hours as the written policy and procedure is already required for OFLA and FMLA. If the business does not already have a written policy and procedure for notice requirements as they don't meet the OFLA requirements, the department estimates it will take approximately one day for the business to create a written policy and procedure and up to four hours of legal review. In 2021 in Oregon, on average, an employment/labor lawyer charges \$312 per hour therefore up to four hours of legal review would cost up to \$1,248 (\$312 per hour x 4 hours).

During the RAC meeting it was mentioned that updating a written policy and procedure could take more than one day as it has to go through review. One RAC member provided feedback that it would cost their employer significantly more than that. The department asked for additional feedback as thought the cost was overstated as it the cost for updating the entire employee handbook and not one section and didn't receive any additional feedback.

c. Equipment, supplies, labor and increased administration required for compliance:

It will take, on average, well under an hour to respond to any notice the department sends to a business about a claimant's benefit leave. The employer may respond to the notice electronically via our new Frances system, and there will be other options to respond via mail or telephone for employers without access to technology/equipment.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The PFMLI Advisory Committee, which serves as the Rulemaking Advisory Committee (RAC) for these rules, is

statutorily required to have four members represent employers, at least one of whom represents employers with fewer than 25 employees. The RAC was consulted when developing these rules.

The PFMLI Division also formed a benefits workgroup that consisted of 15 members appointed by the PFMLI Division Director, which consisted of employee and business representatives. There are three PFMLI Advisory Committee members on the workgroup. The purpose of the benefit workgroup is to engage with representatives and stakeholders about specific aspects relating to PFMLI benefits in Oregon. The workgroup utilized the information and insights it gathered in the course of its work to assist the PFMLI Advisory Committee in developing recommendations to provide to the department as it relates to the implementation of the program and the administrative rules drafted for benefits. The workgroup met 14 times over the course of a year, the first meeting occurred in July 2020 and the last meeting occurred in October 2021. We also emailed materials to the workgroup in November 2021 and requested feedback.

Small businesses may also sign up to participate in our town halls, receive PFMLI emails, listen to PFMLI Advisory Committee meetings, attend RAC meetings, and are invited to provide feedback on the proposed draft rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

471-070-1000, 471-070-1010, 471-070-1020, 471-070-1030, 471-070-1100, 471-070-1110, 471-070-1120, 471-070-1130, 471-070-1200, 471-070-1210, 471-070-1220, 471-070-1230, 471-070-1310, 471-070-1320, 471-070-1420, 471-070-1440

ADOPT: 471-070-1000

RULE SUMMARY: Defines terms in the Paid Family and Medical Leave Insurance program's rules related to program benefits.

CHANGES TO RULE:

471-070-1000

Benefits: Definitions

(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 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) "Domestic violence," as the term is used for a safe leave purpose described in ORS 659A.272, means abuse as defined in ORS 107.705.[¶]

(10) "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.[¶]

(11) "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.[¶]

(12) "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 a hospital, hospice, or residential facility such as 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 asthma, diabetes, or epilepsy;[¶]

(f) Involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as 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 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.¶

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

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

(a) The crime of stalking 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.¶

(15) "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.¶

(16) "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 work 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. ¶

(17) "Work week" means seven days 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.

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

Statutes/Other Implemented: ORS 657B.090, 657B.010

ADOPT: 471-070-1010

RULE SUMMARY: Clarifies when certain employees, self-employed individuals that have elected coverage, and employees of tribal governments where the tribal government has elected coverage are eligible for Paid Family and Medical Leave Insurance benefits.

CHANGES TO RULE:

471-070-1010

Benefits: Eligibility and Qualification for Benefits

- (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 Oregon employment or self-employment for which they are requesting leave from work;¶
 - (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 when taking family leave for the purpose of caring for and bonding with a child during the first year after the child's birth or during the first year after the initial placement of the child through foster care or adoption, regardless of whether a new benefit year starts during the first year following birth or initial placement.
- Statutory/Other Authority: ORS 657B.340
Statutes/Other Implemented: ORS 657B.015, 657B.020



EXHIBIT 018

ADOPT: 471-070-1020

RULE SUMMARY: Clarifies the assignment of subject wages and taxable income from self-employment into specific calendar quarters.

CHANGES TO RULE:

471-070-1020

Benefits: Assignment of Wages and Income

(1) For purposes of Paid Family and Medical Leave Insurance (PFMLI) benefits, subject wages shall be assigned to the calendar quarter in which they are paid, in the same manner that PFMLI contributions are payable pursuant to ORS 657B.150.¶

(2) For purposes of PFMLI benefits, taxable income from self-employment shall be assigned to the quarters in which the contributions are paid in accordance with OAR 471-070-2030.¶

(3) Subject wages and taxable income from self-employment in a calendar quarter that are included in the base year or alternate base year of a claim for benefits may not be included in a different base year or alternate base year of any subsequent claim.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.050

ADOPT: 471-070-1030

RULE SUMMARY: Establishes a maximum amount of Paid Family and Medical Leave Insurance benefits a claimant is eligible to receive in a single benefit year

CHANGES TO RULE:

471-070-1030

Benefits: Maximum Amount of Benefits in a Benefit Year

In any given benefit year, a claimant shall not receive Paid Family and Medical Leave Insurance benefits established under ORS 657B.340 that exceed an amount equal to:

(1) The employee's weekly benefit amount multiplied by 12 for any combination of family, medical, or safe leave; or

(2) The employee's weekly benefit amount multiplied by 14 for any combination of family, medical, or safe leave for 12 weeks and two additional weeks of leave for limitations related to pregnancy, childbirth or related medical condition, including but not limited to lactation for a total of 14.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.020, 657B.050

ADOPT: 471-070-1100

RULE SUMMARY: Clarifies the application process and manner an individual must use when applying for Paid Family and Medical Leave Insurance benefits.

CHANGES TO RULE:

471-070-1100

Benefits: Application for Benefits

- (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 verifying 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 nonconsecutive, 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 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 (6) of this rule.

(5) In cases where 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.

(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.

Statutory/Other Authority: ORS 657B.340, ORS 657B.100, 657B.090

Statutes/Other Implemented: ORS 657B.100, 657B.090

ADOPT: 471-070-1110

RULE SUMMARY: Clarifies the method for verifying a request to take Paid Family and Medical Leave Insurance when the qualifying purpose is related to family leave to care for and bond with a child.

CHANGES TO RULE:

471-070-1110

Benefits: Verification of Family Leave to Care for and Bond with a Child

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

(a) The child's birth certificate;¶

(b) A Consular Report of Birth Abroad;¶

(c) A document issued by a health care provider of the child or pregnant parent;¶

(d) A hospital admission form associated with delivery; or¶

(e) Another document approved by the department for this purpose.¶

(2) A claimant applying for PFMLI benefits to care for and bond with a child during the first year after the placement of the child through foster care or adoption must provide one of the following forms of verification:¶

(a) A copy of a court order verifying placement;¶

(b) A letter signed by the attorney representing the prospective foster or adoptive parent that confirms the placement;¶

(c) A document from the foster care, adoption agency, or social worker involved in the placement that confirms the placement;¶

(d) A document for the child issued by the United States Citizenship and Immigration Services; or¶

(e) Another document approved by the department for this purpose.¶

(3) The verification required in sections (1) and (2) of this rule must show the following:¶

(a) Claimant's first and last name as parent or guardian of the child after birth or placement of the child through foster care or adoption;¶

(b) Child's first and last name; and ¶

(c) Date of the child's birth or placement.

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

Statutes/Other Implemented: ORS 657B.090

ADOPT: 471-070-1120

RULE SUMMARY: Clarifies the method for verifying a request to take Paid Family and Medical Leave Insurance when the qualifying purpose is related to family leave or medical leave due to a serious health condition.

CHANGES TO RULE:

471-070-1120

Benefits: Verification of a Serious Health Condition



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, and reasonable estimation of the duration of the condition or recovery period for the patient; and

(5) 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; or

(b) For family leave, information sufficient to establish that the claimant's family member has a serious health condition.

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

Statutes/Other Implemented: ORS 657B.090

ADOPT: 471-070-1130

RULE SUMMARY: Clarifies the method for verifying a request to take Paid Family and Medical Leave Insurance when the qualifying purpose is related to safe leave.

CHANGES TO RULE:

471-070-1130

Benefits: Verification of Safe Leave

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

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

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

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

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

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

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

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

Statutes/Other Implemented: ORS 657B.090



ADOPT: 471-070-1200

RULE SUMMARY: Establishes timelines for the claimant to respond to requests for additional information from the Oregon Employment Department.

CHANGES TO RULE:

471-070-1200

Benefits: Claim Processing: Additional Information

In addition to the information required from a claimant under OAR 471-070-1100 and OAR 471-070-1430, 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, fax, 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.

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

Statutes/Other Implemented: ORS 657B.090

ADOPT: 471-070-1210

RULE SUMMARY: Clarifies situations when the claimant must alter information provided on the initial application for benefits within 10 calendar days of any changes.

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, if applicable, including, but not limited to, changes to the claimant's:

(a) 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 656 or Unemployment Insurance benefits under ORS chapter 657.

(2) 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.

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

Statutes/Other Implemented: ORS 657B.090, 657B.100

EXHIBIT 018

ADOPT: 471-070-1220

RULE SUMMARY: Establishes a method for a claim for Paid Family and Medical Leave Insurance benefits to be cancelled.

CHANGES TO RULE:

471-070-1220

Benefits: Cancellation of a Claim

A claim may be cancelled at any time provided: ¶

(1) A request to cancel has been submitted online or in another method approved by the department; ¶

(2) No leave was taken under the claim; ¶

(3) Benefits have not been paid for the claim. Benefits are considered paid if a payment has been mailed or electronically sent to the claimant's bank or other financial institution, or the payment was distributed but intercepted; and ¶

(4) No disqualification has been issued by the department and no appeal of a disqualification or denial has been requested. ¶

Example: Solomon was approved for 3 weeks of consecutive leave for a scheduled surgery starting on March 1, 2024. The claim started a new benefit year and established the weekly benefit amount for the benefit year. However, Soloman decides to postpone the surgery until August 1, 2024 and requests to cancel the claim. No leave was taken and no benefits were paid. The request is cancelled by the department. The benefit year and weekly benefit amount are also cancelled. When Soloman applies again for benefits for the surgery in August, a new benefit year is started and a new weekly benefit amount is established.

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

Statutes/Other Implemented: ORS 657B.090

EXHIBIT 018

ADOPT: 471-070-1230

RULE SUMMARY: Establishes procedures for the Oregon Employment Department when issuing an administrative decision on an application or a claim for the Paid Family and Medical Leave Insurance benefits. Written notice of the decision will be provided to the claimant.

CHANGES TO RULE:

471-070-1230

Benefits: Administrative Decisions

(1) Administrative decision shall be made on timely submitted applications and claims in accordance with ORS 657B.100 and shall be based on information available from the following sources: the department's records, information provided or obtained from the claimant, employers, or other sources as appropriate, including, but not limited to, health care providers and other state agencies.

(2) Written notice of administrative decisions shall be provided to the claimant and delivered to the claimant's last known address as shown in the department's records or delivered electronically when permitted, if the claimant has opted for electronic notification.

(3) The administrative decision shall contain, at a minimum:

(a) Identification of the claimant;

(b) Identification of the issues, citing the laws and rules involved;

(c) The department's conclusion and the facts and reasons underlying those conclusions;

(d) A statement allowing benefits, including the frequency and duration, or denying benefits;

(e) The date of the decision; and

(f) A statement advising the claimant of their appeal rights and the manner in which an appeal may be submitted.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.090, 657B.100

ADOPT: 471-070-1310

RULE SUMMARY: Clarifies situations when an employee is and is not required to provide a written notice to their employer at least 30 calendar days before commencing paid family, medical, or safe leave. Clarifies the manner the written notice must be issued and the penalty amount of 25 percent of the first weekly benefit amount if the written notice isn't issued.

CHANGES TO RULE:

471-070-1310

Benefits: Employee Notice to Employers Prior to Commencing Leave

- (1) If the leave is foreseeable, 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. ¶
 - (2) If the leave is not foreseeable, an eligible employee may commence leave without 30 calendar days advance notice. However, the employer may require that the eligible employee 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. The oral notice that may be required can be given by any other person on behalf of the eligible employee taking 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. ¶
 - (3) An employer may require written notice to include:¶
 - (a) Employee's full name; ¶
 - (b) Type of leave; ¶
 - (c) Explanation of the need for leave; and ¶
 - (d) Anticipated timing and duration of leave. ¶
 - (4) 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 policies and sent to the proper individual. Whether leave is to be continuous or is to be taken intermittently, notice need only be given one time, but the employee shall advise the employer as soon as practicable if dates of scheduled leave change, are extended, or were initially unknown.¶
 - (5) An employer that requires eligible employees to provide a written notice before the eligible employee commences leave, or immediately thereafter, as applicable, 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 under section (8) of this rule that may be imposed by the department for not complying with the employer's notice requirements. ¶
 - (6) 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 of the notice to report if the claimant did not provide the required notice per the employer's written policy and procedures. The employer may respond to the department's notice either online or by another method approved by the department. The response must include:¶
 - (a) A description of the notice, if any, that was provided by the employee to the employer about the leave and the date it was provided; ¶
 - (b) A copy of the written policy and procedure provided to employees under section (5) of this rule; and ¶
 - (c) The date when the written policy and procedure was provided to the employee. ¶
 - (7) If the employer does not respond to the department's notice as described in section (6) of this rule within 10 calendar days from the date of the notice, the claimant's application for benefits shall be processed using the information available in the department's records. ¶
 - (8) If the department determines that the claimant did not provide the required leave notice to the employer, the department may impose a penalty 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  would reduce 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.¶
- Example 1: Sanomi did not provide the required notice to their employer about taking 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 weekly benefit amount would be reduced to \$105 (\$140 - \$35). However, the minimum weekly benefit amount is \$120, so Sanomi's first weekly benefit payment would be \$120 instead. ¶

(9) 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. ¶

Example 2: Joy did not provide the employer with the required leave notice. Joy normally works an average of four work days in a work week and was unable to work the entire 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 (\$100 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. ¶

(10) 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. ¶

(11) 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 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: 471-070-1320

RULE SUMMARY: Clarifies the employer will be notified by the Oregon Employment Department when a claimant is taking leave once a claim for Paid Family and Medical Leave Insurance benefits has been received or updated and establishes timelines for the employer to respond to the provided notice.

CHANGES TO RULE:

471-070-1320

Benefits: Communication to Employers and Employee Application for Benefits

(1) After a claimant has filed an application or updated their claim for Paid Family and Medical Leave Insurance (PFMLI) benefits, the department shall notify any employers that the claimant is requesting leave from and provide information about the employee's claim.¶

(2) Employers may respond to the notice from the department within 10 calendar days of the date on the notice to report any additional information about the employee's PFMLI claim. Employers shall respond to the department's notice online or through another method approved by the department. If the employer fails to provide information within 10 calendar days, the claimant's application for benefits shall be processed using the information available in the department's records. If the employer later provides additional information, the department may reprocess the claim, taking into account the additional information.¶

(3) The department may need to determine whether a claimant has coverage under an equivalent plan approved under ORS 657B.210 and the effective dates of any coverage the claimant has, or information about a claim for benefits that the claimant has filed under an equivalent plan. The department may request additional information from the claimant's equivalent plan employer and administrator, if applicable, after the claimant files an application with the department. When this information is requested, equivalent plan employers or administrators must respond to the department's request within 10 calendar days from the date on the request for additional information.¶

(4) After a claimant's application for benefits has been processed by the department and a decision is issued to the claimant, the department shall notify the claimant's employers and administrators, if applicable, whether the claimant's application for benefits was approved or denied by the department, and, if approved, the dates and period of leave that the claimant is approved for.

Statutory/Other Authority: ORS 657B.340, ORS 657B.040

Statutes/Other Implemented: ORS 657B.040

ADOPT: 471-070-1420

RULE SUMMARY: Clarifies that leave periods may be taken in consecutive and nonconsecutive periods when claiming Paid Family and Medical Leave Insurance benefits and describes that leave must be taken from all employers and from all self-employed work for the entirety of the work day to receive benefits.

CHANGES TO RULE:

471-070-1420

Benefits: Leave Periods and Increments

(1) A claimant may request family, medical, or safe leave provided under ORS chapter 657B in either consecutive, or nonconsecutive, 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 reported by the claimant in their application for benefits.¶

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



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

Statutory/Other Authority: ORS 657B.340

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

ADOPT: 471-070-1440

RULE SUMMARY: Describes how the weekly benefit amount will be prorated when Paid Family and Medical Leave is taken in an increment less than a work week.

CHANGES TO RULE:

471-070-1440

Benefits: Weekly Benefit Proration

(1) A claimant who takes leave in work day increments 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 would typically work in their work week.

(3) The total benefit amount paid for leave taken in increments is calculated by multiplying the benefit amount paid for a work day 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.

Example 1: Allison submits an application that states their typical work week consists of five work days. The weekly benefit amount is \$1,000.00. Allison states on the application that 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 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) x 6 weeks].

Example 2: Lamar submits an application that states their typical work week consists of three work days and 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) x 4 weeks].

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

Statutes/Other Implemented: ORS 657B.090

From: Beth Hope <beth@tidesofchangenw.org>
Sent: Tuesday, May 31, 2022 11:19 AM
To: OED_RULES * OED <OED_RULES@employ.oregon.gov>
Subject: Public Comment on Rules Related to Paid Safe Leave for Survivors of Domestic Violence, Harassment, Sexual Assault, and Stalking

May 31, 2022
Via electronic submission only
Anne Friend
OED_Rules@employ.oregon.gov
875 Union Street NE
Director's Office
Salem, OR 97311

Re: Public Comment on Rules Related to Paid Safe Leave for Survivors of Domestic Violence, Harassment, Sexual Assault, and Stalking

To the Oregon Employment Department:

On behalf of Tides of Change in Tillamook, below are our comments on the proposed rules implementing Paid Safe Leave for Survivors of Domestic Violence, Harassment, Sexual Assault, and Stalking as part of the Paid Family and Medical Leave Insurance (PFMLI) program.

Tides of Change serves survivors of domestic, sexual, and dating violence, stalking, and trafficking throughout rural Tillamook County. We serve about 400 to 500 individuals annually, providing more than 10,000 services, which encompasses 24-hour crisis intervention, safety planning, emergency shelter, safe housing, protection order assistance, accompaniment services, health advocacy, information and referrals, system navigation, counseling and support groups. We work to provide hope, safety and support to those impacted by gender-based violence and to shift cultural norms through advocacy, education, and community collaboration.

Domestic and sexual violence are public health and safety concerns impacting every community in Oregon. Access to paid leave is critical to allow survivors to stay safe without risking their ability to meet basic needs for themselves and their children, especially for survivors of color who have suffered centuries of economic and social disparities, who continue to experience disproportionate rates of violence, and who are being particularly hard hit by the impact of COVID.

On behalf of survivors of Oregon, we offer the following feedback regarding Batch 3 of the proposed rules implementing PFMLI published April 12, 2022:

- **Language accessibility is critical for survivors:** Access to information and forms should be available in a variety of languages and in formats designed to reach culturally specific communities.

Resources and information are helpful to survivors only when they are readily available and accessible. Please ensure this is possible.

- **Definitions of domestic violence, harassment, sexual assault, and stalking should all reference threats or attempts at those crimes.** Those who choose to use violence against intimate partners use threats, coercion, and related tactics to maintain power and control. For the safety of survivors, it is critical to consider those in evaluating the dangerousness of the one using or threatening to use violence and the potential risks and lethality. Threats may be "only" words, but they keep survivor-victims in extreme fear for themselves and their children and bound by hopelessness.

- **There should be a general provision providing for good cause waiver of documentation, timeline, and other technical requirements for accessing safe leave whenever necessary to address safety concerns.** To leave safety considerations out of the rules would defeat the purpose of the safe leave program. Specifically:
 - o **Self-attestation as verification of eligibility for safe leave is critical:** Thank you for the inclusion of this important language. Survivors are the experts in their lives, their situations, and the understanding of the person(s) using violence against them. Often it is too dangerous for them to contact law enforcement, and they must operate in utmost secrecy to protect themselves and their children. Self-attestation is a critical step in safety-planning and maintaining safety.

 - o **Delay in advance requests and notice of leave should never disqualify or penalize a survivor from accessing safe leave benefits:** The threat of abuse, violence, or harassment is never within the victim's control, and is therefore not foreseeable. In many cases, a victim may not be able to give notice right after taking leave, depending on the nature and severity of the abuse or the danger. Notice to the employer should be provided as soon as practicable and safe for the survivor.

- **Confidentiality of Records Regarding Safe Leave Must be Assured:** Confidentiality of information pertaining to safe leave is critical to ensure that victims of domestic violence, harassment, sexual assault, or stalking can take the paid leave they need to access services to protect themselves. Records should be confidential and not released without the express permission of the employee, unless otherwise required by law. As advocates, we know that confidentiality is a primary and critical need for survivors and is the reason that all advocacy services are completely confidential, and in Oregon, protected by advocate privilege. Sometimes survivors are unable even to knock on the door of an agency such as ours because of fear the person using violence against them will discover they are seeking assistance. To protect survivors, we are able to meet them in various locations to protect their safety. Ensuring records remain confidential is absolutely critical. The need for confidentiality for the safety of survivors cannot be overstated.

Thank you for the opportunity to comment. Please let me know if I can provide further information.

Sincerely,

beth

Beth Hope (she/her)

Community Response Coordinator

Tides of Change

Formerly the Tillamook County Women's Resource Center

office: 503.842.9486 ~ cell: 503.428.4364

Time *to* Care OREGON

May 31, 2022

To: Karen Humelbaugh and PFMLI Policy Team, Oregon Employment Department
From: Lisa Kwon and Andrea Paluso, Family Forward Oregon
RE: PFML Batch 3 Rules: Benefits

Thank you for the opportunity to provide feedback on Batch 3 Rules related to Benefits for Paid Leave Oregon. Family Forward Oregon is submitting this feedback on behalf of Time to Care Oregon, a coalition of community based organizations and labor unions serving low wage workers, caregivers, families, and immigrant communities, who worked to pass our state's historic paid family and medical leave program in 2019.

We appreciate that the Paid Leave Oregon policy team has adopted multiple suggestions from our previous written feedback that are reflected in this current batch of proposed rules. Below are our recommendations that we believe will strengthen the proposed rules even more– thank you for your consideration of our feedback.

Benefits: Definitions (471-070-1000)

(1) Application: We appreciate that the agency has taken our recommendation to amend this definition from “a covered individual” to “an individual.” Even if an application is ultimately denied because a worker is not a “covered individual,” it is important for the department to recognize and review all applications for PFMLI.

(2) Average weekly wage, (3) Benefit year, and (4) Calendar quarter: We support the proposed definitions.

(5) Care: We support the proposed definitions of “care” and “psychological assistance” as they will cover a broad range of caregiving. **However, we recommend amending the sub-definition of “physical assistance” to eliminate the condition that the family member not be able to attend to their needs themselves.** Where needed as certified by a healthcare provider, care for all family members with a serious health condition is covered by the statute. To ensure that the law is applied as intended, this condition should be eliminated.

(6) Child, (7) Claim, and (8) Claimant: We support the proposed definitions.

(9) “Domestic violence”, (10) “Harassment”, (13) Sexual assault and (14) Stalking: The definitions of victim of "domestic violence," "harassment," "sexual assault," and "stalking" are found in ORS 659A.270(4), (5), (6), and (7), and each of these definitions are broader than the definitions in this proposed rule. The 659A.270 definitions each refer to rules promulgated under ORS 659A.805, which expand the definitions to include threats or attempts of domestic violence,

harassment, sexual assault, or stalking, and include those crimes if they are directed at immediate family members. It is important that the two statutes be applied consistently, so the definitions here should be expanded to include the reference to rules as promulgated under ORS 659A.805.

(11) Health care provider: We appreciate that this definition largely tracks the definition of health care provider in OFLA, but (unlike OFLA) helpfully covers those licensed outside of Oregon. This will be beneficial, for example, in instances where a worker is caring for a loved one who lives and received treatment outside of Oregon.

We strongly encourage that doulas be included in this section, as they play a critical role in prioritizing the emotional, mental, and physical health of many pregnant people.

(12) Serious health condition: We appreciate that this definition largely tracks the definition of health care provider in OFLA (ORS 659A.150(5)), but expands on OFLA's definition to helpfully cover those licensed outside of Oregon. This will be beneficial, for example, in instances where a worker is caring for a loved one who lives and received treatment outside of Oregon. Section (h), also expands on OFLA's definition by including any period of disability due to "miscarriage or stillbirth". **We recommend making it clear in this paragraph that the periods of disability related to miscarriages include both pre and post miscarriage care. We also strongly suggest including abortion as a reason for leave in paragraph (h).**

(15) Subject Wages: We support the proposed definition.

We appreciate that the definition of "**weekly leave report**" has been removed from this section.

Benefits: Eligibility and Qualification for Benefits (471-070-1010)

We appreciate that the agency has removed **the weekly leave report requirement in section (1)(f)**. 471-070-1010 and 471-070-1430. **Submission of a weekly leave report should not be a condition of eligibility—presumably, all workers who are receiving PFMLI benefits have already proven their eligibility to receive said benefits.**

While in the context of a program like unemployment insurance it may make practical sense for workers to recertify their unemployment on a weekly basis, it does not make sense for the PFMLI program, which, unlike UI, does not include a job search requirement and has some leaves with predictable durations (*e.g.* bonding leave, recovery from common surgeries, etc.).

We appreciate that the agency has taken our feedback to amend section (1)(g) to replace "Have not reached" with "Have not exceeded." This will ensure that workers are able to fully utilize the amounts of leave and benefits allowed under the law.

Benefits: Assignment of Wages and Income (471-070-1020)

This section offers sensible and clear instructions. We support these proposed rules as written.

Benefits: Maximum Amount of Benefits in a Benefit Year (471-070-1030)

We appreciate that the agency has adopted our suggestion and amended 471-070-1030(2) to include the broader list of needs eligible for the additional two weeks of benefits, instead of just “pregnancy”.

Benefits: Application for Benefits (471-070-1100)

We continue to have serious concerns with section (1), which requires a claimant to include their SSN or ITIN when applying for benefits. In particular, we are concerned about eligible workers who do not have an SSN or ITIN, and how they will be able to receive benefits. We recommend that the agency invest in the time and resources to assist workers (without either numbers) to obtain an ITIN, and provide support throughout the process. We look forward to having further conversations about equitable access to paid family and medical leave benefits, especially for workers without an SSN or ITIN.

In addition, we suggest more clarification under section (1)(b), as to what documentation regarding a claimant’s identity will be required. Any requirement to provide identification should be carefully crafted to ensure that it does not create a barrier to accessing benefits for workers, especially since low-income workers, workers of color, and immigrant workers may be less likely to have access to some forms of identification.

At section (2), we recommend clarifying that the employer’s equivalent plan and application guidelines must be compliant with the department’s regulations.

We are glad that pursuant to section (4), workers can file claims for up to 30 days prior to the start of leave and for up to 30 days after the start of leave. The ability to file claims ahead of leave will give workers the opportunity to gather documentation and respond to any application errors prior to being busy tending to their qualifying leave event. **However, we recommend allowing workers to file their leave claims for longer, such as for up to 90 days after their leave period starts as a matter of course.** The additional buffer time for filing claims will increase access to the program and will allow eligible workers ample time to file their claims.

We appreciate that the agency has amended section (5) to allow the department to accept applications for up to one year after the start date of a workers’ leave, if the claimant demonstrates good cause.

In paragraph (6), we strongly recommend broadening the definition of “good cause” to include the additional circumstances:

- When a claimant’s employer did not post or provide information about Paid Family Medical Leave and the employee did not learn about it within the 30 days of being eligible to take it;
- Safety concerns impacting the claimant or the claimant's child. This would be consistent with the good cause provision in Or. Admin. R. 471-070-1130 (2) and is an important factor to include in any provision related to requirements for accessing safe leave. To leave such a consideration out would defeat the purpose of the benefit.

- Inadequate or lack of notice, non-language compliant notices, and thwarted attempts to file due to technological, disability- related or language access barriers.
- If adequate notice was required but not provided or if notice is not adequate and/or language compliant, any hearing request, application, notice to employer or response to request for information (including otherwise untimely requests), shall be deemed timely.

Benefits: Verification of Family Leave to Care for and Bond with a Child (471-070-1110)

We appreciate that the agency has amended paragraph (2)(c) to specify that a social worker may provide needed documentation of an adoption or foster care placement.

Benefits: Verification of a Serious Health Condition (471-070-1120)

We support the information required to verify a serious health condition listed in this section.

We suggest that the agency develop a new form to verify medical leave instead of relying on the existing OFLA/FMLA forms. We strongly recommend and support [Washington's current serious health care verification form](#), which is straightforward and efficient for both healthcare providers and employees, and consists of only the information absolutely necessary for agency staff to determine eligibility. We look forward to working with the agency on the design of the serious health condition verification forms further.

Benefits: Verification of Safe Leave (471-070-1130)

We strongly recommend that self-attestation be considered a standard method for the department to verify safe leave, instead of only in cases where a claimant can demonstrate good cause for not providing one of the forms of documentation in section (1) of this rule. Alternatively, we would also support a form of “self-attestation” that may be verified by a qualified third party, outside of the good cause exception to documentation. This will be particularly important for victims who are not involved with counseling, a court case, or medical care, *or* are using safe leave to relocate or take steps to secure an existing home pursuant to ORS 659.272(5), as they may not have access to the other forms of certification currently listed.

In addition, we strongly recommend adding confidentiality language with respect to verification submitted. We believe that the confidentiality language stated in 659A.280 should also be in the rules as it relates to safe leave verification:

Pursuant to ORS 659A.280, all records and information kept by an employer regarding use of safe leave for purposes related to domestic violence, harassment, sexual assault, or stalking, including the fact that the employee has requested or obtained use of safe leave, are confidential and may not be released without the express permission of the employee, unless otherwise required by law.

We appreciate that the agency has accepted our suggestion to amend paragraph (1)(a) and (b) to clarify that police reports, documentation, and orders may come from “federal agency or state, local, or tribal” courts/governmental agencies.

Benefits: Claim Processing; Additional Information (471-070-1200)

Generally, we are concerned that the department is contemplating restricting response times when seeking additional information from individuals who have applied for PFMLI benefits. Applicants may be wrapping up work before their leaves begin, preparing to undergo serious medical treatment, or traveling to a seriously ill loved one when the department requests additional information. **We suggest not specifying a timeframe in which applicants must respond to the department.**

We appreciate that the agency has amended paragraph (2) to extend the timeline to respond to the agency from 7 days to 10 days. **However, if necessary to specify a response time from claimants when additional information is requested, we recommend allowing claimants significantly longer (such as 30 days) to respond to the department, regardless of the mode of communication.** This will allow claimants ample time to respond to the department.

Benefits: Updates to Application for Leave; Additional Claims (471-070-1210)

Currently, section (2) states that a claimant’s failure to notify the department of changes to contact information, employer(s) or self-employment, average number of work days worked per work week, leave schedule, or qualifying purpose for benefits may result in a “delay, denial, overpayment, or disqualification of weekly benefits.” **We strongly recommend deleting “denial” and “disqualification” from 471-070-1210(2).** Claimants who meet the statutory criteria are statutorily entitled to PFMLI benefits while on leave for a qualifying purpose. While, as a practical matter, failure to provide this information could delay receipt of benefits or cause errors that will need to be remedied, failure to notify the department is not grounds for denial or disqualification.

Benefits: Cancellation of a Claim (471-070-1220)

We appreciate that the agency has removed the requirement to submit a weekly leave report in this section as referenced in paragraph (2) of the previous draft rules. However, we suggest that the proposed rule be amended so that a victim of domestic violence, harassment, sexual assault, or stalking accessing safe leave should not be penalized for failure to comply with these deadlines if timely notification was not feasible due to safety concerns.

Benefits: Administrative Decisions on Application and Weekly Leave Reports (471-070-1230)

We appreciate that the agency has removed the requirement to submit a weekly leave report in this section as referenced in paragraph (1) of the previous draft rules.

Benefits: Employee Notice to Employers Prior to Commencing Leave (471-070-1310)

In addition to the helpful language proposed at section (3) regarding what employers can require written notice to include, **we recommend explicitly stating that “An employee giving notice of the need for PFMLI leave does not need to expressly assert rights under the Act or even**

mention the PFMLI to meet the employee’s obligation to provide notice under an employer policy.” This explicit statement that no “magic words” are required closely follows regulations regarding notice under the federal FMLA at 29 C.F.R. § 825.301(b).

We are glad to see the specific proposed rules at section 5) for the mechanism by which employers who chose to require written notice can do so. In addition, **we recommend further clarifying the rule to explicitly state that an employer who does not comply with the requirements of section (5) is not entitled to notice under the PFMLI statute, having failed to require it as authorized by law.**

We believe that the automatic rule in Section (8), which states that the department may penalize an employee by reducing the first weekly benefit amount by up to 25% where they have failed to comply with the notice requirement, is inconsistent with the discretionary approach provided by the statute. **As the PFML statute in ORS 657B.040(4) states, such a penalty is discretionary, rather than mandatory,** both as to the amount and as to whether to impose the penalty at all. However, despite the use of “may” and “up to” (mirroring the statute) in the first sentence of the section (8), the second sentence suggests that this penalty is not only automatically applied, but automatically applied at the maximum amount except where doing so would reduce the benefit below the minimum amount. **We strongly recommend re-evaluating this rule as it may harshly impact claimants. Instead of applying a blanket reduction of 25% for workers who failed to give timely notice, we recommend providing clear criteria for how and when the department will choose to exercise its discretion, including factoring in how late the worker’s notice was (if given) and when the worker received their employer’s policy.**

We appreciate that the agency has accepted our suggestion to explicitly state in paragraph (8) that workers are able to appeal the department’s decision to penalize them in accordance with ORS 657B.410 and applicable administrative rules.

Benefits: Communication to Employers about Employee Application for Benefits
(471-070-1320)

We strongly recommend that the department remove the allowance for employers to weigh in on a claimant’s application for PFMLI benefits with “additional information” beyond that explicitly requested by the department pursuant to section (2). The department already collects a range of information from the claimant—any additional information not explicitly requested by the department provided by the employer is irrelevant. We are especially concerned with the last sentence of section (2), which effectively allows the department to reconsider a worker’s claim at any point in time that an employer decides to submit “additional information.” Once a claimant has cleared the department’s thorough review process, they should be able to rest assured that they will receive their benefits as expected. The employer’s ability to provide “additional information” should be eliminated.

Benefits: Leave Periods and Increments (471-070-1420)

Paragraphs 1 and 2 of this proposed section generally offer clear and reasonable requirements that track the statute. **However, we strongly recommend that the department amend sections**

(3) and (4) to remove the requirement that leave be taken from all employers. Workers should be able to decide the jobs from which they are taking leave during a given leave period. In some cases, a worker may only need leave from one job.

For example, a worker who needs medical leave from a more physically demanding job but is able to safely continue a second, less physically demanding job, given that workers' health needs, or a worker is sharing care responsibilities for a seriously ill parent with a sibling and is only needed during certain times. In those circumstances, a worker should not be required to take leave they do not need (and may not qualify for) or forfeit the leave they do need. Moreover, we will continue to exacerbate the current workforce staffing crisis if we require workers to take unnecessary leave from their jobs.

Benefits: Weekly Benefit Proration (471-070-1440)

We support the proposed rules as written.

Thank you for your consideration of our comments.
Sincerely,



TIX Education Specialists

"Bridging compliance and best practice."

Anne Friend

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Director's Office

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May 27, 2022

To the Oregon Employment Department:

TIX Education Specialists (TIXEdu) partners with Oregon K-12 schools and institutions of higher education to strengthen Title IX as well as other federal and state sexual harassment and anti-discrimination protections in our schools. Our goal is to bridge compliance with evidence-based, trauma-informed best practices to help educators and school administrators serve their communities best. Oregon schools employ tens of thousands of Oregonians as both staff and faculty. We work to ensure that all Oregonians employed at one of our schools can access a safe workplace as well as be able to access reporting options and support services when instances of violence do occur.

In our work with schools, we advocate for employers to prioritize equity and true accessibility of workplace reporting processes and services. Unfortunately, many school employees experience interpersonal violence at much higher rates than their colleagues including those who carry the experiences of being BIPOC, immigrant or undocumented, gender nonconforming, or anyone struggling to access safe and affordable housing. To ensure equity we must acknowledge the varied intersections of trauma that many carry with them determining whether they feel safe accessing some reporting systems over others.

Victims and survivors of violence should have options and choice in how they access the support needed to access their workplaces safely. In addition to accessing the criminal justice or civil systems, employees of Oregon K-12 schools and colleges can also utilize the Title IX process. It is a common misconception that Title IX applies to students only. Title IX equally affords rights and protections to employees for instances of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. Additionally, Title IX mandates employers make available victim services such as protective orders in the workplace as well as options for investigation and resolutions.

We are grateful for the Oregon Employment Department's work on Paid Leave Oregon and its effort to fill a long-standing gap in support for victims. We would like to offer the following considerations:

471-070-1130: Safe Leave Documentation

- (1)(a) reports to include written reports (also known as "formal complaints") made to a school's Title IX Coordinator.
- (1)(b) no-contact orders, administrative leave, and emergency removals issued by a school's Title IX Coordinator should qualify as appropriate documentation.

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471-070-1310: Notice to Employer

We strongly encourage OED to evaluate options for increased privacy options including:

- Increased agency for a victim to determine who hears their story and to what amount of detail.
- Allow for redactions to be made to documentation that is provided to either employers or OED to limit unnecessary disclosure of personal details about experiences of violence. This is especially true in our schools where often the reported individual is a co-worker or supervisor.

We want to ensure that all Oregonians can access Safe Leave by mitigating the instances a victim would have to limit their choices, privacy or safety to ensure they don't also lose employment. Everyone deserves to have choice in how they stay safe and start to heal. The Title IX process and its services are utilized every day by teachers, staff and faculty who experience violence. Incorporating these recommendations into Paid leave rules will support individuals by enabling them to access all resources available during a challenging time.

Thank you for opportunity to comment.

Respectfully,

Samantha Brace
Policy & Communications Manager
TIX Education Specialists