

Paid Leave Oregon
Proposed Oregon Administrative Rules - Batch 8 FINAL

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BENEFITS & ASSISTANCE GRANTS

ORS 657B.010 through ORS 657B.120 establishes benefit claim administration for Paid Leave Oregon. The below rules outline purpose for Paid Leave Oregon rules, the factors for relationship determinations, describe the role of a claimant representative, add clarity for family leave, and provide further details on job protection standards with the passage of Senate Bill (SB) 999 and SB 913 during the 2023 Legislative Session.

ORS 657B.200 establishes assistance grants for employers with fewer than 25 employees for when an employee takes Paid Leave. The new assistance grant rule provides explanation and guidelines for the different successors in interest.

471-070-0001 - Purpose

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

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

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

(1) “Affinity,” as the term is used in ORS 657B.010, means a relationship that meets the following requirements:

(a) There is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship, and;

(b) The bond under section (a) of this rule may be demonstrated by, but is not limited to the following factors, with no single factor being determinative:

(A) Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills, or beneficiary designations;

(B) Emergency contact designation of the claimant by the other individual in the relationship, or vice versa;

(C) The expectation to provide care because of the relationship or the prior provision of care;

(D) Cohabitation and its duration and purpose;

(E) Geographical proximity; and

(F) Any other factor that demonstrates the existence of a family-like relationship.

(2) “Application” means the process in which an individual submits the required information and documentation described in OAR 471-070-1100 to request benefits for a period of leave. Approval of an application establishes a claim.

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

(a) Set for each fiscal year beginning July 1 and ending June 30 of the following year;

(b) Applied for the calculation of weekly benefit amounts starting the first full week following July 1;

(c) Applied for the entire benefit year after a new benefit year is established, even if the average weekly wage amount changes when the new fiscal year begins.

(4) "Benefit year" means a period of 52 consecutive weeks beginning on the Sunday immediately preceding the day that family, medical, or safe leave commences for the claimant, except that the benefit year shall be 53 weeks if a 52-week benefit year would result in an overlap of any quarter of the base year of a previously filed valid claim. A claimant may only have one valid benefit year at a time.

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

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

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

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

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

(a) Under the age of 18; or

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

(8) "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.

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

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

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

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

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

(14) “First year” after the child’s birth, foster placement, or adoption means the timeframe beginning the day of the child’s birth, foster placement, or adoption and ending the day before the child’s first birthday or first anniversary of the foster placement or adoption.

(15) “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.

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

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

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

(B) A dentist;

(C) A direct entry midwife;

(D) A naturopath;

(E) A nurse practitioner;

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

(G) An optometrist;

(H) A physician;

(I) A physician’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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(23) “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.

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

(25) “Willful false statement” means any occurrence where:

- (a) A claimant or employer makes a statement or submits information that is false;
- (b) The claimant or employer knew or should have known the statement or information was false when making or submitting it;
- (c) The statement or submission concerns a fact that is material to the rights and responsibilities of either the claimant or the employer under ORS chapter 657B; and
- (d) The claimant or employer made the statement or submitted the information with the intent that the department would rely on the statement or information when taking action.

(26) “Willful failure to report a material fact” means any occurrence where:

- (a) A claimant or employer omits or fails to disclose information;
- (b) The claimant or employer knew or should have known that the information should have been provided;
- (c) The information concerns a fact that is material to the rights and responsibilities of either the claimant or the employer under ORS chapter 657B; and
- (d) The claimant or employer omitted or did not disclose the information with the intent that the department would take action based on other information or a lack of information.

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

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

[Stat. Auth.: ORS 657B.090, 657B.120, 657B.340, Chapter 203 Oregon Laws 2023; Stats. Implemented: ORS 657B.010, 657B.090, 657B.120, Chapter 203 Oregon Laws 2023]

471-070-1250 – Benefits: Claimant Designated Representative

(1) A claimant may designate as a claimant designated representative an individual 18 years or older, who is authorized by the claimant to represent the claimant by exchanging information with the Paid Family and Medical Leave Insurance (PFMLI) program on behalf of the claimant. The claimant designated representative is authorized to provide and receive the following with the PFMLI program:

- (a) Information submitted by the claimant;
- (b) Information about PFMLI benefits that the claimant has received or will receive;
- (c) Information about pending or issued decisions made on the claimant's PFMLI claim; and
- (d) Information provided by a claimant designated representative on behalf of the claimant.

(2) To designate a claimant designated representative, the claimant must complete and submit the department's Claimant Designated Representative Form, electronically or by mail. In order for the representative to be approved by the department to exchange information, the form must be complete. At a minimum, it must include the following:

- (a) Claimant information:
 - (A) First and last name,
 - (B) Social Security Number or Individual Taxpayer Identification Number,
 - (C) Date of birth; and
 - (D) Contact information, including mailing address and telephone number.
- (b) Claimant designated representative information:
 - (A) First and last name,
 - (B) Relationship to claimant; and
 - (C) Contact information, including mailing address, telephone number, and email address;
- (c) Authorization beginning and end dates.
- (d) A signed and dated attestation by the claimant declaring that the claimant understands the purpose of the authorization, that the claimant has not been pressured to sign the authorization, and that the designation can be revoked at any time; and
- (e) A signed and dated attestation by the claimant designated representative declaring that they are acting in the best interest of the claimant.

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

(4) The authorization will automatically end on the last day of the claimant's current benefit year. If no valid claim is established, authorization will end 30 days after the claimant's signature date on the Claimant Designated Representative Form.

(5) The claimant designated representative must maintain the confidentiality of any information they receive from the department on behalf of the claimant. The department is not responsible for any disclosure of the claimant's information by the claimant designated representative.

(6) If the claimant designated representative provides inaccurate information to the department, the claimant is responsible for any resulting delay, denial, overpayment, or disqualification of PFMLI benefits.

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

471-070-1330 – Benefits: Job Protection [Amended]

- (1) The protections provided under ORS 657B.060 and this rule apply only to an eligible employee who was employed by the employer for at least 90 consecutive calendar days prior to taking Paid Family and Medical Leave Insurance (PFMLI) leave. 90 consecutive calendar days include the days the employee is not scheduled to work but is still employed with the employer.
- (2) An employer must restore an employee returning from PFMLI leave to the employee's former position, if the position still exists, even if the former position has been filled by a replacement worker during the employee's PFMLI leave. The employee's former position is the position held by the employee at the time PFMLI leave commenced, regardless of whether the job has been renamed or reclassified. (For example, a delivery driver must be returned to the same route, at the same rate of pay and benefits, driving the same type of truck, delivering the same type of goods, on the same shift, and working from the same location as when the driver started PFMLI leave.)
- (3) For the purposes of this rule, any worker hired or reassigned during an eligible employee's leave to perform the same work in the same position that the eligible employee held before the leave was taken is a replacement worker. If the eligible employee on PFMLI leave notifies the employer that they are ready to return to work earlier than anticipated, the employer must give the eligible employee the opportunity to work any hours that the replacement worker would otherwise have been scheduled to work beginning on the second business day following the date the eligible employee notified the employer they were ready to end their leave and return to work.
- (4) Notwithstanding section (2) of this rule, an employee is not entitled to return to the former position if the employee would have been terminated or reassigned from their current position to another position if PFMLI leave had not been taken.
- (5) Subject to section (6)(d) of this rule, if the position held by the employee at the time PFMLI leave began has been eliminated, and not merely renamed or reclassified, then:
- (a) If the employer is a large employer as defined in OAR 471-070-3150, the employer must restore the employee to any available, equivalent position for which the employee is qualified, within a 50 mile radius of the employee's former job site.
 - (A) An available position is a position that is vacant or not permanently filled.
 - (B) An equivalent position is a position that is virtually identical to the employee's former position in as many aspects as possible in terms of employment benefits and pay, and similar working conditions, including privileges, perks, and status. It must involve substantially the same or similar duties and responsibilities, which must entail equivalent skill, effort, responsibility, and authority.
 - (C) If an equivalent position is available at multiple job sites, and the employee is not able to return to the employee's former position because it no longer exists, the employer shall first offer the employee the position at the job site closest to the employee's former job site.
 - (b) If the employer is a small employer as defined in OAR 471-070-3150, the employer may, at the employer's discretion and based on business necessity, restore the employee to a different position. The different position must offer the same employment benefits and pay, and similar working conditions, including privileges, perks, and status as the employee's former position and must have similar job duties and responsibilities as the employee's former position.

(6)

- (a) Unless the terms of a collective bargaining agreement, other employment agreement, or the employer's policy provides otherwise, an employee on PFMLI leave is not entitled to accrue employment benefits during a period of leave. Employment benefits include but are not limited to: accrual of seniority, production bonuses, or other non-health-care-related benefits that would have accrued if the employee was working;
- (b) Benefits an employee was entitled to and that accrued prior to starting PFMLI leave, including, but not limited to seniority or pension rights, must be restored in full upon the employee's return to work. The benefits do not have to be restored if such benefits have been eliminated or changed for all similarly situated employees;
- (c) An employee is not entitled to a right, benefit, or position of employment other than a right, benefit, or position to which the employee would have been entitled to if the employee had not taken PFMLI leave; and
- (d) An employee is subject to layoff on the same terms or under the same conditions as similarly situated employees who have not taken PFMLI leave.

(7) During any PFMLI leave, an employer must maintain any health care benefits the employee had prior to taking such leave, for the duration of the leave, as if the employee had maintained their employment continuously during the period of leave.

- (a) An employer continuing health care insurance coverage for an employee on PFMLI leave may require that the employee pay only the same share of premium costs during the leave that the employee would have been required to pay if not on leave.
- (b) If an employee cannot or will not pay their share of the premium costs, the employer may elect to discontinue health care benefit coverage, unless doing so would render the employer unable to restore the employee to full benefit coverage once the employee returns to work. If coverage lapses because an employee has not made required premium payments, upon the employee's return from PFMLI leave the employer must restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including being subject to any new preexisting condition waiting period, to wait for an open enrollment period, or to pass a medical examination to obtain reinstatement of coverage.
- (c) If the employer pays (directly or indirectly, voluntarily or as required by state or federal statute) any part of the employee's share of health or other insurance premium while an employee is on PFMLI leave, the employer may deduct from their pay the employee's share of health or other insurance premiums paid by the employer until the amount is repaid. The employer may deduct up to 10 percent of the employee's gross pay each pay period after the employee returns to work until the health or other insurance premium amounts paid by the employer are repaid.
- (d) If an employee fails to return to work — unless the failure to return to work is because of a serious health condition or safe leave for which the employee would be entitled to PFMLI leave or another circumstance beyond the employee's control — the employer may recover the employee's share of the health insurance premiums paid by the employer. The employer may use any legal means to collect the amount owed for the employee's share of health insurance premiums paid by the employer, including deducting the amount from the employee's final paycheck.

(8) An employer may require an employee to follow the employer's established leave policy regarding reporting to the employer any changes to the employee's leave status.

(9) If an employee gives clear notice of intent to not to return to work from PFMLI leave, except as required by other state or federal law, the employer's obligations under ORS chapter 657B to restore the employee's position and maintain any health care benefits cease on the date the notice is given to the employer.

(10) It is an unlawful employment practice to discriminate against an eligible employee who has invoked any provision of ORS chapter 657B or this rule. An employee who alleges a violation of any provision of ORS 657B.060 or this rule may bring a civil action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820 unless a remedy is provided under ORS 657B.410 or applicable administrative rules.

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

471-070-3790 – Assistance Grants: Successor in Interest Rights and Responsibilities

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

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

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

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

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

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

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

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

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

[Stat. Auth.: ORS 657B.200; Stats. Implemented: ORS 657B.200, 657B.320]

CONFIDENTIALITY

ORS 657B.400 establishes the basis for confidentiality with Paid Leave Oregon. The new confidentiality rules below outline the standards by which Paid Leave Oregon must protect employee and employer privacy and information.

471-070-0900 – Confidentiality: Definitions

(1) “Customer information” means information related to an individual or a business entity seeking services from the Paid Family and Medical Leave Insurance (PFMLI) program, and includes.

- (a) Data that pertains to an individual business or person;
- (b) Aggregations of data about businesses in which there are fewer than three businesses or in which any one business accounts for more than 80 percent of the aggregated data; and
- (c) Aggregations of data about persons in which there are fewer than three persons.

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

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

471-070-0910 – Confidentiality: Information Collection

(1) The Paid Family and Medical Leave Insurance (PFMLI) program shall only collect customer information to administer ORS chapter 657B.

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

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

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

471-070-0920 – Confidentiality: Responsibility of Paid Family and Medical Leave Insurance Staff

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

(2) PFMLI staff and any other entities or individuals with access to PFMLI information are authorized to access confidential customer information only on a “need to know” basis, as needed to perform official duties.

(3) PFMLI may charge a reasonable fee to reimburse for the cost of providing records, including the cost of preparing the information and costs associated with implementing and maintaining written disclosure agreements.

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

471-070-0930 – Confidentiality: Permissible Disclosures

In addition to the disclosure described in ORS 657B.400(2)-(4), the director may, at the director’s discretion, disclose otherwise confidential information:

- (1) To a claimant, regarding details specific to the claimant's benefits claim.
- (2) To an authorized claimant designated representative, as described in and subject to the requirements described in OAR 471-070-1250.
- (3) To the claimant's current or prior employer or the employer's representative. Information specific to employer contributions may be disclosed to the employer or the employer's representative. The department will only share with the employers a claimant's benefit claims information necessary to properly administer the claim (including, but not limited to, the leave dates and duration of leave) unless the department has the express consent of the claimant or the claimant's designated representative, or unless otherwise required by law.
- (4) To the Administrative Law Judges of the Office of Administrative Hearings, as necessary, once a request for hearing has been filed and to prepare for a contested case proceeding under ORS 183.482.

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