

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 471
EMPLOYMENT DEPARTMENT

FILED
10/29/2021 8:18 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Definition and administrative provisions related to contributions for PFMLI program

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/20/2021 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.

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Filed By:
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HEARING(S)

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

DATE: 11/30/2021
TIME: 9:00 AM - 11:00 AM
OFFICER: Anne Friend
ADDRESS: Virtual
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DATE: 12/09/2021
TIME: 4:00 PM - 6:00 PM
OFFICER: Anne Friend
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SPECIAL INSTRUCTIONS:
Registration Instructions will be on our website

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NEED FOR THE RULE(S)

Need for Rule(s): Why do we need this rule?

In order to implement and administer the Paid Family and Medical Leave Insurance (PFMLI) Division, the Oregon Employment Department is promulgating permanent administrative rules to in accordance with ORS chapter 657B.

Racial Equity Impact:

By providing paid and job protected leave, PFMLI will allow those who do not currently have access to and cannot afford to care for themselves or their ailing family members 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 wages, contributions and penalties the PFMLI Division looked at the racial equity impact on these administrative rules 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(s), policy, or decision and who will benefit from or be burdened?

In drafting the administrative rules related to wages, contributions and penalties, the PFMLI Division has been careful to ensure that we are thinking through the racial inequity that may occur. Due to historic exclusion and racial disparities, it is likely that Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander and other people of color and their businesses, experience discrimination and other barriers in learning about requirements of, and access to, governmental and other programs, which is a risk as PFMLI is implemented. Also based on history, the PFMLI Division is aware that penalties could disproportionately fall on Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander and other people of color owned businesses as business owners are less likely to have staff resources dedicated to regulatory compliance, such as a human resource department. The PFMLI Division is also aware that the combined payroll reporting process may present barriers for non-English speaking businesses. Lastly, racial equity disparities may arise around the misclassification of workers as independent contractors versus employees – this negatively impacts a person's ability to take needed leave as well as life-time earnings, savings and eventual ability to retire.

Are there strategies to mitigate the unintended consequences?

The PFMLI Division places a high priority on developing and maintaining a diverse and inclusive culture and ensuring there is equitable access to understanding and using the program for businesses paying PFMLI contributions. The PFMLI Division's goal is to ensure that there is equity for businesses and individuals as we implement PFMLI for Oregonians. The PFMLI Division will make the information, tools and processes accessible. The PFMLI Division is working with our technology vendor to ensure the registration process for businesses is accessible and is available in multiple languages, as well as having a paper process and staff ready to assist in the reporting and ongoing requirements. The PFMLI Division is putting information and mechanisms in place to ensure accountability and mitigate disparities. We will be creating Frequently Asked Questions, video instructions, guides that will address the Oregon combined payroll reporting process and other tools to expand awareness and education making all materials available in multiple languages. Additionally, the PFMLI Division will be conducting focused outreach and engagement activities from now until implementation to marginalized communities, including English as a Second Language (ESL), Black, Indigenous, Latin/o/a/x, Asian and Pacific Islander communities. Finally, the Division will be monitoring a number of data elements, developing Key Performance Measures (KPMs), and reporting out regularly on equity in the PFMLI program ongoing. The department will also continuously explore ways to make changes within the policy and technology solution should disparities begin to arise in the program.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

PFMLI statute - ORS chapter 657B (https://www.oregonlegislature.gov/bills_laws/ors/ors657B.html);
Unemployment Insurance statute – ORS chapter 657 (https://www.oregonlegislature.gov/bills_laws/ors/ors657.html);
Oregon Employment Department Unemployment Insurance Taxes administrative rules, OAR Chapter 471, Division 31 (<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=2338>)

FISCAL AND ECONOMIC IMPACT:

Any fiscal or economic impact 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)):

ORS 657B requires state agencies, local governments and other public bodies to withhold from their employees' wages PFMLI contributions and to remit payment of the contributions quarterly on the Oregon combined quarterly payroll report that is submitted to the Oregon Employment Department. The administrative rules for PFMLI contributions have little to no effect on state agencies, local governments and other public bodies as the statute creates the requirements.

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% of the state's workforce. Oregon has approximately 120,000 small businesses with fewer than 25 employees that employ 24.19% of the state's workforce. Since all, or nearly all, employees are eligible for PFMLI benefits, all, or nearly all, small business employers will be subject to these administrative rules.*

*Based on from Unemployment Insurance 2020 Tax Wage file.

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

Approximately 2,500 agriculture employers file the Oregon combined payroll report annually. Based on the administrative rule, agriculture employers who currently file annually will need to file the Oregon combined payroll report quarterly to report PFMLI contributions. All other types of employers already file the Oregon combined payroll report quarterly, and will also be required by statute to report PFMLI contributions quarterly. The projected amount of hours to report the PFMLI wages quarterly instead of annually is four hours every quarter or 16 hours for the entire year. Based on 2021 payroll company costs, the projected cost of 16 hours to complete the Oregon combined payroll report quarterly is \$29 to \$150 per hour* for a total of \$464 to \$2,400 depending on the type of service used.

* <https://quickbooks.intuit.com/r/payroll/cost-of-payroll/>

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

Increased administration is required for the agriculture employers who currently file their Oregon combined payroll report annually as the requirement for PFMLI is to file the Oregon combined payroll report quarterly.

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), is statutorily required to have a four members represent employers, with 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 contributions workgroup that consisted of 14 members appointed by the PFMLI Division director. There are three PFMLI Advisory Committee members on the workgroup. The purpose of the contributions workgroup is to engage with representatives and stakeholders about specific aspects relating to contributions. The workgroup utilized the information and insights gathered in the course of its work to assist the PFMLI Advisory Committee in developing recommendations to provide the department as they relate to the implementation of the program and the administrative rules drafted for contributions. The workgroup met 12 times over the course of a year, the first meeting occurred in June 2020 and the last meeting occurred in January 2021.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

471-070-0415, 471-070-0420, 471-070-0425, 471-070-0430, 471-070-0435, 471-070-0440, 471-070-0445, 471-070-0450, 471-070-0455, 471-070-0465, 471-070-0550, 471-070-0850, 471-070-3000, 471-070-3010, 471-070-3020, 471-070-3030, 471-070-3310, 471-070-3320, 471-070-5240, 471-070-8520, 471-070-8530

ADOPT: 471-070-0415

RULE SUMMARY: Clarifies that incidental expenses of employees are not wages as defined in ORS 657B.010(26) for the Paid Family and Medical Leave Insurance program and clarifies record keeping requirements for such expenses.

CHANGES TO RULE:

471-070-0415

Wages: Incidental Expenses

(1) Wages do not include:

(a) Moneys paid to employees to reimburse them for meal expenses in the event employees are required to perform work after their regular office hours; and

(b) Amounts paid to employees to reimburse them for traveling or other expenses actually incurred by them while performing service for the employer.

(2) No deduction may be made under this section unless an accurate and detailed expense account is prepared by or with the knowledge of the employee and submitted to the employer in such form as will meet the requirements of the Internal Revenue Service and unless such account is preserved by the employer for a period of three calendar years.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.010

ADOPT: 471-070-0420

RULE SUMMARY: Clarifies that an individual receiving a pension from a former employer is not an employee as defined in ORS 657B.010(13) and that pensions are not wages as defined in ORS 657B.010(26) for the Paid Family and Medical Leave Insurance program.

CHANGES TO RULE:

471-070-0420

Wages: Pensions

An individual receiving a pension from a former employer shall not be considered an employee of that employer solely because of the pension. The amount of the pension is not wages

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.010

ADOPT: 471-070-0425

RULE SUMMARY: Clarifies that jury pay is not wages as defined in ORS 657B.010(26) for the Paid Family and Medical Leave Insurance program.

CHANGES TO RULE:

471-070-0425

Wages: Jury Pay

Compensation, reimbursement, fees, lodging, meals or other remuneration paid or provided to an individual for services performed as a juror are not wages.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.010

ADOPT: 471-070-0430

RULE SUMMARY: Clarifies that bonuses, fees, and prizes are wages as defined in ORS 657B.010(26) for the Paid Family and Medical Leave Insurance (PFMLI) program, and clarifies that the PFMLI contribution rate applies to such payments.

CHANGES TO RULE:

471-070-0430

Wages: Bonuses, Fees, and Prizes

Bonuses, fees and prizes are wages if paid or given by the employer to an employee as compensation, reward, or added remuneration for services. Bonuses, fees, and prizes shall be included in the payroll of the employer at the time they are paid. A bonus, fee, or prize paid or received during a calendar year shall be wages earned during the calendar year paid, and the Paid Family and Medical Leave Insurance contribution rate for such year shall be applicable to any bonus, fee, or prize constituting wages.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.010

ADOPT: 471-070-0435

RULE SUMMARY: Clarifies that the continuation of wages paid during a disability period are wages as defined in ORS 657B.010(26) for the Paid Family and Medical Leave Insurance (PFMLI) program. Lump sum payments to compensate an employee for an accident sustained in the course of employment are not wages as defined in ORS 657B.010(26) for PFMLI.

CHANGES TO RULE:

471-070-0435

Wages: Disability Payments and Accident Compensation

(1) When an employer continues the payment of wages during a disability period, or pays to the employee all or part of the difference between benefits or compensation received from an insurance carrier or State Accident Insurance Fund and the employee's regular or usual wage, the sums so paid by the employer are wages unless excluded from the term wages by ORS 657.115 and 657.125. ¶

(2) Lump sum or other special payments to compensate an employee for an accident sustained in the course of employment are not wages.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.010

ADOPT: 471-070-0440

RULE SUMMARY: Clarifies that gifts are not wages as defined in ORS 657B.010(26) for the Paid Family and Medical Leave Insurance program.

CHANGES TO RULE:

471-070-0440

Wages: Gifts

(1) Gifts, other than tips or gratuities, received by an employee during the course of employment from persons other than their employer are not wages. ¶

(2) The director reserves the right, based on the facts in each particular case, to determine whether or not the gift is in fact a bonus, fee, or prize given as a reward or added remuneration for services rendered.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.010

ADOPT: 471-070-0445

RULE SUMMARY: Clarifies that wages, as defined in ORS 657B.010(26) for the Paid Family and Medical Leave Insurance program, includes, but is not limited to certain remuneration types.

CHANGES TO RULE:

471-070-0445

Wages: Remuneration Types

Wages include, but are not limited to:

(1) Commission or a guaranteed wage;

(2) Compensatory pay;

(3) Dismissal or separation allowances;

(4) Holiday pay;

(5) Paid time off;

(6) Sick pay;

(7) Stand-by pay;

(8) Tips; and

(9) Vacation pay.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.010

ADOPT: 471-070-0450

RULE SUMMARY: Clarifies that remuneration other than cash is considered wages as defined in ORS 657B.010(26) for the Paid Family and Medical Leave Insurance program, except for agricultural labor, domestic service, and other specified exemptions. Specifies how the cash value of such payments is determined.

CHANGES TO RULE:

471-070-0450

Wages: Remuneration Other than Cash

(1) Subject to the provisions of section (2) of this rule, wages include the cash value of all remuneration paid in any medium other than cash, except for agricultural labor and domestic service and the specific exemptions enumerated in ORS 657.115 through 657.140.

(2) Board, lodging, services, facilities or privileges furnished by an employer shall be considered remuneration paid for services performed by an employee unless it appears that furnishing of the same was not required by the terms of the contract of hire; written or oral, express or implied; and that the value thereof was not a material factor in the determination by either party of the amount of any cash remuneration payable for such services.

(3) The cash value of noncash remuneration shall be either:

(a) The amount of noncash remuneration which is carried on the employer's payroll, provided such amount is comparable to values prevailing in the community; or

(b) An amount determined by the director when the value of non-cash remuneration is not carried on the employer's payroll. In such determination, board furnished by an employer as remuneration for services shall have a minimum value of 30 percent of the standard meal per diem rates for the 48 continental United States and the District of Columbia established by the U.S General Services Administration (CONUS meal rate) per day. The rate per day will be rounded to the nearest dollar. The rate per month will be 30 times the rounded daily rate. If room is furnished in addition to board, no additional value will ordinarily be placed upon the room. If room and board are furnished at hotels, resorts or lodges, or if a room only, an apartment, a house or any other consideration is provided, the value for tax purposes will be the fair market value thereof.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.010

ADOPT: 471-070-0455

RULE SUMMARY: Clarifies that employee benefits that are excluded in ORS 657.115 and paid through a cafeteria plan are not wages as defined in ORS 657B.010(26) for the Paid Family and Medical Leave Insurance program, even if paid through a payroll deduction.

CHANGES TO RULE:

471-070-0455

Wages: Cafeteria Plans

Employee benefits paid through a cafeteria plan, as defined in the Internal Revenue Code Section 125, are not wages if listed as excluded in ORS 657.115, even if paid through a payroll deduction.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.010

ADOPT: 471-070-0465

RULE SUMMARY: Clarifies that corporate officer and shareholder dividends are wages as defined in ORS 657B.010(26) for the Paid Family and Medical Leave Insurance program to the extent that those payments are reasonable compensation for services performed for the corporation.

CHANGES TO RULE:

471-070-0465

Wages: Corporate Officer and Shareholder Dividends

Remuneration means and includes any payments, which includes dividends paid to a corporate officer or shareholder, are wages to the extent that those payments are reasonable compensation for services performed for the corporation.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.010

ADOPT: 471-070-0550

RULE SUMMARY: Establishes which employees are designated by the director as having the authority to act for and in the name of the director in matters related to Paid Family and Medical Leave Insurance.

CHANGES TO RULE:

471-070-0550

Continuous Jurisdiction

(1) In accordance with the provisions of ORS 657B.110, the director designates the following employees to have the authority to act for and in the name of the director in matters of reconsideration and correction of any final decision under ORS chapter 657B: ¶

(a) Deputy Director;¶

(b) Division Director for Paid Family and Medical Leave Insurance;¶

(c) Deputy Division Director for Paid Family and Medical Leave Insurance; and¶

(d) Any employee authorized and directed by individuals identified in paragraphs (a) through (c) of this section who, in the course of their assigned duties, are tasked with the writing, review, and reconsideration or correction of decisions issued by the Paid Family and Medical Leave Insurance program.¶

(2) If the director finds, as new facts not previously known to the director or the designees specified in section (1) of this rule, that a claimant or an employing unit has suffered or would suffer substantial adverse effect because of:¶

(a) Misinformation provided to such party by an employee of the Employment Department; or¶

(b) Improper application of Employment Department Law or administrative rules by an employee of the Employment Department, the director, or one of the designees specified in section (1) of this rule, may take appropriate action to restore to the injured party all rights and benefits which were improperly denied.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.010

ADOPT: 471-070-0850

RULE SUMMARY: Establishes provisions related to returns, statements, and other documents or reports required to be filed for the Paid Family and Medical Leave Insurance program using electronic filing.

CHANGES TO RULE:

471-070-0850

Electronic Filing

(1) Any return, statement, other document or report required to be filed under any provision of the laws administered by the department may be filed in electronic (as defined in ORS chapter 84) form if an authorized electronic method of filing such return, statement, other document or report is made available by the department.

(2) A return, statement, other document or report that is filed in electronic form may not be denied legal effect or enforceability solely because it is in electronic form.

(3) A return, statement, other document or report that is filed in electronic form is deemed to be filed and received on the date actually received by the department or on the date stated in the electronic acknowledgment of receipt issued by the department.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.340, ORS 84.052

ADOPT: 471-070-3000

RULE SUMMARY: Defines terms used to regulate the Paid Family and Medical Leave Insurance Division's contributions program.

CHANGES TO RULE:

471-070-3000

Contributions: Definitions

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

(2) "Maximum wage amount" means the maximum employee wages per employer subject to PFMLI contributions per calendar year.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.150, 657B.300

ADOPT: 471-070-3010

RULE SUMMARY: Establishes a method for determining the contribution rate, the period in which the contribution rate will be in effect, and a method for determining the maximum wage amount for the Paid Family and Medical Leave Insurance program

CHANGES TO RULE:

471-070-3010

Contributions: Method for Determining Contribution Rate and Maximum Wage Amount

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

(a) PFMLI Trust Fund balance on August 31 of each year;¶

(b) Estimated number of Oregon employees and their estimated PFMLI subject wages;¶

(c) Estimated number of employers that employ on average 25 or more employees, as described in OAR 471-070-3160;¶

(d) Estimated number of employers that employ on average fewer than 25 employees, as described in OAR 471-070-3160, and the estimated number of those employers that commit to pay the employer contributions in accordance with OAR 471-070-3750;¶

(e) Estimated number of tribal governments electing coverage under ORS 657B.130(4) and the estimated number of employees employed by tribal governments that have elected coverage;¶

(f) Estimated number of self-employed individuals electing coverage under ORS 657B.130;¶

(g) Maximum wage amount;¶

(h) Average weekly wage as defined in ORS 657B.010(2);¶

(i) Estimated revenue that will be deposited into the PFMLI Trust Fund through the end of the next calendar year, including projections of:¶

(A) Contributions paid;¶

(B) Penalties and interest paid;¶

(C) Equivalent plan application fees paid; and¶

(D) Interest accrued on the PFMLI Trust Fund;¶

(j) Estimated expenditures from the PFMLI Trust Fund through the end of the next calendar year, including projections on:¶

(A) Benefits paid;¶

(B) Administrative costs; ¶

(C) Assistance grants paid; and¶

(D) Amount reimbursed to the General Fund.¶

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

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

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

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.150

ADOPT: 471-070-3020

RULE SUMMARY: Clarifies how the Paid Family and Medical Leave Insurance maximum wage amount will be applied for employees with multiple employers.

CHANGES TO RULE:

471-070-3020

Contributions: Maximum Wage Amount

(1) Wages are subject to contributions up to the maximum wage amount earned per employer each calendar year.

¶

(2) If an employee works for multiple employers, each employer must:¶

(a) Withhold and remit employee contributions for wages earned up to the maximum wage amount paid by the employer; and¶

(b) Pay employer contributions on wages earned up to the maximum wage amount paid by the employer, when applicable.¶

Example 1: An engineer works for a hotel chain from January to August 2026 and earns \$130,000. The hotel chain will withhold and remit employee contributions and pays employer contributions on the engineer's total wages of \$130,000. The engineer then works for a school district from September to December 2026 and earns \$60,000. The school district will withhold and remit employee contributions and pays employer contributions on the engineer's total wages of \$60,000, without consideration of previous wages paid by the hotel chain.¶

Example 2: An attorney works full-time for a law firm and part-time for a marketing company throughout 2023. The maximum wage amount for 2023 is \$132,900. The attorney earns \$165,000 from the law firm. The law firm will withhold and remit employee contributions and pays employer contributions on \$132,900 of the attorney's wages. After contributions are withheld and paid on \$132,900 of wages, the law firm stops withholding and paying contributions on the attorney's wages. The attorney earns \$40,000 wages from the marketing company. The marketing company will withhold and remit employee contributions and pays employer contributions on the attorney's earnings of \$40,000, without consideration of the wages paid by the law firm throughout the year.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.150

RULE SUMMARY: Clarifies the timing of Paid Family and Medical Leave Insurance combined payroll reporting for all employers and establishes that certain domestic employers may file annually.

CHANGES TO RULE:

471-070-3030

Contributions: Wage Reporting and Contribution Payments

(1) Employers must file on the Oregon Quarterly Combined Tax Report detailing on the Paid Family and Medical Leave Insurance (PFMLI) portion all PFMLI wages earned, employee PFMLI contributions collected, and employer PFMLI contributions due, except those employers listed in section (2) of this rule and in OAR 471-070-2030. The quarterly report is due on or before the last day of the month following the close of the calendar quarter.¶

(2) Domestic employers may file an Oregon Combined Tax Report annually detailing the PFMLI wages earned and employee PFMLI contributions collected if they have on average less than 25 employees as calculated under OAR 471-070-3150. The annual report is due on or before the last day of January of the following year.¶

(3) Contribution payments are due quarterly and payable for each calendar quarter with respect to PFMLI wages paid within that calendar quarter unless specified otherwise under section (4) of this rule. Quarterly contributions are due and payable on or before the last day of the month following the close of the calendar quarter.¶

(4) Contribution payments, from domestic employers who file annually, are payable for each calendar year with respect to wages paid within that calendar year. Annual contributions shall be due and payable on or before the last day of January of the following year. ¶

(5) When the due date falls on a Saturday, Sunday or a legal holiday, the report and payment is due on the next business day following the due date.¶

(6) If an employer ceases to exist; discontinues operations or business; or sells out, exchanges or otherwise disposes of the business or substantially all of its assets, any contribution payable under this section is immediately due and payable, and the employer shall pay the contributions due within 10 calendar days.¶

(7) An employer who fails to pay timely contributions as required by sections (3) or (4) of this rule is delinquent. If a delinquency continues following the issuance of a notice of delinquency to the employer's last-known address as shown in the department's records and the department may require the employer to report and pay contributions on a monthly basis until all delinquent contributions have been paid in full, along with any currently due contributions, and the employer receives approval to begin making quarterly reports and pay contributions as provided in this rule.¶

(8) If an employer is required to pay contributions monthly, the monthly contributions are due on or before the last day of the month following the month for which the contributions are payable. If the contributions are not paid by the due date, the employer is delinquent.¶

(9) Any employer that is delinquent in the payment of contributions as provided in this rule is subject to the penalties as specified in ORS 657B.320, and further may be assessed an additional penalty as provided in ORS 657B.910. ¶

(10) Employers are responsible for the payment of penalties for delinquent contributions. Employers are prohibited from withholding funds from employees for the purposes of paying penalties or applying employee contributions toward the payment of penalties. ¶

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

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

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.150, 293.660

ADOPT: 471-070-3310

RULE SUMMARY: Dictates the order in which payments made to the Paid Family and Medical Leave Insurance Division are applied.

CHANGES TO RULE:

471-070-3310

Contributions: Application of Payments

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

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

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

(a) Undesignated Payments:

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

(i) Penalties;

(ii) Interest; and then

(iii) PFMLI Contributions.

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

(i) Legal Fees;

(ii) Penalties;

(iii) Interest; and then

(iv) PFMLI Contributions.

(b) Designated Payments:

(A) Legal Fees;

(B) Penalties;

(C) Interest; and then

(D) PFMLI Contributions.

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

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

(6) The employees listed in OAR 471-070-0550 may act on behalf of the director for purposes of sections (4) and (5) of this rule.

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

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

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.150, 657B.120, 657B.320, 657B.430, 657B.910

ADOPT: 471-070-3320

RULE SUMMARY: Clarifies that, under certain circumstances, the Paid Family and Medical Leave Insurance Director, or an authorized representative, may demand from an employer a deposit, bond, or an irrevocable letter of credit issued by an insured institution.

CHANGES TO RULE:

471-070-3320

Contributions: Deposit, Bond, or Letter of Credit

(1) For the purposes of ORS 657B.190, the director or an authorized representative may require a deposit, bond or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, when the director or an authorized representative finds it necessary for the protection of the Paid Family and Medical Leave Insurance (PFMLI) Fund established under ORS 657B.430.¶

(2) The determination that a deposit, bond or irrevocable letter of credit is necessary is in the director or an authorized representative's sole discretion. Circumstances that will require a deposit, bond or irrevocable letter of credit include, but are not limited to, circumstances where an employer who currently employs employees subject to ORS chapter 657B:¶

(a) Is currently delinquent in filing PFMLI reports or payment of PFMLI contributions; or¶

(b) Was previously delinquent in filing PFMLI reports or payment of PFMLI contributions.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.190, 657B.430

ADOPT: 471-070-5240

RULE SUMMARY: Clarifies the director of the Oregon Employment Department may, in certain circumstances, agree to compromise the amount of Paid Family and Medical Leave Insurance contributions due from an employer.

CHANGES TO RULE:

471-070-5240

Compromise of Amount Due

It shall be the policy of the director to compromise the amount due from an employer or former employer with a delinquent account pursuant to the provisions of ORS 657B.320(8) where it appears that such action would be in the best interests of all parties involved and the statutory criteria for a settlement have been met.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.320

ADOPT: 471-070-8520

RULE SUMMARY: Clarifies when the one-percent penalty will be applied and the ability of the employer to request a waiver of the penalty for the Paid Family and Medical Leave Insurance program.

CHANGES TO RULE:

471-070-8520

One-Percent Penalty

(1) If an employer has failed to file all required reports or pay all required contributions for the calendar year, the department shall assess the penalty authorized by ORS 657B.910 on the Paid Family and Medical Leave Insurance (PFMLI) subject wages. The department shall send notice of the assessment of such penalty to the employer's last known address as shown in the department's records on or before October 20 of the year. The penalty shall become final on November 10 immediately following the assessment.¶

(2) On or after the date of the assessment, but prior to November 10 immediately following the assessment, the employer may request waiver of the penalty based on good cause as defined in OAR 471-070-8530.¶

(3) If an employer makes a request for waiver of the penalty within the time prescribed in section (2) of this rule, the department shall make a decision, either granting or denying the waiver, and mail notice of the decision to the employer's last known address as shown in the department's records. If, prior to November 10 immediately following the assessment, the department determines that the employer had good cause for the failure to file all reports or pay all contributions due by September 1, the department shall grant the request for waiver and remove the penalty from the employer's account. If the employer fails to establish good cause prior to November 10 immediately following the assessment, the department shall deny the request for waiver. If the request for waiver is denied, the department shall notify the employer that a request for a contested case hearing may be filed within 20 days after the date that the penalty waiver decision is sent to the employer.¶

(4) Hearings held and administrative law judge decisions issued pursuant to section (3) of this rule shall be in accordance with the provisions of chapter 137, division 3 of the Oregon Administrative Rules that have been adopted for the PFMLI program.¶

(5) Judicial review of administrative law judge decisions issued pursuant to this rule shall be as provided for review of orders in contested cases under ORS 183.310 through 183.550. The director is designated as a party for purposes of hearings under this rule.¶

(6) Upon motion of the director or upon application of an interested employer, the director may reconsider a penalty imposed under ORS 657B.910 irrespective of whether it has become final:¶

(a) Such reconsideration shall be restricted to penalties resulting from clerical errors or errors of computation and may include a new decision upon any grounds or issues not previously ruled upon or new facts not previously known to the director:¶

(b) A new decision issued after reconsideration shall be subject to hearing and judicial review in accordance with this rule.¶

(7) A request for waiver of the penalty for good cause must be in writing. The date of any request for waiver under this rule shall be:¶

(a) The postmarked date on the request, if mailed; ¶

(b) The date specified in OAR 471-070-0850, if electronically filed; or¶

(c) In the absence of a postmark, submittal date or machine imprinted date, the most probable date of mailing as determined by the director.¶

(8) The employees listed in OAR 471-070-0550 may act on behalf of the director for the purposes of sections (1), (2) and (3) of this rule.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.910

ADOPT: 471-070-8530

RULE SUMMARY: Clarifies when the Paid Family and Medical Leave Insurance (PFMLI) Division will find an employer had "good cause" for failure to file combined payroll reports or pay PFMLI contributions.

CHANGES TO RULE:

471-070-8530

Good Cause for Failure to File Reports or Pay Contributions

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

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

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

(b) Filed the required report or paid the contributions due within seven days after the date determined by the director to be the date the factors or circumstances causing the delay ceased to exist; ¶

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

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

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

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

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.910, ORS 657B.920