

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 8:05 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Outreach plan for the Paid Family and Medical Leave Insurance Division

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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875 Union Street NE
Director's Office
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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: 11/30/2021
TIME: 9:00 AM - 11:00 AM
OFFICER: Anne Friend
ADDRESS: Virtual
Oregon Employment Department
Salem, OR 97311

DATE: 12/09/2021
TIME: 4:00 PM - 6:00 PM
OFFICER: Anne Friend
ADDRESS: Virtual
Oregon Employment Department
Salem, OR 97311

SPECIAL INSTRUCTIONS:
Registration link 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 be transparent about the Paid Family and Medical Leave Insurance (PFMLI) Division's outreach plan and in accordance with ORS 657B.340(2).

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 to bond with a new child in their family to take that time off and still receive an income. We know that Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander and other people of color experience great disparities with regard to income, child care and health care. 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 developing our administrative rule for an outreach plan, the PFMLI Division looked at the racial equity impact on 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?

By drafting and adopting this administrative rule relating to the PFMLI Division's plan to inform and receive input from Oregon employers and employees, the intent is that the Division will get closer to achieving racial equity for historically marginalized communities, which include Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander and other people of color throughout the implementation of the PFMLI Division. It is critical to be mindful of the fact that historically, communities of color have lacked trust in government and state agencies due to systemic failures and mistreatment.

Based on research, the PFMLI Division believes many Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander and other people of color owned businesses may not know about the PFMLI Division due to many factors. For instance, many small businesses may not have a designated human resources employee, and that may impact communities facing racial injustice more acutely than others. National data is clear that, "compared to white workers, Latin/o/a/x workers are 66 percent more likely, Black workers are 83 percent more likely and Native Americans, Pacific Islander and multiracial workers 100 percent more likely to be unable to take leave when needed. Inability to afford unpaid leave is the most common reason for needing leave but not being able to take it, followed by fear of losing a job."* Access to and understanding of the leave laws for Black, Indigenous, Latin/o/a/x, Asian and Pacific Islander will not be achieved unless adequate outreach to these communities are achieved. Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander and other people of color are more likely to be denied access to leave and other benefits by employers more than their white counterparts.

*<https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/called-to-care-a-racially-just-recovery-demands-paid-family-and-medical-leave.pdf>

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 on ensuring there is equitable access to the PFMLI Division this begins with our hiring practices within OED and the PFMLI Division. We must prioritize engagement with marginalized communities during each step of the implementation and administration of the program, explore options to invest in community based organizations for continued outreach, be creative in how we deliver our messages – such as ads, Spanish radio, community navigator positions, work with other state agencies to maximize knowledge and support. By adopting an administrative rule specifically pertaining to outreach, the PFMLI Division demonstrates that the department is firmly committed to doing robust engagement throughout the implementation of the PFMLI Division as it pertains to racial bias and inequity experienced by Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander and other people of color in Oregon. Our goal is to implement a PFMLI system with equity centered in decision-making and with the feedback and input from Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander and other people of color.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

PFMLI statute - ORS chapter 657B (https://www.oregonlegislature.gov/bills_laws/ors/ors657B.html)

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 this new administrative rule.

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 rule for the PFMLI outreach plan has little to no effect on state agencies, local governments and other public bodies; however, these entities are employers and will participate in the PFMLI Division. The PFMLI Division will provide outreach to these entities and welcomes their input.

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.* It is the department's goal to have as many small businesses as possible participate in the PFMLI outreach plan.

*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:

There is little to no effect on those subject to the administrative rule as the administrative rule tends to be clarifying in nature and does not affect projected reporting, recordkeeping or other administrative activities or costs.

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

None known

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

The PFMLI Advisory Committee, which serves as an administrative Rulemaking Advisory Committee (RAC), is statutorily required to have a member who represents employers with fewer than 25 employees. The RAC and others representing small businesses were consulted when developing this administrative rule.

The PFMLI Division also formed a small employer workgroup that consisted of 14 members appointed by the PFMLI Division director. There are six PFMLI Advisory Committee members on the workgroup. The purpose of the small employer workgroup is to engage with representatives and stakeholders about specific aspects relating to small employers and assistance grants. 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 the department as they relate to the implementation of the program and the administrative rules drafted. The workgroup met nine times over the course of a year, the first meeting occurred in August 2020 and the last meeting occurred in February 2021.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

ADOPT: 471-070-0800

RULE SUMMARY: Clarifies the Paid Family and Medical Leave Insurance Division's outreach plan to inform and receive input from Oregon employers and eligible employees.

CHANGES TO RULE:

471-070-0800

Outreach Plan

(1) In order to both inform and receive input from Oregon employers and eligible employees about the Paid Family and Medical Leave Insurance (PFMLI) program, the department will establish an outreach and community engagement plan that:

(a) Identifies persons, groups and organizations impacted by the program;

(b) Includes analysis of stakeholder expectations, concerns and suggestions relating to program implementation and administration; and

(c) Develops strategies for engaging with stakeholders.

(2) Outreach and community engagement activities include but are not limited to:

(a) Public awareness campaigns;

(b) Community outreach events;

(c) Surveys;

(d) Focus groups;

(e) Town halls;

(f) Workshops; and

(g) Stakeholder interviews.

(3) The department is committed to collaborating with community-based, culturally specific, advocacy organizations serving historically marginalized and immigrant communities to ensure equitable access to information.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.340