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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 8:00 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Definition and administrative provisions related eligibility of self-employed for PFMLI 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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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: 11/30/2021  
TIME: 9:00 AM - 11:00 AM  
OFFICER: Anne Friend  
ADDRESS: Virtual  
Oregon Employment Department  
Salem, OR 97311

SPECIAL INSTRUCTIONS:  
Registration instructions will be on our website.

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

SPECIAL INSTRUCTIONS:  
Registration instructions will be on our website.

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 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. 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 much needed benefit underserved populations and help to combat the insidious impact of historical and current injustice and iniquity that families of color face when trying to access government programs. While developing our administrative rules for self-employed individuals, 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, policy, or decision and who will benefit from or be burdened?

The PFMLI Division anticipates that Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander and other people of color of self-employed individuals will be underrepresented as a percentage of the population who will enroll in the PFMLI Division due to historic exclusion and systemic inequity and lack of access to employment and benefit programs nationwide. This is one of a few programs, nationally and in Oregon, that allow self-employed individuals to participate. Therefore, in drafting these administrative rules, the PFMLI Division considered ways to ensure we are opening up access to the PFMLI Division equitably for underrepresented and marginalized self-employed individuals. Additionally, the PFMLI Division believes awareness of the self-employed part of the law and administrative rules as well as applying to participate could be a difficult process for non-English speaking or Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander and other people of color who are self-employed individuals.

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 to ensure there is equitable access to opt into the PFMLI Division for self-employed individuals. The PFMLI Division is working with our technology vendor to ensure the registration process for self-employed individuals is accessible and available in multiple language, as well as having a paper process and staff ready to assist in the registration and ongoing requirements. The PFMLI Division will be creating Frequently Asked Questions, video instructions, a self-employed guide and other tools and making all materials available in multiple languages positively impact racially disparate outcomes. Lastly, the PFMLI Division will be conducting outreach and engagement activities with marginalized communities from now until implementation.

The PFMLI Division has determined that in order to encourage greater self-employed participation in the PFMLI Division and equity for income and access, self-employed individuals who opt into the PFMLI Division will only pay 60 percent of the total PFMLI contribution rate, which aligns with the amount paid by employees, as opposed to the entire PFMLI contribution rate of up to one percent. The PFMLI Division will also work to craft specific communications and outreach strategies due to the common misclassification of self-employed workers when they could, in-fact, be employees.

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#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

PFMLI statute - ORS chapter 657B ([https://www.oregonlegislature.gov/bills\\_laws/ors/ors657B.html](https://www.oregonlegislature.gov/bills_laws/ors/ors657B.html));

Oregon personal income tax returns for determining Oregon net income from self-employment (<https://www.oregon.gov/dor/forms/Pages/default.aspx>);

Washington State's PFML administrative rules and policies regarding self-employed individuals electing coverage (<https://paidleave.wa.gov/elective-coverage/>);

Massachusetts PFML administrative rules and polices regarding self-employed individuals electing coverage (<https://www.mass.gov/info-details/paid-family-and-medical-leave-coverage-for-self-employed-individuals>);

Washington D.C.'s administrative rules and policies regarding self-employed individuals electing coverage (<https://does.dc.gov/page/dc-paid-family-leave>)

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## FISCAL AND ECONOMIC IMPACT:

Based on the percentage of self-employed individuals electing into Washington State's PFML program, it is anticipated that approximately 0.45 percent of self-employed individuals, or about 1,025 (228,000 x .45%), will elect to participate in Oregon's PFML program. Each self-employed individual will pay 60 percent of the total PFML contribution rate. Based on Oregon Department of Revenue's 2018 Personal Income Tax information, the average net income for a sole proprietorship is approximately \$25,500. With an average net income of \$25,500, the average self-employed individual could pay \$153 in PFML contributions in a year (\$25,500 x maximum PFML contribution rate of 1 percent x .6 percent of the maximum PFML contribution rate). Based on this information, it is anticipated that there will be an economic impact to the PFML Fund for a calendar year of \$156,825 (\$153 x 1,025 self-employed individuals electing to participate in Oregon's PFML Division).

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## 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 allows self-employed individuals to elect to participate in the PFML program and pay contributions to the Oregon Employment Department. The administrative rules on self-employed individuals for PFML have no impact on state agencies, local governments and public bodies, which are not self-employed individuals.

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

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

Per the American Community Survey, Oregon has approximately 228,000 self-employed individuals\*. Since all self-employed individuals have the option to elect to participate in the PFML program, these rules will impact all self-employed individuals that choose to participate. Based on data from self-employed individuals who elected to participate in Washington State's, which has a similar program and demographics, it is anticipated that approximately 0.45 percent, or 1,025, of the self-employed individuals in Oregon will elect to participate in the PFML program.

\*Per the American Community Survey from 2019 five year estimate out of 1,979,043 total employed.

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

The self-employed rules allow the self-employed individual to elect to participate in the PFML program online or in another method approved by the department. The self-employed individual will need to provide documentation to verify their identity and the Oregon taxable net income from self-employment. The rules will also require self-employed individuals electing into the program to pay PFML contributions quarterly and provide proof of income annually. To comply with these rules, it will take on average, less than two hours a quarter to submit a payment to the Oregon Employment Department and provide proof of documentation.

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

It will take, on average, less than two hours a quarter to submit a contribution payment to the Oregon Employment

Department and provide proof of documentation. There is no equipment known that will be needed to comply with these rules. The self-employed individual will need their Oregon personal income tax return.

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

The PFMLI Division also formed a self-employed/independent contractor workgroup that consisted of 11 members appointed by the PFMLI Division director. There are four PFMLI Advisory Committee members on the workgroup. The purpose of the self-employed/independent contractor workgroup is to engage with representatives and stakeholders about specific aspects relating to self-employed/independent contractors. 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 they relate to the implementation of the program and the administrative rules drafted for self-employed/independent contractors. The workgroup met seven times over the course of a year, the first meeting occurred in August 2020 and the last meeting occurred in February 2021.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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RULES PROPOSED:

471-070-2000, 471-070-2005, 471-070-2010, 471-070-2030, 471-070-2170

ADOPT: 471-070-2000

RULE SUMMARY: Defines terms used by the Paid Family and Medical Leave Insurance program necessary to regulate self-employed elections of coverage.

CHANGES TO RULE:

471-070-2000

Self-employed: Definition

"Taxable income from self-employment" means Oregon net income from self-employment as reported on the Oregon personal income tax return.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.130, 657B.150

ADOPT: 471-070-2005

RULE SUMMARY: Clarifies which self-employed individuals may elect coverage for the Paid Family and Medical Leave Insurance program.

CHANGES TO RULE:

471-070-2005

Self-employed: Eligibility

A self-employed individual, as defined in ORS 657B.010(22), may elect coverage under the Paid Family and Medical Leave Insurance program if the individual:

(1) Earns at least \$1,000 in taxable income from self-employment in the preceding calendar year;

(2) Completes a notice of election and provides the required documentation as described in OAR 471-070-2010; and

(3) Is not terminated from elective coverage within the previous three calendar years, in accordance with OAR 471-070-2170.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.130

ADOPT: 471-070-2010

RULE SUMMARY: Clarifies the requirements for a self-employed individual's coverage election to the Paid Family and Medical Leave Insurance Program approval and establishes a timeline.

CHANGES TO RULE:

471-070-2010

Self-employed: Election Requirements and Effective Date

(1) An eligible self-employed individual may apply to elect coverage under the Paid Family and Medical Leave Insurance program at any time. ¶

(2) A notice to elect must be in writing and submitted online or in another method approved by the department. To be reviewed, the notice must be complete and include: ¶

(a) Information about the individual applying for elective coverage, including: ¶

(A) First and last name; ¶

(B) Social Security Number or Individual Taxpayer Identification Number; and ¶

(C) Address and contact information. ¶

(b) Information on the individual's business, when applicable, including: ¶

(A) Business Identification Number; ¶

(B) Business name; and ¶

(C) Business address and contact information. ¶

(c) The individual's total taxable income from self-employment for the preceding calendar year; ¶

(d) Documentation verifying: ¶

(A) The individual's identity; and ¶

(B) The individual's taxable income from self-employment, including but not limited to, income reported to Oregon on the personal income tax return from the preceding calendar year. ¶

(e) An agreement to: ¶

(A) Pay contributions for a period of not less than three years; ¶

(B) Provide any information and documentation on the individual's taxable income from self-employment that the department deems necessary for the administration of the elective coverage, including but not limited to, a copy of the Oregon personal income tax return annually; and ¶

(C) Provide additional information to confirm eligibility for elective coverage, if requested by the department; ¶

(f) Acknowledgement of the conditions for termination of self-employed elective coverage established in OAR 471-070-2170, including, but not limited to, the condition that coverage cannot be terminated until coverage has been in effect for at least three years. ¶

(3) The department may deny a notice to elect if: ¶

(a) The notice does not include the required information and documentation in accordance with this rule, or ¶

(b) The self-employed individual does not meet the eligibility requirements in OAR 471-070-2005 or other applicable law. ¶

(4) Approved elective coverage becomes effective on the date the complete notice to elect was received with the department. ¶

[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.130

RULE SUMMARY: Clarifies the contribution rate percentage and the responsibility for self-employed individuals to pay Paid Family and Medical Leave Insurance contributions and file appropriate reports.

CHANGES TO RULE:

471-070-2030

Self-employed: Contribution Payments and Reporting Requirements

(1) A self-employed individual who elects coverage under ORS 657B.130 must contribute to the Paid Family Medical Leave Insurance (PFMLI) Trust Fund in an amount that is equal to 60 percent of the total contribution rate described in OAR 471-070-3010 up to an annual taxable income from self-employment that is equal to the calendar year maximum wage amount described in OAR 471-070-3010. ¶

(2) Total contribution payments will be based on the individual's total taxable income from self-employment from the tax return required to be filed in the previous calendar year and generally shall be divided into four quarterly contribution payments. If a contribution is due for only part of a quarter, the contribution amount shall be prorated based on the number of calendar days that the elective coverage is in effect. ¶

Example: Sally, a self-employed individual, elects PFMLI coverage on May 1, 2024. Sally earned \$80,000 in taxable income from self-employment in 2023. Assuming a total contribution rate of one percent, Sally's four quarterly contribution amounts due are calculated as follows: ¶

First quarterly payment, period of May 1 through June 30 (second quarter calendar year 2024), will be \$80.44 [(\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters) x 61/91 calendar days in the quarter]. ¶

Second quarterly payment, period of July 1 through September 30 (third quarter calendar year 2024), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters). ¶

Third quarterly payment, period October 1 through December 31 (fourth quarter calendar year 2024), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters). ¶

Fourth quarterly payment, period January 1 through March 30 (first quarter calendar year 2025), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters). ¶

(3) Quarterly contributions shall be due and payable in accordance with OAR 471-070-3030. ¶

(4) A self-employed individual who fails to timely pay contributions as required by sections (1) through (3) of this rule is delinquent. Any individual found to be delinquent in the payment of contributions is subject to the penalties as specified in ORS 657B.320 and also may be assessed an additional penalty as provided in ORS 657B.910. ¶

(5) The date of receipt of contributions 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. ¶

(6) The self-employed individual must annually report information and provide documentation required in subsection (a) or (b) of this section that the department deems necessary for the administration of the elective coverage. ¶

(a) Except as specified in subsection (b) of this section, a self-employed individual must annually report to the department the prior year's taxable income from self-employment required to be filed, and provide their Oregon personal income tax return to the department on or before April 30 of each year. ¶

(b) If a self-employed individual files their Oregon personal income tax return on extension, the department will use the information on the individual's last tax return filed and provided to calculate quarterly contribution payments. The department will adjust the quarterly contribution payments due when the prior year's tax return on extension is filed and provided to the department. The self-employed individual must report to the department the prior year's taxable income from self-employment filed on extension and provide their Oregon personal income tax return on or before October 31 of each year.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.130, 293.660, 657B.150

ADOPT: 471-070-2170

RULE SUMMARY: Clarifies when and how a self-employed individual or the Oregon Employment Department may terminate Paid Family and Medical Leave elective coverage.

CHANGES TO RULE:

471-070-2170

Self-employed: Termination

- (1) A self-employed individual may terminate elective coverage by filing a written notice online or in another method approved by the department.¶
  - (2) A self-employed individual can terminate elective coverage any time after the coverage has been in effect for three years or longer. The termination shall take effect 30 days after the notice to terminate is received by the department, unless a later date is requested by the self-employed individual on the written notice.¶
  - (3) A self-employed individual may terminate elective coverage that has been in effect for less than three years only in the following circumstances: ¶
    - (a) The individual has filed a voluntary or involuntary bankruptcy petition; or¶
    - (b) The individual changed employment status or is otherwise no longer eligible for elective coverage, in accordance with OAR 471-070-2005.¶
  - (4) The notice to terminate elective coverage under (3) of this rule must provide the following information:¶
    - (a) The reason for the termination; and ¶
    - (b) Any supporting documentation. ¶
  - (5) The department may terminate a self-employed individual's elective coverage if the individual is delinquent on contributions in accordance with OAR 471-070-2030. ¶
  - (6) When the department determines that a self-employed individual's election shall be terminated under section (5) of this rule, the department will send the individual a letter to terminate at their last known address, as shown in the department's records that provides: ¶
    - (a) The reason for the termination;¶
    - (b) Instructions for how to resolve issues leading to the termination; and¶
    - (c) The date that the termination will take effect absent action on behalf of the self-employed individual.¶
  - (7) All contributions payable in accordance with OAR 471-070-2030 are due immediately upon termination of coverage.¶
  - (8) A self-employed individual whose elective coverage is terminated by the department may not reelect coverage as a self-employed individual for three years following the date of termination.¶
- [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.130