



NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 471
EMPLOYMENT DEPARTMENT

FILED
05/30/2023 4:42 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amending and adopting Paid Leave Oregon administrative rules relating to benefits and assistance grants.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/30/2023 11:55 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: 06/22/2023

TIME: 2:00 PM - 4:00 PM

OFFICER: Anne Friend

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-983-1966

CONFERENCE ID: 1606021736

DATE: 06/26/2023

TIME: 9:00 AM - 11:00 AM

OFFICER: Anne Friend

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-983-1966

CONFERENCE ID: 1600293450

DATE: 06/28/2023

TIME: 4:00 PM - 6:00 PM

OFFICER: Anne Friend

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-983-1966

CONFERENCE ID: 1610107827

NEED FOR THE RULE(S)

In order to implement and administer the Paid Leave Oregon program with benefits and assistance grants, the Oregon Employment Department (OED) is promulgating permanent administrative rules in accordance with ORS chapter 657B. The rules clarify who shall file weekly claims, how benefit payments are calculated for self-employed individuals, what to do if a benefit check is lost, stolen, destroyed, or forged, and how to request voluntary federal and Oregon personal income tax withholding.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

- Paid Leave Oregon statute – ORS chapter 657B (https://www.oregonlegislature.gov/bills_laws/ors/ors657B.html);
- Oregon Employment Department Unemployment Insurance Taxes statute and administrative rules – ORS chapter 657 and OAR Chapter 471, Division 31 (https://www.oregonlegislature.gov/bills_laws/ors/ors657.html and <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=2338>);
- Washington State's Paid Leave administrative rules (WACs Chapter 192-500 through 192-810) (<https://app.leg.wa.gov/WAC/default.aspx?cite=192>);
- Washington DC's Paid Leave administrative rules (DCMR Chapter 7-34 to 7-35) (<https://www.dcregs.dc.gov/Common/DCMR/AgencyChapterList.aspx?AgencyID=45>);
- Administration of Public Funds statute – ORS chapter 293 (https://www.oregonlegislature.gov/bills_laws/ors/ors293.html)

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

By providing paid and job protected leave, OED will allow those who do not currently have access to and cannot afford to care for themselves or their ailing family members, deal with the challenges of domestic violence and similar challenges, or bond with a new child in their family, to take that time off and still receive an income. This program will provide a much needed benefit to underserved populations and help to combat the insidious impact of historical and current injustice and iniquity that families of color face when trying to access government programs.

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. While adopting and amending our administrative rules benefits and assistance grants, the OED looked at the racial equity impact of these administrative rules and answered the below questions.

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

The OED administrative rules related to benefits and assistance grants are intended to provide clarity and guidance on different areas of Paid Leave Oregon benefits, such as definitions, assistance grants, benefit payment methods, filing weekly claims, and qualification for benefits. The administrative rules seek to ensure that eligible employees have timely and equitable access to benefits when an eligible employee has made contributions to the Paid Leave Oregon Trust Fund established under ORS chapter 657B. The OED recognizes the administration of benefits is the heart of the program and the administrative rules were developed with a focus on accessibility and compensation through a racial equity framework to identify potential structural barriers that may limit use of the Paid Leave Oregon program.

The OED recognizes that racial disparities, discrimination, and inequities across society is evidence of institutional racism that is often invisible and sometimes unintentional, but inherent elements of policy development. We recognize the importance of acknowledging and understanding racial and ethnic disparities in access to and use of Paid Leave Oregon is vital in developing inclusive administrative rules and policies. In addition, until the Paid Leave Oregon

program develops its own measurable data, we continue to gather relative data from other states with paid leave programs and draw experience from their established benefit programs.

In drafting these administrative rules related to information about accessing small business assistance grants, the OED has been very careful to ensure that we are thinking through the racial inequity that may occur. Today, many small-business services and supports are easily accessible to white-owned and English-speaking businesses. Due to historic exclusion and racial disparities, it is very likely that Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander, and other people of color owned businesses may experience barriers when accessing small business assistance grants that could greatly benefit their business as eligible Paid Leave Oregon employees take leave. While the grant application process for assistance grants is intended to be simple and straightforward, we know that businesses owned by people of color experience greater challenges in grant application processes due to racial bias. The addition to include the use of the federal employer identification number (FEIN) on the assistance grant application, could potentially create a barrier for small business owners of color and non-native English speakers as. This may include their general understanding of the FEIN, trust in additional government oversight, and whether or not their small business would benefit overall from assistance grants. Otherwise, at this time, there are no known racial impacts to this addition to the administrative rule. Providing clear definitions and requirements related to program benefits ensures employees have a better understanding of the benefits they are applying for. This can result in less mistakes and quicker turnarounds for application process, giving eligible employees greater ability to take the time off they need to care for themselves or a loved one. This should have a positive impact especially for employees of color and employees who are non-native-English speakers. These particular groups are an example of priority populations who are most likely to benefit from Paid Leave Oregon and who have the least amount of access to these programs.

For employees who take intermittent leave or qualify for more than one purpose, the new administrative rule requires a weekly claim be filed to receive benefits. This change creates a potential impact for employees who may lack reliable access to internet services. As of 2019, the latest report indicated that one-fifth of households of color with school-aged children had no internet services. In rural areas, one-third of families with school-aged children were without high-speed internet services. This barrier increases the likelihood that a week of benefit payments could be missed due to circumstance outside their control, causing an unnecessary financial burden during a likely stressful life event. In addition, though claimants can qualify for more than one purpose during the same week, separate applications are required to be submitted along with filing weekly claims. These changes seemingly burden those who lack sufficient access to technology, and this intersects with families of color who are low wage earners.

Delivery of benefits includes direct deposit which requires a bank account. This has the potential to impact employees of color who are unbanked. According to the latest economic research, four in ten Black adults and three in ten Hispanic adults are unbanked, or without a banking account. Being issued a ReliaCard as an alternative could potentially create more impacts, such as if the card is stolen, trying to setup account with unreliable customer service, and even paying for any services fees. This can create an additional burden to families and individuals already experiencing stress and trauma due to circumstances, including the financial loss of much needed income. This issue has an impact on people of color who are much more likely struggling to meet the minimum income standard.

These are just a few examples of potential racial equity impacts from the benefit administrative rules. Though the rules aim to ensure equitable benefits for employees, and a straightforward assistance grant application process, the requirements established in these benefit rules could have an equity impact for employees' access to the state Paid Leave Oregon plan, in particular, impacting Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander, women, people with disabilities, LGBTQIA2S+ communities, migrant workers, migrant communities, people working to meet the minimum income standard, individuals who are non-native English speakers, and individuals with limited or non-technical experience or resources to navigate these requirements due to systemic and institutional barriers.

To truly allow workers the ability to take time off to provide vital care for themselves or loved ones, employers are increasingly offering employees paid leave benefits, which permit employees to take sufficient paid, job-secured time off for significant life events like the birth or adoption of a child and the emergence of significant health issues. Paid

Leave Oregon not only helps ensure the health and well-being of employees and their families, but also improves employee productivity and satisfaction and helps employers attract and retain top talent by giving them a competitive edge.

Are there strategies to mitigate the unintended consequences?

It is important to recognize that complex bureaucratic processes often have built-in barriers, such as the appeal process, and the legal language used, that disproportionately impact those who are non-native English speakers and individuals who are socioeconomically disadvantaged. Furthermore, due to historical exclusion and systemic racism, communities of color, in particular Black, Latino/a/x or Indigenous persons in the U.S. may not fully trust the legal system and government processes. As policymakers consider legislation, however, they can help mitigate some of these concerns. Increased access to paid family, medical, and safe leave requires addressing disparities in access and enhancing racial equity by broadening worker coverage, expanding eligibility criteria, increasing wage replacement rates, and ensuring job and anti-retaliation protections.

The OED's goal is to ensure that there is equity for businesses and eligible employees as we implement Paid Leave Oregon for Oregonians. The OED 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 and employees paying Paid Leave Oregon contributions. Below are some strategies the OED has implemented or plans to implement within the draft administrative rules to mitigate unintended consequences:

- Collaborating with community members most impacted to develop strategies and give recommendations to leadership to remove or lower barriers to accessing benefits
- Allow benefit applications and weekly claims to be filed a variety of ways to meeting eligible employees individual needs (online, over the phone, or by paper)
- Allow benefit payments to be issued more than one way – direct deposit into a checking or savings account, ReliaCard (which is like a prepaid debit card that can be used anywhere debit cards are taken and doesn't require a bank account), or by a paper check
- Examining the root cause of factors that produce or perpetuate racial inequities to better understand gaps in the program and how to best address them
- Providing supplemental materials to guidebooks such as a, "frequently asked questions," section on our website, instructional videos, and other tools in order to accommodate different learning styles; monitoring usage to inform gaps in initial and continued messaging
- Establishing and using an equity framework to standardize review processes to ensure that all new and ongoing processes, procedures, administrative rules, and related communications are furthering program equity
- Collaborating with the division's data team to gather and analyze information for any gaps or trends benefits access
- Centering the most impacted, those who have been historically underserved and under resourced by addressing practices, cultural norms and structural barriers that create inequities
- Commitment to open, ongoing and transparent dialogue with invested community members and policy makers
- Continuing to build the website, forms, guidebooks, and any other public facing documents in multiple languages
- Monitoring a number of data elements related to benefits, appeals, assistance grants, and collections in order to determine if and what disparate outcomes historically marginalized groups are facing in Paid Leave Oregon
- Developing Key Performance Measures (KPMs), and report out regularly on equity disparate impacts in the Paid Leave Oregon program
- Continuously explore ways to make changes within the policy and technology solution when racial disparities begin to arise in the program

- Having instructions in plain language and easy to use tools that allows more individuals ability to file for benefits, understand how application process works, and be better equipped to complete the process
- Creating video instructions in several languages to give direction for Frances Online and how to submit a benefit application and supporting documentation electronically for quicker results
- Building a universal glossary of terms that is the same across the division to help with delivering consistent information to lessen confusion among division employees and the public
- Committing to, and then provide, ongoing anti-racism and trauma-informed care training to assist staff in understanding, identifying, and eliminating racial inequities the policy, procedures, and rules that may otherwise have on already marginalized groups.

FISCAL AND ECONOMIC IMPACT:

Any fiscal or economic impact for Paid Leave Oregon benefits and assistance grants is the result of the statute being implemented. There is no fiscal or economic impact associated with these new administrative rules as the personal income tax withheld will be paid to the IRS and the Oregon Department of Revenue.

COST OF COMPLIANCE:

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

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

The administrative rules on Paid Leave Oregon benefits will likely have an impact on state agencies, local governments, and other public bodies because their employees (claimants) may be eligible for Paid Leave Oregon benefits. The state agencies, units of local government, and the public may need to provide additional information requested by the department to verify claimant information and accept leave notices from their employees.

The administrative rules for Paid Leave Oregon assistance grants requires the federal identification number on the application will impact state agencies, local governments, and other public bodies only if they have fewer than 25 employees on average and are applying for an assistance grant.

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

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

In the second quarter of 2022, Oregon had approximately 113,900 small businesses with fewer than 50 employees that employ 34 percent of the state's workforce. Oregon has approximately 107,500 small businesses with fewer than 25 employees that employ 24 percent of the state's workforce.*

* Source: Oregon Unemployment Insurance Wage Records

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

The reporting, recordkeeping, and other administrative activities included in the Paid Leave Oregon benefit administrative rules relate to eligible employees and not the small business.

Small businesses that have on average fewer than 25 employees in a year may qualify for an assistance grant if an eligible employee is out of work for Paid Leave Oregon purposes. The assistance grant application is required by statute but the administrative rule amendment requires the federal employer identification number be added to the application. This will take minimal time for the employer to add to the application.

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

The OED believes there is no equipment, supplies, labor, or increased administration required for compliance with the Paid Leave Oregon benefit administrative rules as these rules impact the eligible employee rather than the employer.

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

The Paid Leave Oregon 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.

Small businesses may also sign up to participate in our community engagement events (out of 507 town halls there were 20,775 attendees), receive Paid Leave Oregon emails (107,307 unique emails are on the Paid Leave Oregon email distribution list), listen to Paid Leave Oregon Advisory Committee meetings (about 30 attendees at each meeting), attend RAC meetings (on average between 100-150 attendees each meeting), and are invited to provide feedback on the proposed draft rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

471-070-1000, 471-070-1010, 471-070-1015, 471-070-1100, 471-070-1120, 471-070-1200, 471-070-1205, 471-070-1210, 471-070-1310, 471-070-1420, 471-070-1430, 471-070-1440, 471-070-1445, 471-070-1450, 471-070-1460, 471-070-1465, 471-070-1470, 471-070-1480, 471-070-1510, 471-070-3710

AMEND: 471-070-1000

RULE SUMMARY: Amends the administrative rule to define several terms in the Paid Leave Oregon program's rules governing program benefits. Add definitions that clarify the meaning of "consecutive leave", "intermittent leave", and "self-employed individual's average weekly income" to provide further distinction and clarification when benefits are taken.

CHANGES TO RULE:

471-070-1000

Benefits: Definitions

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

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

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

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

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

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

A claimant may only have one valid benefit year at a time.¶

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

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

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

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

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

(a) Under the age of 18; or¶

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

(7) "Claim" means a period of Paid Family and Medical Leave Insurance (PFMLI) benefits that starts with an approved application for benefits and continues through the duration of the approved leave until the approved leave or benefit amount has been exhausted or the approved timeframe for the leave has been reached. A claimant may have multiple claims in a benefit year, but may not be approved for more than the allowable benefit or leave amount as described in OAR 471-070-1030.¶

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

(9) "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.¶

(10) "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.¶

(101) "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.¶

(112) "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.¶

(123) "Health care provider" means:¶

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

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

(B) A dentist;¶

(C) A direct entry midwife;¶

(D) A naturopath;¶

(E) A nurse practitioner;¶

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

(G) An optometrist;¶

(H) A physician;¶

(I) A physician's assistant;¶

(J) A psychologist;¶

(K) A registered nurse; or¶

(L) A regulated social worker.¶

(b) A person who is primarily responsible for the treatment of the claimant or the family member of the claimant solely through spiritual means before or during a period of PFMLI leave, including but not limited to a Christian Science practitioner.¶

(134) "Intermittent" leave means leave taken periodically in separate blocks of time or when leave is taken for two or more leaves 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.¶

(15) "Offset" means the withholding of an amount equal to an amount owed to the department from a benefit payment which would otherwise be payable to a claimant. ¶

(16) "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. ¶

(17) "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.¶

(148) "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.¶

(159) "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.¶

(1620) "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.¶

(217) "Willful" and "willfully" means a knowing and intentional act or omission.¶

(1822) "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.¶

(1923) "Willful failure to report a material fact" means any occurrence where:¶

(a) A claimant or employer omit 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.¶

(204) "Work day" means any day on which an employee performs any work for an employer and is an increment of a work week. The number of work days in a work week is based on the average number of work days worked by an employee at all employment. There are a maximum of seven work days in a work week. If a work day spans two 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.¶

(215) "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 and dividing the total by 12 and rounding down 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.

Statutory/Other Authority: ORS ~~657B.340~~90, ~~ORS 657B.09~~120, ~~657B.340~~

Statutes/Other Implemented: ORS ~~657B.09~~10, ~~ORS 657B.01~~90, ~~657B.120~~

AMEND: 471-070-1010

RULE SUMMARY: Amends the administrative rule to tie to the new administrative rule clarifying taking leave from work.

CHANGES TO RULE:

471-070-1010

Benefits: Eligibility and Qualification for Benefits

(1) For an individual to be eligible to receive Paid Family and Medical Leave Insurance (PFMLI) benefits, the individual must:

(a) Be one of the following:

(A) An employee;

(B) A self-employed individual who has elected coverage under ORS 657B.130 and in accordance with OAR 471-070-2010 and whose coverage is currently in effect; or

(C) An employee of a tribal government, where the tribal government has elected coverage under ORS 657B.130 and where the tribal government's coverage is currently in effect.

(b) Earn at least:

(A) \$1,000 in subject wages, as defined in OAR 471-070-1000, in either the base year or alternate base year;

(B) \$1,000 in taxable income from self-employment, as defined in OAR 471-070-2000, in either the base year or alternate base year; or

(C) \$1,000 in a combination of subject wages and taxable income from self-employment in either the base year or alternate base year.

(c) Contribute to the PFMLI Fund established under ORS 657B.430 in accordance with ORS 657B.150 and OAR 471-070-2030 during the base year or alternate base year, as applicable;

(d) Experience a qualifying purpose for benefits under ORS 657B.020;

(e) Have current scheduled Oregon employment or self-employment for om which they are ~~request~~ taking leave from work as described in OAR 471-070-1015;

(f) Submit an application for benefits in accordance with all requirements under ORS 657B.090 and OAR 471-070-1100;

(g) Have not exceeded their maximum paid leave and benefit amounts under ORS 657B.020 and OAR 471-070-1030 in the active benefit year; and

(h) Have no current disqualifications from receiving benefits due to:

(A) The individual being eligible to receive Workers' Compensation under ORS chapter 656, or Unemployment Insurance benefits under ORS chapter 657; or

(B) A director determination under ORS 657B.120 that the individual previously willfully made a false statement or willfully failed to report a material fact in order to obtain benefits.

(2) An individual may not exceed 12 weeks of paid leave per child for the purpose of caring for and bonding with the child during the first year after the birth or initial placement of the child, regardless if a new benefit year starts during the first year following birth or initial placement.

Example 1: Juan files an application for benefits for seven weeks of paid leave and is approved by the department to care for a family member with a serious health condition and begins a benefit year on November 5, 2023. After returning from this leave, Juan has five weeks of leave remaining in the balance of their benefit year. In March 2024, Juan and their partner adopt a child. Juan submits an application for benefits to the department and is approved for the remaining five weeks of paid leave in the benefit year in order to care for and bond with the newly adopted child. Juan's benefit year expires on November 2, 2024 and Juan submits a new application for benefits to the department. Juan is approved for leave to care for and bond with the same child and starts a new benefit year. Because Juan already bonded with the same child for five weeks in the prior benefit year, Juan may only take leave to care for and bond with that child for up to an additional seven weeks in the new benefit year.

Example 2: Julie files an application for benefits and is approved for leave for their own serious health condition and begins a benefit year on September 17, 2023. Julie takes two weeks of leave to recover from the serious health condition and then returns to work. In June 2024, Julie gives birth to twins. Julie submits an application for benefits to the department and is approved for ten weeks of leave to care for and bond with the first twin. Julie's benefit year expires on September 14, 2024 and then Julie submits another application for benefits to the department and is approved for twelve weeks of leave to care for and bond with the second twin, starting a new benefit year.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.015, 657B.020

RULE SUMMARY: Creates a new administrative rule to clarify the requirements for considering if an individual is taking leave from work to qualify for Paid Leave Oregon benefits. Individual will not be considered taking leave from work if they would not be performing their employment duties for reasons other than Paid Leave.

CHANGES TO RULE:

471-070-1015

Benefits: Leave from Work

(1) For an individual to be considered as taking leave from work, the individual must: ¶

(a) Be otherwise scheduled to work a work day or week; and ¶

(b) Be unable to perform their employment duties due to a qualifying purpose under ORS 657B.020. ¶

(2) An individual may not be considered as taking leave from work if they would not be performing their employment duties for reasons other than PFMLI qualifying purposes described in ORS 657B.020, including but not limited to, circumstances related to: ¶

(a) An employer's business operations, such as: ¶

(A) A lapse in seasonal operations; ¶

(B) School break periods; or ¶

(C) Other suspensions or cessations of an employer's business operations. ¶

(b) A period of incarceration, in which an individual is unable to perform their employment duties as a result of being an adult in custody. ¶

Example 1: Rory is a seasonal employee for a vegetable farm in the Willamette Valley. Rory does not work at the farm in December and January but is still considered an employee of the vegetable farm and does not have other paid employment during this time. Rory does not qualify for PFMLI benefits in December and January because Rory is not taking leave from work, as Rory is not scheduled to work and does not perform employment duties at the vegetable farm during these months. ¶

Example 2: Selena is an instructor at Oregon State University with a 9-month contract that begins in September and ends in June. Selena also teaches summer courses at the University of Oregon between June and September. Selena qualifies for PFMLI benefits for a qualifying purpose during the summer break at Oregon State University because Selena is taking leave from work, as Selena is scheduled to work and perform employment duties at the University of Oregon between June and September. ¶

Example 3: Fiona works at a restaurant as a server and is scheduled to work a five-day work week Monday through Friday. On Monday and Tuesday Fiona is serving an adult in custody sentence. On Thursday and Friday of the same week, Fiona needs to take care of their father who has a serious health condition. Fiona qualifies for PFMLI benefits on Thursday and Friday because Fiona is taking leave from work on these days as Fiona is scheduled to work to work and is unable to perform employment duties on these days due to a PFMLI qualifying purpose. Fiona does not qualify for PFMLI benefits on Monday and Tuesday, even if they have a PFMLI qualifying purpose, because Fiona is unable to perform duties for their employer for reasons other than a PFMLI qualifying purpose. ¶

Example 4: Jack works as a store manager for a clothing store and was approved for four weeks of PFMLI benefits to bond with a child after birth. After two weeks of bonding leave, Jack starts a six-month period of incarceration. Jack does not qualify for PFMLI benefits during the remaining two weeks of leave, because during the time Jack is an adult in custody, they are unable to perform their employment duties for reasons other than a PFMLI qualifying purpose. Once Jack completes the period of incarceration and resumes paid employment, Jack may again be eligible for PFMLI benefits for a qualifying purpose. ¶

Example 5: Joelle is a high school teacher with a nine-month contract that begins in September and ends in June. Joelle is not expected to teach during the school break periods and does not have other paid employment during that time. Joelle does not qualify for PFMLI benefits during school break periods, because Joelle is not taking leave from work, as they are not scheduled to work during those times and would not perform their employment duties during break times.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.010, ORS 657B.015

AMEND: 471-070-1100

RULE SUMMARY: Amends the administrative rule to define several terms in the Paid Leave Oregon program's rules governing program benefits. Add definitions that clarify the meaning of "consecutive leave", "intermittent leave", and "self-employed individual's average weekly income" to provide further distinction and clarification when benefits are taken.

CHANGES TO RULE:

471-070-1100

Benefits: Application for Benefits

- (1) To request Paid Family and Medical Leave Insurance (PFMLI) benefits provided under the state plan established in ORS 657B.340, a claimant must submit an application for benefits. An application must be submitted online or by another method approved by the department. For the application to be approved by the department, the application must be complete and must include, but is not limited to, the following:¶
- (a) Claimant information, including:¶
 - (A) First and last name;¶
 - (B) Date of birth;¶
 - (C) Social Security Number or Individual Taxpayer Identification Number; and¶
 - (D) Contact information, including mailing address and telephone number.¶
 - (b) Documentation verifying sufficient to establish the claimant's identity;¶
 - (c) Information about the claimant's current employment or self-employment for which they are requesting leave from work:¶
 - (A) Business name(s) and dates of employment or self-employment;¶
 - (B) Business address and contact information for all employers or self-employed businesses;¶
 - (C) Average number of work days worked per work week; and¶
 - (D) Any current breaks from work or anticipated future breaks from work that are unrelated to PFMLI leave.¶
 - (d) Information about the notice given to any employers under ORS 657B.040 and OAR 471-070-1310, if applicable, and the date(s) any notice was given;¶
 - (e) Information about the claimant's leave schedule, including:¶
 - (A) Employer(s) from which leave is being taken;¶
 - (B) Anticipated leave dates; and¶
 - (C) Whether the leave is to be taken in consecutive, or ~~nonconsecutive~~, intermittent periods.¶
 - (f) The type of leave taken by the claimant, which must be one of the following:¶
 - (A) Family leave;¶
 - (B) Medical leave; or¶
 - (C) Safe leave.¶
 - (g) Verification of the reason for the leave, including:¶
 - (A) For family leave to care for or bond with a child, verification consistent with OAR 471-070-1110;¶
 - (B) For family leave to care for a family member with a serious health condition, verification consistent with OAR 471-070-1120 and an attestation that the claimant has a relationship equal to "family member" under ORS 657B.010 and is caring for a family member with a serious health condition;¶
 - (C) For medical leave, verification consistent with OAR 471-070-1120; or¶
 - (D) For safe leave, verification consistent with OAR 471-070-1130.¶
 - (h) If the claimant is requesting up to two additional weeks of leave for limitations related to pregnancy, childbirth or a related medical condition, documentation that the claimant is currently pregnant or was pregnant within the year prior to the start of the additional two weeks of leave;¶
 - (i) Information about the claimant's eligibility to receive Workers' Compensation under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657; and¶
 - (j) A written or electronically signed statement declaring under oath that the information provided in support of the application for PFMLI benefits is true and correct to the best of the individual's knowledge.¶
- (2) An employee who has PFMLI coverage solely through an employer with an equivalent plan approved under ORS 657B.210 must apply for PFMLI benefits by following the employer's equivalent plan application guidelines.¶
- (3) An employee who is simultaneously covered by more than one employer's equivalent plan approved under ORS 657B.210, or that is simultaneously covered by the state plan and at least one employer with an equivalent plan, must apply separately under all plans they are covered under and from which they are taking leave by following the respective application guidelines for each plan.¶
- (4) A complete application for PFMLI may be submitted to the department up to 30 calendar days prior to the start of family, medical, or safe leave and up to 30 calendar days after the start of leave. Applications submitted outside

of this timeframe, either early or late, will be denied, except in cases where a claimant can demonstrate an application was submitted late for reasons that constitute good cause under section (65) of this rule.¶

(5) ~~In Good cause exists where~~ a claimant demonstrates good cause for the late submission of an application, the department may accept the establishes by satisfactory evidence submitted to the department that factors or circumstances beyond the claimant's control prevented the claimant from submitting a completed application up to one year after the start of leave.¶

~~(6) within the required timeframe under section (4) of this rule.~~ Good cause for the late submission of an application is determined at the discretion of the department and includes, but is not limited to, the following:¶

(a) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents an individual from timely filing an application; or¶

(b) A demonstrated inability to reasonably access a means to file an application in a timely manner, such as an inability to file an application due to a natural disaster or a significant and prolonged department system outage.¶

(6) If the department determines the claimant demonstrated good cause for late submission of an application, the department may accept the application up to one year after the start of leave.¶

[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, ~~ORS 090~~, 657B.100, 657B.09340

Statutes/Other Implemented: ORS 657B.1090, 657B.1090

AMEND: 471-070-1120

RULE SUMMARY: Amends the administrative rule for the verification of a serious health condition includes, but is not limited to, a diagnosis in order to determine eligibility for benefits.

CHANGES TO RULE:

471-070-1120

Benefits: Verification of a Serious Health Condition

A claimant applying for Paid Family and Medical Leave Insurance (PFMLI) benefits for their own serious health condition or to care for a family member with a serious health condition must submit verification of the serious health condition from a health care provider that includes:¶

- (1) The health care provider's first and last name, type of medical practice/specialization, and their contact information, including mailing address and telephone number;¶
- (2) The patient's first and last name;¶
- (3) The claimant's first and last name, when different from the patient identified in section (2) of this rule;¶
- (4) The approximate date on which the serious health condition commenced or when the serious health condition created the need for leave;¶
- (5) A reasonable estimate of the duration of the condition or recovery period for the patient;¶
- (6) A reasonable estimate of the frequency and duration of intermittent leave and estimated treatment schedule, if applicable; and¶
- (7) Other information as requested by the department to determine eligibility for the PFMLI benefits; including:¶
 - (a) For medical leave, information sufficient to establish that the claimant has a serious health condition, including, but not limited to a diagnosis; or¶
 - (b) For family leave, information sufficient to establish that the claimant's family member has a serious health condition, including but not limited to a diagnosis.

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

Statutes/Other Implemented: ORS 657B.090

AMEND: 471-070-1200

RULE SUMMARY: Amends the administrative rule to remove the reference to "fax" and change the incorrect OAR from OAR 471-070-1430 to OAR 471-070-1205

CHANGES TO RULE:

471-070-1200

Benefits: Claim Processing; Additional Information

In addition to the information required from a claimant under OAR 471-070-1100 and OAR 471-070-1430~~205~~, the department may request that a claimant provide additional information necessary to establish facts relating to eligibility or qualification for benefits. Unless a time frame is otherwise defined under statute or rule or is specified by an authorized department representative, the claimant must respond to all requests for information within the following time frames:¶

(1) 14 calendar days from the date of the request for information, if the request was sent by mail to the claimant's last known address as shown in the department's records.¶

(2) 10 calendar days from the date of the request for information, if the request was sent by telephone message, ~~fax~~, email, or other electronic means.¶

(3) When the response to the request for information is sent to the department by mail, the date of the response shall be the date of the postmark affixed by the United States Postal Service. In the absence of a postmarked date, the date of the response shall be the most probable date of mailing as determined by the department.¶

(4) The time frames specified in sections (1) and (2) of this rule may be extended at the department's discretion when a claimant can demonstrate they failed to provide a timely response for good cause. Good cause exists when the claimant responds to the department as soon as practicable and establishes by satisfactory evidence that circumstances beyond the claimant's control prevented the claimant from providing a timely response, including, but not limited to, an incapacitating serious health condition or a situation related to safe leave.

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

Statutes/Other Implemented: ORS 657B.090

ADOPT: 471-070-1205

RULE SUMMARY: Requires a weekly claim to be filed to receive weekly benefits for claimants who are taking intermittent leave or are taking leave for more than one qualify purpose at a time. The weekly claim must be submitted after the work week has ended and no later than 30 calendar days following the end of the work week unless there is good cause.

CHANGES TO RULE:

471-070-1205

Benefits: Weekly Claims

(1) A claimant taking Paid Family and Medical Leave Insurance (PFMLI) benefits on an intermittent leave schedule or for more than one qualifying purpose as described in OAR 471-070-1430, must file a weekly claim in order to receive PFMLI benefits for that week.¶

(2) For a weekly claim to be approved, the weekly claim must be complete and include, but is not limited to, the following information:¶

(a) The dates of the work week being claimed;¶

(b) The number of work days of leave taken for each leave type specified under 657B.020;¶

(c) The number of days worked during the work week;¶

(d) Claimant's eligibility to receive Workers' Compensation under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657 for the work week;¶

(e) Any changes to current employment, including any new employment or employment that has ended since the benefit application or last weekly claim; and¶

(f) A written or electronically signed statement declaring under oath that the information provided in support of the weekly claim is true and correct to the best of the claimant's knowledge.¶

(3) The weekly claim must be submitted only after that work week has ended and no later than 30 calendar days following the end of the work week in which the family, medical, or safe leave was taken. Weekly claims submitted after 30 calendar days will be denied, except in cases where a claimant can demonstrate a weekly claim was submitted late for reasons that constitute good cause under section (5) of this rule.¶

(4) For claimants taking intermittent leave, the number of days of leave eligible in a work week may not exceed the average number of work days worked per week, as provided under ORS 471-070-1100(1)(c)(C) or OAR 471-070-1210(2), minus the number of days actually worked during the work week. ¶

Example: Eddie submits an application for benefits that states their average work week consists of four work days. The weekly benefit amount is \$875.00. Eddie submits their first weekly claim and reports three days worked and three days of leave, for a total combination of six days of work and leave reported. Eddie will only be paid for one of the three days of leave reported on the weekly claim report as Eddie worked three days out of a four day work week. The benefit amount paid for the first week of leave to Eddie is \$218.75 [(\$875.00 weekly benefit amount divided by 4 work days) x 1 day of payable leave]. ¶

(5) Good cause exists when a claimant establishes by satisfactory evidence submitted to the department that factors or circumstances beyond the claimant's control prevented the claimant from submitting a weekly claim within the required timeframe under section (3) of this rule. Good cause for the late submission of a weekly claim is determined at the discretion of the department and includes, but is not limited to, the following:¶

(a) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents a claimant from timely filing a weekly claim; or¶

(b) A demonstrated inability to reasonably access a means to file a weekly claim in a timely manner, such as an inability to file a weekly claim due to a natural disaster or a significant and prolonged department system outage.¶

(6) If the department determines the claimant demonstrated good cause for late submission of a weekly claim, the department may accept the weekly claim up to one year after the leave was taken.

Statutory/Other Authority: ORS 657B.340

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

AMEND: 471-070-1210

RULE SUMMARY: Amends the administrative rule to clarify and require that the claimant may not change their average work schedule throughout the entire claim unless has current employment or self-employment changes or applied for additional qualifying purposes. This will alleviate administrative burden and provide consistency in calculations for benefit payments.

CHANGES TO RULE:

471-070-1210

Benefits: Updates to a Claim for Leave

(1) After submitting an application for benefits as specified in OAR 471-070-1100, a claimant must notify the department within 10 calendar days of any changes to the information provided on their application and provide additional information as provided in OAR 471-070-1200, if applicable, including, but not limited to, changes to the claimant's:¶

(a) First and last name;¶

(b) Mailing address;¶

(c) Telephone number;¶

(d) Current employment or self-employment;¶

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

(f) Leave schedule;¶

(g) Type of leave taken; or¶

(h) Eligibility to receive Workers' Compensation under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657.¶

(2)(a) A claimant may change their average number of work days worked per work week that they provided on the application for benefits only under the following circumstances in which the claimant: ¶

(A) Added one or more new employer since applying for benefits;¶

(B) Left one or more employer since applying for benefits; or¶

(C) Applied for benefits for an additional qualifying purpose.¶

(b) Any approved change to the average number of work days worked per work week shall take effect beginning on the Sunday of the first week after the claimant experienced a change in employment or started an additional qualifying purpose for benefits. ¶

(3) Failure to notify the department of any changes to the information provided on an application for benefits as specified in section (1) of this rule may result in a delay, denial, overpayment, or disqualification of weekly benefits.¶

[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, ORS 657B.090

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

AMEND: 471-070-1310

RULE SUMMARY: Amends the administrative rule to clarify an eligible employee is required to give notice to their employer when commencing family, medical, or safe leave. Also change "continuous" to "consecutive" and to clarify the 25 percent benefit reduction and clarify how the benefit payments will be reduced. The department may waive the imposition of the benefit reduction.

CHANGES TO RULE:

471-070-1310

Benefits: Employee Notice to Employers Prior to Commencing Leave

(1) Except as provided in ORS 657B.040(5) for safe leave, an eligible employee must give notice to their employer when commencing a period of family, medical, or safe leave. ¶

(2) If the leave is foreseeable, an employer may require an eligible employee ~~must~~ give ~~written~~ oral notice at least 30 calendar days before commencing a period of paid family, medical, or safe leave and an employer may require an eligible employee to give written notice at least 30 calendar days before commencing leave. Examples of foreseeable leave include, but are not limited to, an expected birth, planned placement of a child, or a scheduled medical treatment for a serious health condition of the eligible employee or a family member of the eligible employee. ¶

(23) If the leave is not foreseeable, an eligible employee may commence leave without 30 calendar days advance notice. However, the eligible employee or another person on behalf of the eligible employee taking leave must give oral notice to the employer within 24 hours of the commencement of the leave and must provide written notice within three days after the commencement of leave. Leave circumstances that are not foreseeable include, but are not limited to, an unexpected serious health condition of the eligible employee or a family member of the eligible employee, a premature birth, an unexpected adoption, an unexpected foster placement by or with the eligible employee, or for safe leave. ¶

(34) An employer may require a written notice to include: ¶

(a) Employee's first and last name; ¶

(b) Type of leave; ¶

(c) Explanation of the need for leave; and ¶

(d) Anticipated timing and duration of leave. ¶

(45) Written notice includes, but is not limited to, handwritten or typed notices, and electronic communication such as text messages and email that is consistent with the employer's known, reasonable, and customary policies. Whether leave is to be ~~continuous~~ consecutive or is to be taken intermittently, ~~n. Notice need only be given one time for consecutive leave only needs to be given one time prior to taking the consecutive leave~~, but the employee shall advise the employer as soon as practicable if the dates of any scheduled leave change, are extended, or were initially unknown. Notice for intermittent leave shall be given orally to the employer within 24 hours of the commencement of each work day taken or earlier if known. ¶

(56) An employer that requires eligible employees to provide a written notice before the eligible employee commences leave, must outline the requirements in the employer's written policy and procedures. A copy of the written policy and procedure must be provided to all eligible employees at the time of hire and each time the policy and procedure changes and in the language that the employer typically uses to communicate with the employee. If the employer requires the employee to provide a written notice, the policy and procedures must include a description of the ~~penalties~~ benefit reduction under section (910) of this rule that may be imposed by the department for not complying with the employer's notice requirements. ¶

(67) An employee does not need to expressly mention the Paid Family and Medical Leave Insurance program when giving their employer written or oral notice under this rule. ¶

(78) The department will notify the employer pursuant to OAR 471-070-1320(1) when a claimant has applied for paid family, medical, or safe leave benefits. The employer may respond to the notice from the department within 10 calendar days from the date on the department's notice to report if the claimant did not provide the required notice under this rule. The employer may respond to the department's notice either online or by another method approved by the department. ¶

(89) If the employer does not respond to the department's notice as described in section (78) of this rule within 10 calendar days from the date on the department's notice, the claimant's application for benefits shall be processed using the information available in the department's records. ¶

(910) If the department determines that the claimant did not provide the required leave notice to the employer, the department may impose a ~~penalty~~ benefit reduction by issuing a decision and reducing the first weekly benefit amount payable under ORS 657B.090 by 25 percent. ~~The penalty will be a 25 percent reduction, except whfirst benefit payment it would issued will be reduced by the weekly benefit amount below the minimum benefit amount~~

provided in ORS 657B.050(2)(b). The claimant may appeal the imposition of the penalty in accordance with ORS 657B.410 and applicable administrative rules. entire amount of the reduction. If the first benefit payment issued is less than the entire amount of the reduction, the subsequent benefit payment(s) will be reduced until the entire reduction has been subtracted. ¶

Example 1: Sanomi did not provide the required notice to their employer about taking consecutive family leave. Sanomi's weekly benefit amount is \$140. A 25 percent reduction of their benefit amount in the first week equals \$35 ($\$140 \times .25$), so the first Sanomi is taking leave from work for family leave for all the work days within the first week. The 25 percent benefit reduction equals \$35 ($\140 weekly benefit amount would be reduced to \$105 ($\$140 - \35). However, the minimum weekly benefit amount is $\times .25$ reduction). Sanomi's first benefit payment would have been \$1240, so Sanomi's but will the first weekly benefit payment amount would be \$120 instead. ¶
(10) For leave taken in increments of less than a full work week, the total penalty amount shall be divided by the number of work day increments contained in a work week and deducted from benefits paid for that number of work days. reduced to \$105 ($\140 benefit payment - \$35 reduction). Because the first benefit payment is more than the amount of the reduction, the entire reduction is subtracted from the first benefit payment. ¶

Example 2: Joy did not provide the employer with the required leave notice about taking intermittent medical leave. Joy normally works an average of ~~four~~ six work days in a work week and ~~was~~ is unable to work the entire one of those days each week due to taking medical leave. Joy's weekly benefit amount is \$4600, which is prorated to \$100 per work day of leave because Joy only works an average of four days in a work week. The penalty amount is \$25 per work day ($(\$600 \text{ weekly benefit amount} / 6 \text{ days per week})$). The amount of the benefit reduction is \$150 ($\$600 \text{ weekly benefit amount} \times .25 \text{ reduction}$). Joy's first benefit payment would have been \$100 because one day of leave from work during that week is taken. However, the first benefit payment is reduced to \$0 after the reduction amount is subtracted ($\$100$ first week benefit payment - $\$1050 \times .25$). Joy's benefit amount is reduced to \$75 ($\100 per work day minus \$25 penalty per work day) for each of the first four work days of leave taken, as four days equals one work week. reduction). The second benefit payment would have been \$100 but the second benefit payment is reduced to \$50 after the remaining reduction amount is subtracted ($\$100$ second week benefit payment - \$50 remaining reduction). The third benefit payment is not reduced as the entire amount of the reduction has already been subtracted from Joy's benefit. ¶

(11) The claimant may appeal the imposition of the benefit reduction in accordance with ORS 657B.410 and applicable administrative rules. ¶

(112) The employee may request a waiver of the benefit reduction ~~penalty~~ for good cause. Good cause will be found when the employee establishes, by satisfactory evidence, that factors or circumstances beyond the employee's reasonable control prevented the employee from providing the required notice to the employer. Good cause includes, but is not limited to, an incapacitating serious health condition or a situation related to safe leave, for which the employee provided notice to the employer as soon as was practicable. ¶

(123) The department, in its discretion, may waive the imposition of the benefit reduction without a request for a waiver by the employee if the department determines that the employee had good cause for not providing notice to their employer(s) or applying the benefit reduction is against equity, good conscience, or administrative efficiency. ¶

(14) If an employee receives their first weekly benefit payment, and the department subsequently determines that proper notice to the employer was not made by the employee, an amount equal to the 25 percent benefit reduction ~~penalty~~ will be considered an erroneous overpayment, and that ~~penalty amount~~ amount of the reduction may be collected from the employee in accordance with ORS 657B.120.

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

Statutes/Other Implemented: ORS 657B.040

AMEND: 471-070-1420

RULE SUMMARY: Amends the administrative rule to change "nonconsecutive" to "intermittent" to align with the rest of the administrative rules.

CHANGES TO RULE:

471-070-1420

Benefits: Leave Periods and Increments

(1) A claimant may request family, medical, or safe leave provided under ORS chapter 657B in either consecutive, or ~~nonconsecutive~~, intermittent periods of leave.¶

(2) Leave may be taken and benefits may be claimed in increments that are equivalent to one work day or one work week, as defined in OAR 471-070-1000. When claiming an increment of less than a full work week, the number of work days that can be reported during a week is established by the average number of work days ~~typically~~ worked per week by the claimant.¶

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

Example 1: Kelsey is taking family leave and is currently an employee at a university and an architecture firm. Kelsey works for the university in the morning of ~~their~~ work day and the architecture firm in the evenings on the same work day. Kelsey must take leave from both places of employment for the work day in order to claim benefits for the work day. If Kelsey only missed work from the university due to the family leave for that one work day, it would not qualify for benefits.¶

Example 2: Chloe is taking medical leave and is currently an employee at a department store and a self-employed delivery driver. Chloe works four work days total per work week: Monday and Tuesday at the department store and Wednesday and Saturday as a self-employed delivery driver. Chloe must take leave for all four work days from both jobs in order to claim a full work week of benefits. If Chloe only missed work on Monday and Saturday due to medical leave, Chloe would qualify for benefits for two work days instead of a work week.

Statutory/Other Authority: ORS 657B.340

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

ADOPT: 471-070-1430

RULE SUMMARY: Describes that a claimant may take Paid Leave Oregon benefits for more than one qualifying purpose during the same week as long as separate applications are submitted and weekly claims are filed.

CHANGES TO RULE:

471-070-1430

Benefits: Simultaneous Qualifying Purposes

(1) A claimant may take Paid Family and Medical Leave Insurance (PFMLI) for more than one qualifying purpose under ORS 657B.020 during the same week, provided the claimant submits a separate and complete application as described in 471-070-1100 for each qualifying purpose, is for a different qualifying reason, and is approved to take leave for each qualifying purpose.

(2) The multiple qualifying reasons taken within the same week can be for the same type of qualifying purpose; for example, a claimant may take family leave for two different family members, each with their own serious health condition.

(3) A claimant shall not receive a PFMLI benefit payment for more than one type of qualifying purpose taken on a single work day.

(4) For any week in which a claimant takes leave for more than one qualifying purpose, that claimant must file a weekly claim, as described in OAR 471-070-1205, to receive PFMLI benefits.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.020

AMEND: 471-070-1440

RULE SUMMARY: Amends the administrative rule to make minor corrections in order to increase clarity.

CHANGES TO RULE:

471-070-1440

Benefits: Weekly Benefit Proration

(1) A claimant who takes leave in work day increments, as described in OAR 471-070-1000, shall be paid a prorated benefit amount based on the number of work days of leave taken in the work week.¶

(2) The benefit amount paid for a work day is calculated by dividing the claimant's weekly benefit amount by the average number of work days that the claimant would ~~typically work in their~~ work per work week.¶

(3) The total benefit amount paid for leave taken in work day increments is calculated by multiplying the benefit amount paid for a work day, rounded to the nearest whole cent, by the number of work days of leave taken for the work week, ~~rounded to the nearest whole cent, and~~ not to exceed the weekly benefit amount.¶

Example 1: Allison submits an application for benefits that states their ~~typical~~ average work week consists of five work days. The weekly benefit amount is \$1,000.00. Allison states on the application that they will take leave for three of the five days that Allison ~~typically~~ worked in the work week for six weeks. The ~~weekly~~ benefit amount paid to Allison for ~~the six~~ each weeks is \$600 [(\$1,000.00 weekly benefit amount divided by 5 work days) x 3 days on leave in the work week]. Assuming nothing changes, Allison will receive a total benefit amount of \$3,600 [(\$600 weekly benefit amount paid) x 6 weeks].¶

Example 2: Lamar submits an application for benefits that states their ~~typical~~ average work week consists of three work days and they will take leave for one of the three days in each of the four weeks. The weekly benefit amount is \$400.00. The ~~weekly~~ benefit amount paid ~~for~~ each week to Lamar is \$133.33 [(\$400.00 weekly benefit amount divided by 3 work days) x 1 day on leave in the work week]. Assuming nothing changes, Lamar will receive a total benefit amount of \$533.32 [(\$133.33 weekly benefit amount paid) x 4 weeks].

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

Statutes/Other Implemented: ORS 657B.090

ADOPT: 471-070-1445

RULE SUMMARY: Describes how Paid Leave Oregon benefits are calculated for self-employed individuals who elect coverage and submit a benefit application. This rule aligns with how benefits are calculated for employees in ORS 657B.050.

CHANGES TO RULE:

471-070-1445

Benefits: Self-Employed Benefit Calculation

(1) For any self-employed individual who elects Paid Family and Medical Leave Insurance (PFMLI) coverage under OAR 471-070-2010 and pays contributions as provided in OAR 471-070-2030, the weekly benefit amount that an individual may qualify for is determined as follows:¶

(a) If the self-employed individual's average weekly income is equal to or less than 65 percent of the average weekly wage, the individual's weekly benefit amount shall be 100 percent of the self-employed individual's average weekly income.¶

(b) If the self-employed individual's average weekly income is greater than 65 percent of the average weekly wage, the individual's weekly benefit amount is the sum of:¶

(A) 65 percent of the average weekly wage; and¶

(B) 50 percent of the self-employed individual's average weekly income that is greater than 65 percent of the average weekly wage.¶

(2) Notwithstanding section (1) of this rule:¶

(a) The maximum weekly benefit amount is 120 percent of the average weekly wage.¶

(b) The minimum weekly benefit amount is five percent of the average weekly wage.¶

(3) If a self-employed individual is taking less than a full week of leave, the department will prorate the weekly benefit amount as specified in OAR 471-070-1440.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.050

ADOPT: 471-070-1450

RULE SUMMARY: Describes the primary payment method for Paid Leave Oregon benefit payments will direct deposit. If the claimant doesn't apply for direct deposit, then the payment will be issued on a ReliaCard Visa. If the department determines that is not feasible, then the department may issue a check to the claimant.

CHANGES TO RULE:

471-070-1450

Benefits: Benefit Payment Methods

(1) Paid Family and Medical Leave Insurance (PFMLI) benefits shall be paid by such method as the director may approve.¶

(2) The department's primary payment method to any claimant approved to receive PFMLI benefits shall be through direct deposit into a checking or savings account in a financial institution in the United States as an electronic funds transfer. "Electronic funds transfer" has the same meaning as provided in ORS 293.525.¶

(3) Claimants who do not select direct deposit will be paid by a stored value card, including but not limited to, ReliaCard Visa.¶

(4) If the department determines that it is not feasible to issue payment to a claimant through direct deposit or a stored value card, then the department may issue a check to the claimant.

Statutory/Other Authority: ORS 293.525, 657B.340

Statutes/Other Implemented: ORS 293.525, 657B.050

ADOPT: 471-070-1460

RULE SUMMARY: Describes the process to request a new benefit check if the claimant's benefit check was lost, stolen, destroyed, or forged.

CHANGES TO RULE:

471-070-1460

Benefits: Lost, Stolen, Destroyed, or Forged Benefit Checks

(1) When a benefit check has been lost, stolen, destroyed, or forged and for purposes of this rule:

(a) A benefit check is "lost" if the claimant never received an issued check, and the check's whereabouts is unknown, or it was received but was not cashed and now cannot be found.

(b) A benefit check is "stolen" if the check was taken or cashed by another without the authorization of the payee, whether or not the other person's identity is known.

(c) A benefit check is "destroyed" if an issued check has not been cashed and has been rendered nonnegotiable.

(d) "Forgery" of a benefit check has the same meaning as provided in ORS 165.007 and further defined in 165.002.

(2) If a benefit check has been issued but not cashed and the claimant completes a written sworn statement that the benefit check was lost, stolen, or destroyed, the check will be reissued in accordance with ORS 293.475 if at least ten calendar days from the date the original check was issued has elapsed. If the original check and replacement check are both received and cashed by the claimant, the claimant shall be liable for repayment of the overpayment to the department.

(3) If the benefit check has been issued and cashed and it is alleged that the check was not signed by the claimant or the claimant's authorized agent, a determination will be made on the validity of the endorsement:

(a) If the endorsement is determined to be the claimant's or the claimant's authorized agent's, the director will notify the claimant by letter and no replacement check will be issued;

(b) In the case of forgery or any unauthorized cashing of a benefit check, a replacement check will be issued if the claimant is due benefits, unless the claimant received any portion of the benefits, or otherwise benefited from the funds.

(c) The department will advise the State Treasurer of the forged or unauthorized cashing of the check.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 293.470, 293.475

ADOPT: 471-070-1465

RULE SUMMARY: Describes the process to request benefit payments due in the event of the death of a claimant that has an approved application for benefits but the benefits are still due. This allows for claimant's survivors to receive payment of any unpaid benefits the claimant had already claimed prior to death. Payments not claimed within two years will be considered abandoned and sent to the State Treasurer.

CHANGES TO RULE:

471-070-1465

Benefits: Payment Due to a Deceased Individual and Abandoned Payment

(1) In the event of the death of an individual to whom Paid Family and Medical Leave Insurance (PFMLI) benefit payments totaling \$10,000 or less are owed and where the decedent's estate is not subject to probate, the department shall pay the benefits to an individual lawfully eligible to receive the payment per ORS 293.490 who must submit an acceptable affidavit to the department.¶

(2) The affidavit submitted under section (1) of this rule must be submitted within two years from the decedent's date of death.¶

(3) Benefit amounts not claimed within two years of the decedent's death will be considered abandoned and delivered to the State Treasurer per ORS 98.352.

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

Statutes/Other Implemented: ORS 657B.090, ORS 98.336, 98.352, 293.490, 293.495

ADOPT: 471-070-1470

RULE SUMMARY: Explains the priority order of offsets that can occur from Paid Leave Oregon benefit payments. It also explains the minimum benefit payment amount that will be issued of no less than \$1.

CHANGES TO RULE:

471-070-1470

Benefits: Benefit Payment Offsets

(1) After any benefit reduction under ORS 657B.040, a claimant's weekly benefit payment may be reduced, as applicable, according to the priorities in section (2) of this rule before the department issues the weekly benefit payment to the claimant.¶

(2) The priority of additional offsets to the weekly benefit payment are:¶

(a) Paid Family and Medical Leave Insurance benefit overpayments described under ORS 657B.120 and OAR 471-070-1510.¶

(b) Federal personal income tax withholdings described under OAR 471-070-1480.¶

(c) State personal income tax withholdings described under OAR 471-070-1480.¶

(d) Child support orders described under OAR 471-070-1490.¶

(e) Funds due to entities that serve a garnishment or levy on the Oregon Employment Department.¶

(3) Weekly benefit payments of less than \$1.00, after all offsets, will not be issued to the claimant.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.050

ADOPT: 471-070-1480

RULE SUMMARY: Clarifies the withholding rate for voluntary federal and state personal income tax to be withheld from Paid Leave Oregon benefit payments. Federal personal income tax withholding will be 10 percent and Oregon personal income tax withholding will be eight percent.

CHANGES TO RULE:

471-070-1480

Benefits: Federal and State Voluntary Tax Withholding

(1) A claimant receiving Paid Family and Medical Leave Insurance (PFMLI) benefits can elect to voluntarily have federal or state personal income tax withholding. To elect voluntary withholding, the claimant must notify the department on an approved method.

(2) When the department receives the claimants notification requesting withholding, the department will:

(a) Withhold at a rate of 10 percent for federal personal income taxes pursuant to IRC section 3402 (p) and applicable regulations for future benefit payments issued.

(b) Withhold at a rate of eight percent for Oregon personal income taxes for future benefit payment issued.

(3) The amount of voluntary withholding from a claimant benefit payment will be rounded to the nearest cent.

(4) The amount of voluntarily withholding from a claimant benefit payment will be held in trust and:

(a) Transferred to the Internal Revenue Service in the time and manner required for withholdings under IRC section 3402.

(b) Transferred to the Department of Revenue in the time and manner provided by the Department of Revenue under ORS chapter 316 and rule.

(5) The election will remain in effect until the claimant submits to the department an authorization for tax withholding form instructing the department to stop withholding. The withholding will stop with the next benefit payment issued, whenever administratively feasible, after the instruction to stop is received by the department.

(6) The PFMLI program shall provide information to a claimant about the total federal and state personal income tax withheld for the calendar year from PFMLI benefit payments on the Form 1099 no later than January 31st following the calendar year.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.050

AMEND: 471-070-1510

RULE SUMMARY: Amends the administrative rule to clarify the amount and timing of the reduction of future benefits to pay for prior benefit overpayments. Removes language about the application of payments as this will be made part of a new rule (OAR 471-070-5210).

CHANGES TO RULE:

471-070-1510

Benefits: Repayment of Overpaid Benefits; Interest

- (1) The director may issue an assessment to a claimant for an overpayment each time a claimant receives Paid Family and Medical Leave Insurance (PFMLI) benefits to which the claimant was not entitled.¶
- (2) If the director determines that a claimant has received benefits to which the claimant was not entitled:¶
- (a) The claimant may be required to repay the amount of benefits that the claimant was overpaid;¶
- (b) ~~The claimant may be required to repay the amount of penalty and interest (if applicable); and~~¶
- (c) ~~The director may secure the repayment of the overpaid benefits through the deduction from future benefits otherwise payable to the claimant under ORS 657B.100; and~~¶
- (c) ~~The director may deduct all or any part of the claimant's future weekly benefits up to the amount of the prior overpayment.~~¶
- (3)(a) If the department determines that a claimant is at fault for an overpayment, due to the claimant's error, false statement, or failure to report a material fact, then the claimant may be liable for interest on the overpayment amount. Interest that the claimant is liable for shall be paid and collected at the same time repayment of benefits is made by the individual, at the rate of one percent per month or fraction of a month. Interest will accrue, beginning on the first day of the month that begins 60 calendar days after the administrative decision establishing the overpayment becomes final.¶
- (b) If the department determines that a claimant is not at fault for an overpayment, then the claimant shall not be liable for interest on the amount to be repaid as a result of the overpayment.¶
- (4)(a) ~~Deductions from PFMLI benefits under section (2)(b) of this rule shall be applied solely to the amount of overpaid benefits for which the claimant is liable. If the director deducts the claimant's future weekly benefits under section (2)(b) of this rule, the deduction shall be from the claimant's future weekly benefits up to the amount of the prior overpayment, penalty, and interest (if applicable). The deduction will begin with the first benefit payment issued after the department's decision regarding the overpayment becomes final.~~¶
- (b) ~~5) Amounts collected through other means shall be applied first to penalties, then interest, and then to the overpaid benefit amount. If there are multiple benefit overpayments, the deduction described in section (4) of this rule will apply to the oldest unwarranted debt first. Once all unwarranted debt is paid, the deduction will apply to the most recent warranted debt.~~¶
- (6) ~~Deductions from PFMLI benefits under section (2)(b) of this rule shall be applied solely to the amount of overpaid benefits for which the claimant is liable.~~¶
- (5) ~~7) Deductions for the repayment of benefits paid erroneously may be deducted from benefits due to the claimant with no time limitations.~~

Statutory/Other Authority: ORS 657B.340, ORS 657B.120

Statutes/Other Implemented: ORS 657B.120

AMEND: 471-070-3710

RULE SUMMARY: Amends the administrative rule to include the use of a federal employer identification number (FEIN) on the assistance grant application and changes claim identification number to social security number or individual taxpayer identification number.

CHANGES TO RULE:

471-070-3710

Assistance Grants: Application Requirements

(1) An employer may apply for an assistance grant only:¶

(a) After an eligible employee has been approved by the department for family leave, medical leave or safe leave; and¶

(b) Prior to the end of the fourth month following the last day of the eligible employee's period of leave.¶

(2) An application for a grant must be submitted online or by another method approved by the department. The grant application must be complete and include the following:¶

(a) Information about the employer applying for the grant, including:¶

(A) Business Identification Number or Federal Employer Identification Number;¶

(B) Business name;¶

(C) Business address; and¶

(D) Business contact person's name and contact information;¶

(b) Information about the eligible employee taking leave for which the employer is requesting the grant, including but not limited to:¶

(A) First and last name;¶

(B) ~~Claim~~ Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN);¶

(C) Start date of the leave; and¶

(D) End date or expected leave end date;¶

(c) Information about the grant being requested, including:¶

(A) Type of grant requested; and¶

(B) Grant amount requested, when applicable;¶

(d) Written documentation demonstrating that the employer:¶

(A) Hired a replacement worker to replace an eligible employee on family leave, medical leave or safe leave, including the replacement worker's name, start date, and ~~Social Security Number or Individual Taxpayer Identification Number~~ SN or ITIN; or¶

(B) Incurred significant additional wage-related costs due to an eligible employee's use of leave and the amount, including, but not limited to, receipts, personnel or payroll records, or sworn statements; and¶

(e) Acknowledgement that:¶

(A) The employer is required to pay the employer contribution for a period of eight calendar quarters in accordance with OAR 471-070-3750; and¶

(B) The employer could be required to repay an assistance grant if employer is later deemed to be ineligible in accordance with OAR 471-070-3850.¶

(3) An employer that receives a grant under ORS 657B.200(1)(b) may submit a ~~revised~~ new grant application requesting an additional grant under ORS 657B.200(2).-¶

(a) The ~~revised~~ new grant application must contain:¶

(A) A ~~revised~~ new leave end date or ~~revised~~ new expected leave end date showing an extension of the initial period of leave requested; and¶

(B) Written documentation demonstrating that a replacement worker was hired to replace an eligible employee on family leave, medical leave or safe leave including the replacement worker's name, start date, and ~~Social Security Number or Individual Taxpayer Identification Number~~. ¶

~~(b) The revised~~ SN or ITIN.¶

(b) The additional grant application submitted under this section will not count against an employer's application limit under ORS 657B.200(3).¶

(4) An incomplete application will not be ~~review~~ considered by the department until and unless it is completed and will not count against an employer's application limit under ORS 657B.200(3).¶

(5) The department may deny an application for a grant for reasons that include, but are not limited to, the employer's failure to demonstrate that:¶

(a) The employer hired a replacement worker or incurred significant additional wage-related costs; or¶

(b) The replacement worker hired or significant additional wage-related costs incurred was due to an employee's use of family leave, medical leave or safe leave.¶

(6) A denied grant application will count against an employer's application limit under ORS 657B.200(3).¶
[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.200, 657B.340
Statutes/Other Implemented: ORS 657B.200