



NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 471
EMPLOYMENT DEPARTMENT

FILED
05/30/2023 10:47 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amending, adopting, repealing Paid Leave Oregon administrative rules relating to contributions, recovery and self-employed.

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, the Oregon Employment Department (OED) is promulgating permanent administrative rules in accordance with ORS chapter 657B. The rules will clarify that contributions shall not be paid on Paid Leave Oregon benefit payments, how contribution calculations shall be rounded, when personal income tax withholding will occur, and when adjustments are considered final.

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 PFML administrative rules (WACs Chapter 192-500 through 192-810) (<https://app.leg.wa.gov/WAC/default.aspx?cite=192>); and
 - Oregon Department of Revenue Administrative rules related to withholding - OAR Chapter 150, Division 316 (<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=448>)
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STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

By providing paid and job protected leave, Paid Leave Oregon 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 under-resourced and underserved populations and will 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.

Paid Leave Oregon contributions rules seek to provide guidance and clarity to Oregon workers and employers. The rules clarify who owes Paid Leave Oregon contributions, when and in what amounts. Contribution rules also guide administrative decision processes as well as defining our collections policies and practices. Clear, easily accessible rules will make it easier for employers and workers to understand both what is expected of them, and the potential consequences for rule violation.

While adopting our administrative rules for contributions, OED looked at the racial equity impact of the 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 recognizes that due in part to historic exclusion and racial disparities, Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander, and other people of color and their small businesses experience specific discrimination and other barriers in learning about the requirements of, and accessing support for, governmental and other programs. Recognizing a need for transparency, a number of our proposed contributions rule amendments and additions clarify when payments are subject to contributions and how to calculate the contributions formula. Creating a contribution formula that is easy to understand and follow, with concrete rules regarding how to calculate the formula and clear definitions throughout all rules, will particularly benefit small employers without dedicated payroll and HR departments. These employers may have struggled with no guidance on when to round and without needed definitions. Additionally, because employer errors in this area may have a direct, potentially negative, impact on workers, workers will also benefit from clear guidelines that are easy for their employers to follow.

The OED is aware that penalties may, and historically have, disproportionately fallen on minority business owners who are less likely to have staff resources dedicated to regulatory compliance. Additionally, unexpected expenses, including government penalties, have a particularly burdening effect on new, small, or already-struggling businesses that may lack capital and may face discrimination when applying for short-term bank loans. Rules allowing the waiver of penalties for good cause have been established and are being expanded in this batch of administrative rules. These waivers will likely benefit both employers and the agency, as they provide an opportunity for employers to come into compliance when unplanned, unexpected, or unavoidable complications impact expected contributions and education is a more appropriate agency response.

The OED recognizes the ongoing disparity in debt collection activity in Oregon, with some reports indicating that communities of color are sent to collections at rates over twice those of their white counterparts. Oregon workers and employers owing balances to Paid Leave Oregon have a right to fair and equal collections practices. Our administrative rules surrounding payments, including their due dates and application of payments received, are designed to provide clear and consistent guidance for both employers and internal staff. However, while the order of payment application is standard across agencies and within the debt collection industry, the order specified does place a burden on the debtor and creates a barrier to debt repayment by potentially extending the amount of time the principal balance remains. By applying payments to principal last, the debtor is subject to greater total interest than if the payment were to be applied evenly or to the principal balance first. This will create an especially difficult burden on low-income debtors, who will be more burdened by a higher effective interest rate.

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. OED recognizes the importance of acknowledging and understanding racial and ethnic disparities in access to and use of paid leave 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 Oregon to draw experiences from established programs.

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 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.

OED's goal is to ensure that there is equity for businesses and workers 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 workers 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:

- Providing focused outreach and engagement activities, including a specific campaigning on contributions requirements, key dates, how to calculate, and subjectivity, and any time there are changes to law and/or policy
- Developing a contributions calculator for workers to estimate their contribution amount
- Conducting focused outreach and engagement activities now and after implementation with employers and workers, with a focus on immigrant and speakers of diverse languages, Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander, and other people of color owned businesses, and rural areas and small businesses, which will include increasing general and specific awareness about Paid Leave Oregon;

- Providing instructions, guidebooks, and all other materials in plain language, in multiple languages, and in alternative formats such as video;
- 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
- Evaluating ongoing debt collection practices, once started, to determine what, if any, impact payment application practices and debt waiver policies are having on narrowing historic racial gaps within collections
- 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 on groups impacted by contributions or self-employed
- Monitoring a number of data elements related to contributions, self-employed, appeals, 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 sections should disparities begin to arise in the program
- Creating video instructions in multiple languages to give direction for Frances Online and how to file and report the Paid Leave Oregon contributions
- Building a universal glossary of terms that is the same across the OED 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 negative impacts that Paid Leave Oregon policy, procedures, and rules may otherwise have on already marginalized groups

FISCAL AND ECONOMIC IMPACT:

Any fiscal or economic impact is the result of the statute being implemented as contributions are prescribed per statute. The proposed administrative rules provide further clarification so there is no fiscal or economic impact associated with these new and amended administrative rules.

COST OF COMPLIANCE:

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

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

ORS chapter 657B requires state agencies, local governments and other public bodies to withhold from their employees’ wages Paid Leave Oregon contributions and to remit payment of the contributions quarterly on the Oregon combined quarterly payroll report that is submitted to the Oregon Employment Department.

The administrative rule related to how the contribution calculation is rounded when withholding the contributions from employee’s paychecks will impact state agencies, local governments, and public bodies that have employees. This rounding may already be occurring and therefore, the rule may just provide further clarification.

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:

There is little to no effect on those subject to the administrative rules as the administrative rules tend to be clarifying in nature from what is already required by statute and does not affect projected reporting, recordkeeping, or other administrative activities or costs.

If small businesses have an approved equivalent plan, the administrative rule regarding Paid Leave Oregon benefit payments not being considered wages, may have a positive impact as the small business will not have to withhold Paid Leave Oregon contributions on the benefits paid.

The administrative rule related to how the contribution calculation is rounded when withholding the contributions from employee's paychecks provides further clarification as to how the contributions shall be calculated. This rounding may already be occurring and therefore, the rule may just provide further clarification and not additional administrative activity.

The administrative rules related to self-employed requirements and what personal income tax return is needed when applying to be covered in Paid Leave Oregon, may create a need to work with the Oregon Department of Revenue or their tax preparer to make sure they are providing the correct tax return. However, the amendment to the administrative rule will hopefully provide further clarification of what year's tax return is needed.

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

The OED is not anticipating any equipment or supplies that will be required for compliance. There may be increased labor for employers regarding the rounding of contributions but likely this task is already occurring since contributions began January 1, 2023.

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:

471-070-0010, 471-070-0470, 471-070-2010, 471-070-2030, 471-070-3000, 471-070-3040, 471-070-3310, 471-070-5200, 471-070-5210, 471-070-8520, 471-070-8530, 471-070-8540

AMEND: 471-070-0010

RULE SUMMARY: Amends the administrative rule to define a "volunteer" for purposes of who would not be considered an employee for Paid Leave Oregon purposes

CHANGES TO RULE:

471-070-0010

Definitions

(1) "Paid Leave Oregon" means the Paid Family and Medical Leave Insurance program as described under ORS chapter 657B.

(2) "Volunteer" as used in ORS 657B.010(13)(b)(E), means an individual who performs services for a public agency or private non-profit organizations for civic, charitable, or humanitarian reasons, without promise, expectations or receipt of compensation for services rendered.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.340, 657B.010

ADOPT: 471-070-0470

RULE SUMMARY: Clarifies that Paid Leave Oregon benefits issued by the Employment Department, employer or administrator through an approved equivalent plan, is not considered wages for Paid Leave Oregon contribution purposes.

CHANGES TO RULE:

471-070-0470

Wages: Paid Leave Oregon Benefits

Paid Leave Oregon benefits issued by the Employment Department, employer or administrator through an approved equivalent plan, are not wages.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.010

AMEND: 471-070-2010

RULE SUMMARY: Amends the administrative rule to clarify which year of the tax return needs to be submitted with the election application.

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 a prior tax year, as applicable under year; section (3) of this rule; ¶

(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 a prior tax year, as applicable under year; section (3) of this rule. ¶

(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) If the eligible self-employed individual elects coverage: ¶

(a) In the first quarter of the calendar year (January through March), the individual must provide the tax return required to be filed with the Oregon Department of Revenue for the tax year immediately prior to the last tax year. ¶

(b) In quarters two through four of the calendar year (April through December), the individual must provide the tax return required to be filed with the Oregon Department of Revenue for the last tax year. ¶

Example 1: Kaja elects to have self-employment coverage in February of 2024. Kaja must provide a copy of their 2022 Oregon personal income tax return because it is within the first quarter of the calendar year. ¶

Example 2: Jackie elects to have self-employment coverage in June of 2024. Jackie must provide a copy of their 2023 Oregon personal income tax return because it is after the first quarter of the calendar year. ¶

(4) 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. ¶

(45) 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: Amends the administrative rule to clarify which year of the tax return is needed.

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 ~~the~~ 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 for a prior tax year, per OAR 471-070-2010~~ and generally shall be divided into four quarterly contribution payments. ~~The contribution payments will begin in the quarter the self-employed election is made and continue through the first quarter of the next year.~~ 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 1: Grace; Sally, a self-employed individual, elects PFMLI coverage on May 1, 2024. Grace; Sally earned \$80,000 in taxable income from self-employment in 2023. Assuming a total contribution rate of one percent, Grace; Sally's four quarterly contribution amounts due are calculated as follows:¶

~~The first~~¶

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

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

~~The third~~ird quarterly payment, period of October 1 through December 31 (fourth quarter ~~for~~ calendar year 2024), will be \$120 $(\$80,000 \text{ taxable income from self-employment} \times 0.01 \text{ total contribution rate} \times 0.6 \text{ self-employed contribution percentage} / \text{four quarters})$.¶

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

Example 2: Bert, a self-employed individual, elects PFMLI coverage on August 22, 2024. Bert earned \$40,000 in taxable income from self-employment in 2023. Because Bert's election is made during the third quarter of 2024, Bert only has three quarterly payments (third quarter of 2023, fourth quarter of 2023, and first quarter of 2024) until a new quarterly amount is determined. Assuming a total contribution rate of one percent, Bert's three quarterly contribution amounts due are calculated as follows:¶

The first payment period of July 1 through September 30 (third quarter ~~for~~ calendar year 2024), will be \$26.09 $[(\$40,000 \text{ taxable income from self-employment} \times 0.01 \text{ total contribution rate} \times 0.6 \text{ self-employed contribution percentage} / \text{four quarters}) \times 40/92 \text{ calendar days in the quarter}]$.¶

The second payment period of October 1 through December 31 (fourth quarter ~~for~~ calendar year 2024), will be \$60 $(\$40,000 \text{ taxable income from self-employment} \times 0.01 \text{ total contribution rate} \times 0.6 \text{ self-employed contribution percentage} / \text{four quarters})$.¶

The third payment period of January 1 through March 30 (first quarter ~~for~~ calendar year 2025), will be \$60 $(\$40,000 \text{ taxable income from self-employment} \times 0.01 \text{ total contribution rate} \times 0.6 \text{ self-employed contribution percentage} / \text{four quarters})$.¶

Bert's next payment will be based on the taxable income from self-employment in 2024.¶

~~(3) Quarterly contributions shall be due and payable in accordance with OAR 471-070-303~~ (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.¶

(45) 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.¶

(56) The self-employed individual must annually report information and provide documentation provided in subsection (a) and (b) of this section the department deems necessary for the administrative of elective coverage. Failure to provide the information by December 31 will result in termination of the self-employed individual's

election of PFML 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 ~~fails to provide~~ provides 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 that ~~begin in the second quarter~~. The department will adjust the quarterly contribution payment ~~amounts due, if appropriate, due~~ when the prior year's tax return is ~~filed and provided to the department on or before December 31 of each year~~.¶

Example 3: Tobi, a self-employed individual, elects PFML coverage on June 5, 2023 and provides his 2022 Oregon personal income tax return showing \$40,000 of taxable income from self-employment. Assuming a total contribution rate of one percent, Tobi's quarterly contribution amounts due are \$60 ($\$40,000 \text{ taxable income from self-employment} \times 0.01 \text{ total contribution rate} \times 0.6 \text{ self-employed contribution percentage} / \text{four quarters}$).¶

By April 30, 2024, Tobi needs to provide to the department their 2023 Oregon personal income tax return; however, Tobi is filing an extension for their 2023 Oregon personal income tax return and therefore does not have a tax return to provide to the department. Since the department does not have 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 Tobi's self-employment, the department calculates Tobi's contribution amount for 2024 based on their 2022 Oregon personal income tax return on file. Tobi will continue to pay \$60 each quarter until the 2023 Oregon personal income tax return is received.¶

Tobi provides to the department filed on extension and provide their 2023 Oregon personal income tax on September 22, 2024 which shows Tobi's taxable income from self-employment for 2023 was actually \$50,000. Assuming a total contribution rate of one percent, Tobi's quarterly contribution amounts that should have been paid starting with the second quarter of 2024 was \$75 ($\$50,000 \text{ taxable income from self-employment} \times 0.01 \text{ total contribution rate} \times 0.6 \text{ self-employed contribution percentage} / \text{four quarters}$). By September 22, 2024, Tobi has only made the first quarterly payment (period of April 1 through June 30) of \$60. The department adjusts the amount Tobi should have paid for contributions by \$15 ($\$75 \text{ assessed minus the } \60 paid) and bills Tobi for the difference. The department updates Tobi's contribution amount for the remaining quarters to \$75 return on or before October 31 of each year.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS ~~657B.130, 293.66~~ 293.660, 657B.130, 657B.150

AMEND: 471-070-3000

RULE SUMMARY: Amends the administrative rule to remove the definition of "legal fees" as this will now be included in OAR 471-070-3010 and will no longer be limited to contributions only.

CHANGES TO RULE:

471-070-3000

Contributions: Definitions

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

~~(2) "Maximum wage amount" means the maximum employee wages per employer subject to PFMLI.~~ "Maximum wage amount" means the maximum employee wages per employer subject to Paid Family and Medical Leave Insurance (PFMLI) contributions per calendar year.

Statutory/Other Authority: ORS 657B.340

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

AMEND: 471-070-3040

RULE SUMMARY: Amends the administrative rule to clarify when the rounding shall occur when calculating the Paid Leave Oregon employer and employee contributions.

CHANGES TO RULE:

471-070-3040

Contributions: Withholding of Employee Contributions

(1) An employer may not deduct from the employee's subject wages more than the maximum allowable amount of 60 percent of the total contribution rate described in OAR 471-070-3010 for a pay period rounded to the nearest cent.¶

(2) When performing the calculation described in section (1) of this rule, the intermediate steps shall not be rounded, only the final step shall be rounded to the nearest cent.¶

Example: On February 2, 2023, Jennifer earned \$1,769.89 in subject wages for the pay period. The employer calculates Jennifer's contributions by multiplying the subject wages by the total contribution rate of 1% (not rounded) by the employee contribution rate of 60% (rounded to the nearest cent). The total potential contribution is \$17.6989 ($\$1,769.89 \times 0.01 = \17.6989 , not rounded). Jennifer's employee portion of the potential contribution is \$10.62 ($\$17.6989 \times 0.60 = \10.61934 , rounded to the nearest cent is \$10.62). The employer's contribution (if a large employer) is \$7.08 ($\$17.6989 \times 0.40 = \7.07956 , rounded to the nearest cent is \$7.08).¶

(3) If an employer fails to deduct the maximum allowable employee share of the contribution rate for a pay period, the employer is considered to have elected to pay that portion of the employee's contribution that the employer failed to deduct, and the employer is liable to pay that portion of the employee share under ORS 657B.150(5) or ORS 657B.210(5) for that pay period if not corrected within the quarter. The employer may deduct from the employee's subject wages the amount they failed to deduct within the quarter.¶

(~~34~~) An employer may elect to pay the employee's contribution, in whole or in part, and must provide a written notice, policy, or procedure to the employee or enter into a collective bargaining agreement with the employee specifying that the employer is electing to pay the employee contribution, making the employer liable for that portion of the employee contribution. The employer must give written notice of an update to its notice, policy, or procedure or amendments to its collective bargaining agreement to the employee at least one pay period prior to any reduction by the employer of the ~~elected~~ employee contribution amount that the employer previously elected to pay.¶

(45) If an employer has elected to pay, in whole or in part, the employee portion of contributions as stated in section (~~34~~) of this rule, the employer may not deduct the amount the employer elected to pay from a future paycheck of the employee.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.150, 657B.210

REPEAL: 471-070-3310

RULE SUMMARY: Repealing this rule as the content will be added to a new administrative rule relating to all debts owing under ORS chapter 657B and not just contribution debt.

CHANGES TO RULE:

~~471-070-3310~~

~~Contributions: Application of Payments~~

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

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

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

~~(a) Undesignated Payments:~~

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

~~(i) Penalties;~~

~~(ii) Interest; and then~~

~~(iii) PFMLI Contributions.~~

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

~~(i) Legal Fees;~~

~~(ii) Penalties;~~

~~(iii) Interest; and then~~

~~(iv) PFMLI Contributions.~~

~~(b) Designated Payments:~~

~~(A) Legal Fees;~~

~~(B) Penalties;~~

~~(C) Interest; and then~~

~~(D) PFMLI Contributions.~~

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

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

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

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

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

~~Statutory/Other Authority: ORS 657B.340~~

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

ADOPT: 471-070-5200

RULE SUMMARY: Explains that unless otherwise specified by law, balances owed to Paid Leave Oregon are due as of the date the decision causing the balance owed becomes final. Defines "final" which means a decision made by the department is final unless an individual files an appeal within the allowed appeal timeframe.

CHANGES TO RULE:

471-070-5200

Due Dates for Balances Owed to the Department

(1) Unless otherwise specified in statute or administrative rule, balances owed to the department under ORS chapter 657B are considered due and payable as of the date the decision causing the balance due becomes final.¶

(2) "Final" means a decision made under this chapter for which the timeframe to request a hearing as described in OAR 471-070-8005 has expired, unless a timely request for a hearing with the department regarding the decision has been filed in which case "final" means when the decision issued following the hearing, or any appeal of the hearing, has been issued and the time period to further appeal that decision has passed without a timely appeal being filed.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.340

ADOPT: 471-070-5210

RULE SUMMARY: Clarifies the order in which payments are applied to all outstanding debts under ORS chapter 657B. Similar language for contribution debts was previously listed in OAR 471-070-3310; however, that rule is being repealed so the order applies to all outstanding debts.

CHANGES TO RULE:

471-070-5210

Application of Payments

(1) As used in this administrative rule:

(a) "Designated payments" are payments received by the department specifying a specific debt, distraint warrant, or quarter(s) in the case of contributions.

(b) "Legal fees" means fees attributed to the recording or processing of a distraint warrant on behalf of the department for the purpose of collecting amounts owed under ORS chapter 657B pursuant to ORS 657B.300 and search fees attributed to garnishments issued to financial institutions pursuant to ORS 18.790.

(c) "Principal" means any balance owing under ORS chapter 657B, excluding legal fees, penalties, and interest.

(d) "Undesignated payments" are payments received by the department that are not specified for a debt, distraint warrant, or quarter(s) in the case of contributions.

(2) Except as otherwise provided by statute, or as directed by a court of competent jurisdiction, payments made to the department by or on behalf of an individual or employer for amounts owed under ORS chapter 657B; legal fees, and related penalties; in accordance with the provisions of ORS chapter 657B shall be identified by the department as either "Designated payments" or "Undesignated payments" and will be credited to the individual's or employer's account in the following order of priority:

(a) Undesignated payments:

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

(i) Penalties;

(ii) Interest; and then

(iii) Principal.

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

(i) Legal Fees;

(ii) Penalties;

(iii) Interest; and then

(iv) Principal.

(b) Designated payments:

(A) Legal Fees;

(B) Penalties;

(C) Interest; and then

(D) Principle.

(3) The department may identify categories of indebtedness for internal accounting procedures and may retire each category separately in the order of priority set forth in section (2) of this rule.

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

(5) The employees listed in OAR 471-070-0550 may act on behalf of the director for purposes of section (3) and (4) of this rule.

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

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

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.040, 657B.120, 657B.150, 657B.240, 657B.300, 657B.320, 657B.330, 657B.370, 657B.430, 657B.910, 657B.920

AMEND: 471-070-8520

RULE SUMMARY: Amends the administrative rule to change "final" to "due" to describe when the penalty is due.

CHANGES TO RULE:

471-070-8520

One-Percent Penalty

(1) If an employer has failed to file or complete all required reports or pay all required contributions for the calendar year as described in 471-070-3030, the department shall assess the penalty authorized by ORS 657B.910 on the Paid Family and Medical Leave Insurance (PFMLI) subject wages. The department shall send notice of the assessment of such penalty to the employer's last known address or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records on or before October 20 of the year. The penalty shall become ~~final~~due on November 10 immediately following the assessment.¶

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

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

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

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

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

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

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

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

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

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

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

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

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.910

AMEND: 471-070-8530

RULE SUMMARY: Amends the administrative rule to expand when Paid Leave Oregon will find an employer had "good cause" for failure to file combined payroll reports or pay paid leave contributions to include payments and reports incorrectly filed with another jurisdiction.

CHANGES TO RULE:

471-070-8530

Good Cause for Failure to File Reports or Pay Contributions

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

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

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

(b) Filed the required report or paid the contributions due ~~within~~ no later than seven calendar days after the date determined by the director to be the date the factors or circumstances causing the delay ceased to exist;¶

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

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

(e) Provided copies of timely filed reports and proof of all related payments to another jurisdiction, if the delay was due to making contributions to the incorrect jurisdiction. Good cause will be considered if, within 30 calendar days of the date the department or employer determines the contributions are due to the Paid Family and Medical Leave Insurance Trust Fund instead of another jurisdiction, the employer filed the required report and paid the contributions due.¶

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

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

Statutory/Other Authority: ORS 657B.340

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

AMEND: 471-070-8540

RULE SUMMARY: Amends the administrative rule to specify the penalty is determined final within 20 calendar days from the date the department assessed the late filing penalty, unless the employer requests a timely hearing before the 20 calendar days.

CHANGES TO RULE:

471-070-8540

Penalty Amount When Employer Fails to File Report

(1) If an employer fails to file all required reports within the time period described in ORS 657B.920(2), the department may assess a late filing penalty in addition to any other amounts due.¶

(2) The penalty shall be 0.02 percent of the employer's employees total Paid Family and Medical Leave Insurance (PFMLI) subject wages for the late report rounded to the nearest \$100. If the penalty is calculated to be less than \$100, the amount will be the minimum \$100.¶

Example: Athena's Yoga and Piyo Studio has 20 employees with total PFMLI subject wages for first quarter of 2024 of \$120,000. Athena does not file the 2024 Oregon Quarterly Tax Report for the first quarter. The department sends a written notice warning on May 10, 2024, to Athena's Yoga and Piyo Studio, but they do not correct the deficiency by filing the needed report. A penalty of \$24 ($0.0002 \times \$120,000$ PFMLI subject wages) is calculated by the department. But since the minimum penalty is \$100, the penalty imposed by the department is \$100.¶

(3) The penalty assessment becomes final 20 calendar days from the date on which the department assessed the late filing penalty, unless the employer files a timely request for hearing as described in OAR 471-070-8005.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.920