



NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 471
EMPLOYMENT DEPARTMENT

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

FILING CAPTION: Amending Paid Leave Oregon administrative rules relating to equivalent plans.

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:
Anne Friend
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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. These amended administrative rules provide further guidance for timeframes for equivalent plan employers to respond to letters and expands the timeframe for appeals of an equivalent plan dispute to the OED. The amended rules also clarify when the employee contributions are due to the Paid Leave Oregon Trust Fund when an approved equivalent plan is withdrawn or terminated.

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>);
- Oregon Department of Consumer Business Services administrative rules and laws around insurance providers (<https://wcd.oregon.gov/laws/Pages/index.aspx>).
- Oregon Public Broadcasting (<https://www.pbs.org/newshour/economy/the-system-was-never-created-for-us-business-owners-of-color-still-struggle-to-get-enough-covid-aid>)
- Politico Magazine (<https://www.politico.com/news/magazine/2022/12/18/black-mistrust-healthcare-00060324>)
- MPR News (<https://www.mprnews.org/story/2019/12/16/native-american-leaders-work-to-overcome-community-mistrust-of-census>)
- Urban Institute (<https://www.urban.org/sites/default/files/2022-07/Access%20to%20Paid%20Leave%20Is%20Lowest%20among%20Workers%20with%20the%20Greatest%20Needs.pdf>)

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 equivalent plans provide employers flexibility to decide if offering paid family, medical, and safe leave benefits to their employees through an employer administered or fully insured plan would be preferred to the state plan. This has potential advantages for employers, such as cost savings, ability to maintain existing benefits program if equivalent to the state plan, and an opportunity to provide higher benefits than the state plan, and thus be a more competitive employer. While employees covered by an equivalent plan must receive benefits that are equal to or greater than the state plan, it is the employer, insurance provider, or third party administrator and not Paid Leave Oregon that is responsible for the administration of the equivalent plan, including processing of claim applications, decisions on claims, and payment of benefits.

The OED recognizes that employees covered by equivalent plans may face barriers in accessing benefits through their

employer, such as denial of valid claims and non-payment of approved claims. These barriers may have a disproportionate impact on Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander, and other people of color, immigrants, and non-native English speaking individuals. These racial groups may be more likely to experience discrimination and bias in decision-making on claims, including claim approval and receiving any or all eligible paid leave benefits. Furthermore, individuals who are socioeconomically disadvantaged, meaning persons who have less access to social and economic resources, may face barriers to accessing and understanding paid leave benefits for a variety of reasons including language barriers and access to reliable technology.

The administrative rules on equivalent plans seek to ensure that employers approved to offer benefits through an equivalent plan are able to sufficiently administer the plan while still being in compliance and that their employees have equitable access to benefits under the state plan or an equivalent plan. The amended administrative rule specifies the timeframe for employers to respond to department requests for information. Also clarifies when employee contributions have to be paid to the department in the case of plan termination and withdrawal, and how interest accrues on employee contributions due. In addition, the amended rules clarify the meaning of a successor in interest. On the employee side, the rule amendments extend the timeframe for employees filing equivalent plan disputes.

While amending the above outlined administrative rules for equivalent plans, Paid Leave Oregon looked at the racial equity impact of the administrative rule 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?

In drafting the administrative rule amendments on equivalent plans, Paid Leave Oregon has been careful to think through racial inequities that may occur. A number of the proposed rule amendments clarify department expectations for employers. All employers may likely benefit by providing clear timeframes for responding to information requests and specifying when contributions are due and their accrued interest amounts related to plan withdrawal and termination. The amendments may also benefit small businesses that have less ability to navigate structural barriers like locating missing information. The same benefit also applies to clarifying the definition of successor in interest and aligning the meaning across administrative rules. In addition to providing clear information, the rule on response timeframes further allows more time to respond for employers that do not use electronic communication and thereby takes into account lack of access to technology. This is relevant from an equity perspective because the digital divide particularly burdens Black, Indigenous, and other people of color living at or below the minimum income standard and those living in rural areas as well as persons with a disability.

It is important to be aware of the fact that information and support for small businesses are generally more easily accessible to white-owned, native English speaking businesses than for business owners of color. Due 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 discrimination and face greater barriers in learning about requirements of, and access to, government programs. This was for instance highlighted by the inequities for Black and Latino/a/x business owners in accessing COVID aid. Racial inequities in accessing information may further intersect with inequities for businesses owned by women or members of the LGBTQIA2S+ community and businesses that have less capital.

On the employee side, Paid Leave Oregon proposes to extend the timeframe for requesting a dispute resolution from 20 to 60 days of the equivalent plan employer's appeal decision. Extending the timeframe aligns with the timeframe for requesting an appeal under the state plan and ensures that the same requirements apply to employees covered by an equivalent plan and a state plan. Moreover, extending the appeal timeframe would benefit employees that require more time to understand the dispute process in order to put together an appeal request. This may have a huge impact on individuals such as those who are non-native English speakers or any persons needing help with filing an appeal.

It is important to recognize that complex bureaucratic processes often have built-in barriers, such as the dispute 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, regardless of the available timeframe. 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 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. While the rules aim to ensure equitable benefits for employees, these may not be sufficient to prevent barriers for those who may have an equity impact as identified above. 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 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 and draw experience from established benefit programs.

Are there strategies to mitigate the unintended consequences?

OED's goal is to ensure that there is equity for businesses and individuals as we implement Paid Leave Oregon for Oregonians. The division places a high priority on developing and maintaining a diverse and inclusive culture and ensuring there is equitable access to understanding and using the program for equivalent plan 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:

- Review court case decisions and contested case decisions timely to determine if changes are needed in the division's administrative rules, internal procedures, or a statutory change is needed in ORS chapter 657B.
- Collaborating with the division's data team to gather and analyze information for any gaps or trends on equivalent plan approvals and denials, and demographics on disputing equivalent plan decisions and their outcomes.
- 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.
- Collaborating with community members most impacted to develop strategies and give recommendations to leadership to remove or lower barriers to the equivalent plan dispute appeals process.
- 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.
- Establishing and using an equity framework to standardize review processes to ensure that all new and ongoing processes, procedures, rules, and related communications are furthering program equity.
- 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 equivalent plan contributions, benefit approved and denied, and appeals in order to determine if and what disparate outcomes historically marginalized groups are facing in Paid Leave

Oregon.

- Continuously explore ways to make changes within the policy and technology sections should disparities begin to arise in the program.
- 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 negative impacts that OED policy, procedures, and rules may otherwise have on already marginalized groups.

FISCAL AND ECONOMIC IMPACT:

Any fiscal or economic impact for Paid Leave Oregon equivalent plans is the result of the statute being implemented. There is no fiscal or economic impact associated with these 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)):

The administrative rules on equivalent plans impacts the State as an employer, units of local government and the public if they choose to not participate in the state Paid Leave Oregon plan but rather provide their own approved Paid Leave Oregon equivalent plan to their employees. State agencies, local governments, and the public that has elected to have an equivalent plan will be impacted by these rule amendments by the timeframe to respond to the department's request for additional information and when the contributions shall be due if they terminate or withdraw their plan.

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.*

Since all employers are eligible to offer an equivalent plan instead of participating in the Paid Leave Oregon program, all small employers may be subject to these rules if they choose to offer an equivalent plan instead.

Based on the percentage of small businesses electing to offer an equivalent plan to their employees in Oregon, it is estimated approximately 600 small business employers will submit an application to have a Paid Leave Oregon equivalent plan instead of participating in the state plan.

* Source: Oregon Unemployment Insurance Wage Records

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

The request to respond to the notices sent by the department within 10 to 14 calendar days will require an individual to

respond quickly. The additional information that is needed to process the equivalent plan application can vary so the time needed to respond to the request can also vary. We estimate it will take approximately one hour to respond to the department's request for additional information.

The statute requires the employer to dispose the remaining employee contributions at the time of withdrawn or termination to the department. The administrative rule just clarifies how that will occur. The reporting requirements for payment of employee contributions the employer still has in trust after the equivalent plan is withdrawn or terminated will need to show how much was collected from the employees and how much was paid in expenses to arrive at a net amount. The department will then send an invoice to the employer that will need to be paid. The estimated time needed to compile the report depends on how many employee contributions were withheld and how many different administrative expenses occurred. The reporting and recordkeeping requirement is estimated to take on average four hours.

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

The timeframe to gather the sum of the amount of employee contributions withheld and the administrative expenses paid with the employee contributions to arrive at the net amount will depend on the number of employees the employer has. Per the Bureau of Labor Statistics report released March 17, 2023*, the total national compensation (wages, salaries and benefits) for a professional and related occupation for an employer for private industry workers is \$61.02 per hour. Each small business is different, so the hours needed for reporting requirements and recordkeeping may vary.

*<https://www.bls.gov/news.release/pdf/ecec.pdf>

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 four members represent employers, 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:

471-070-2200, 471-070-2210, 471-070-2220, 471-070-2270, 471-070-2400, 471-070-2450, 471-070-2455, 471-070-2460

AMEND: 471-070-2200

RULE SUMMARY: Amends the administrative rule to align the definition of "successor in interest" with the definition used in OAR 471-070-3130.

CHANGES TO RULE:

471-070-2200

Equivalent Plans: Definitions

- (1) "Administrative Costs" means the costs incurred by an employer directly related to administering an equivalent plan which include, but are not limited to, cost for accounting, recordkeeping, insurance policy premiums, legal expenses, and labor for human resources' employee interactions related to the equivalent plan. Administrative costs do not include rent, utilities, office supplies or equipment, executive wages, cost of benefits, or other costs not immediately related to the administration of the equivalent plan.¶
- (2) "Administrator" means either an insurance carrier/company, third-party administrator, or payroll company acting on behalf of an employer to provide administration and oversight of an approved equivalent plan.¶
- (3) "Declaration of Intent" means a legally binding, signed agreement from an employer documenting the employer's intent and commitment to provide an approved equivalent plan with an effective date of September 3, 2023.¶
- (4) "Employer administered equivalent plan" means an equivalent plan in which the employer offers a private plan where the employer assumes all financial risk associated with the benefits and administration of the equivalent plan, whether it is administered by the employer or a third-party administrator.¶
- (5) "Equivalent plan" means a Paid Family and Medical Leave Insurance (PFMLI) plan approved by the department that provides benefits that are equal to or greater than the benefits provided by the Oregon PFMLI program established under ORS 657B.340.¶
- (6) "Fully insured equivalent plan" means an equivalent plan in which the employer purchases an insurance policy from an insurance company approved to sell PFMLI products by the Oregon Department of Consumer and Business Services (DCBS) Division of Financial Regulation and the benefits related to the plan are administered through the insurance policy.¶
- (7) "Successor in interest" means ~~a successor to another's interest in property, organization, trade, or business that is an employer who is transferred or otherwise acquires all or substantially all of the components parts of a business, including the employees necessary to carry~~ ed on and controlled substantially as it was before the transfer in which there is a complete transfer to the successor of the organization, trade, or business, and substantially all of its assets day to day operations and essential business functions in the same manner and for the same purposes as carried on prior to the acquisition or transfer.¶
- (8) "Substantial reduction in personnel," as used in ORS 657B.260 and applicable administrative rules, means a situation in which the number of employees employed by the predecessor of the organization, trade, or business is reduced by at least 33 percent by the successor in interest.
- Statutory/Other Authority: ORS 657B.340
- Statutes/Other Implemented: ~~ORS 657B.340, ORS 657B.210, 657B.260, 657B.340~~

AMEND: 471-070-2210

RULE SUMMARY: Amends the administrative rule to clarify the timeframe the equivalent plan employer has to respond to the department's request for further information. The timeframe is 14 calendar days for request sent by mail and 10 calendar days if request is sent by telephone, email, or other electronic means.

CHANGES TO RULE:

471-070-2210

Equivalent Plans: Application Requirements and Effective Date

- (1) An employer must submit a separate application and receive department approval for an employer administered equivalent plan or a fully insured equivalent plan for each Business Identification Number. The application must be submitted to the department online or by another method prescribed by the department. An incomplete application will not be reviewed by the department.¶
- (2) For an equivalent plan to be reviewed by the department, the equivalent plan application must include the following:¶
 - (a) Information about the employer applying for the equivalent plan, including:¶
 - (A) Business Identification Number and Federal Employer Identification Number;¶
 - (B) Business name;¶
 - (C) Business address; and¶
 - (D) Business contact's name and contact information;¶
 - (b) A copy of the employer administered equivalent plan or in the case of a fully insured equivalent plan, a copy of the insurance policy or the insurance product and the selected variables the employer is choosing;¶
 - (c) A completed questionnaire attesting that the plan meets all requirements for equivalent plans; and¶
 - (d) Other information as required on the department's equivalent plan application form.¶
- (3) Employers must pay a nonrefundable \$250 application fee with every:¶
 - (a) Application for approval of a new equivalent plan; or¶
 - (b) Application for reapproval or amendment of an equivalent plan that has substantive amendments to the equivalent plan that was originally approved by the department.¶
- (4) Employers must pay a nonrefundable \$150 application fee with every application for reapproval of an equivalent plan that has no changes or only non-substantive amendments to the equivalent plan that was originally approved by the department.¶
- (5) There is no fee for either of the following:¶
 - (a) Application for amendment of an equivalent plan that has substantive or non-substantive amendments to the equivalent plan that were required by Oregon, local, or federal law changes or changes to the contribution rate and maximum wage amount as described in OAR 471-070-3010;¶
 - (b) Application for amendment of an equivalent plan that has non-substantive amendments to the equivalent plan that was originally approved by the department.¶
- (6) "Substantive amendments" to an equivalent plan that was originally approved by the department as used in sections (3), (5), and (11) of this rule include, but are not limited to, any of the following:¶
 - (a) Changing from a fully insured equivalent plan to an employer administered equivalent plan; ¶
 - (b) Changing from an employer administered equivalent plan to a fully insured equivalent plan;¶
 - (c) Changing the fully insured equivalent plan insurance policy to reduce benefits or leave types, regardless of whether the new plan is from the same insurance provider or another insurance provider;¶
 - (d) Changing the questionnaire answers for the equivalent plan; or¶
 - (e) Changing the employer administered equivalent plan to reduce benefits or leave types.¶
- (7) "Non-substantive amendments" as used in section (4), (5), and (11) of this rule include, but are not limited to, any of the following:¶
 - (a) Updating solvency documents for employer administered plans;¶
 - (b) Updating the application for an equivalent plan that does not amend the equivalent plan, includes, but is not limited to, the following:¶
 - (A) Changing business or contact information, or¶
 - (B) Correcting typographical errors; or¶
 - (c) Increasing benefits or leave types, regardless of whether the new plan is from the same insurance provider or another insurance provider.¶
- (8) Approved equivalent plans become effective:¶
 - (a) For new equivalent plans, on the first day of the calendar quarter immediately following the date of approval by the department; and¶
 - (b) For amendments to a previously approved equivalent plan, on the first day of the calendar quarter immediately

following the date of approval of the amendment by the department. If approval of the amendment is denied, the employer must continue to follow the originally approved equivalent plan.¶

(9) An application for reapproval must be submitted by an employer annually for a three-year period following the original effective date of the plan. The application for reapproval is due 30 days prior to the anniversary of the original effective date of the approved equivalent plan¶

Example: ABC Corporation submitted an equivalent plan application to the department on February 4, 2023. The department sent an approval letter for the equivalent plan that was dated March 5, 2023 and the equivalent plan becomes effective on April 1, 2023. The application for reapproval is due on March 1 of 2024, 2025, and 2026; 30 days prior from the original anniversary of the effective date of April 1st.¶

(10) For the purposes of determining the reapproval requirement, the equivalent plan approval date and effective date are the first day of the calendar quarter immediately following the date of the original approval letter from the department.¶

(11) After the three-year period following the original effective date of the plan, an application for reapproval must be submitted any-time a substantive amendment occurs. ~~When a substantive amendment occurs after the three-year period, a reapproval application must be submitted by an employer as described in section (9) of this rule. For non-substantive amendments, a copy of the revised equivalent plan must be submitted to the department at the time the change becomes effective. as described in section (9) of this rule. For a non-substantive amendments, a copy of the revised equivalent plan must be submitted to the department at the time the change becomes effective.~~¶

(12) The department may request any information necessary to establish facts relating to eligibility for an equivalent plan. Unless a timeframe is otherwise specified under statute or administrative rule or is specified by an authorized department representative, the employer must respond to all requests for information within the following time frames:¶

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

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

(13) 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.¶

[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.2210, 657B.340

Statutes/Other Implemented: ORS 657B.210, ~~657B.220~~, 657B.230

AMEND: 471-070-2220

RULE SUMMARY: Amends the administrative rule to increase the timeframe an employee can appeal an equivalent plan employer denial from 20 calendar days to 60 calendar days. This will align with the appeal timeframe in OAR 471-070-8005.

CHANGES TO RULE:

471-070-2220

Equivalent Plans: Plan Requirements

In order for an equivalent plan to be approved by the department, the plan must at a minimum:¶

- (1) Cover all Oregon employees who have been continuously employed with the employer for at least 30 calendar days, regardless of hours worked, including full-time, part-time, temporary workers hired by the employer, and replacement employees hired to temporarily replace eligible employees during PFMLI leave. Any employees who were eligible for benefits under their previous Oregon employer's equivalent plan, who begin working for a new employer with an approved equivalent plan must be automatically covered for benefits under the equivalent plan offered by the new employer as described in ORS 657B.250;¶
- (2) Provide family leave as described in ORS 657B.010(17) and applicable administrative rules;¶
- (3) Provide medical leave as described in ORS 657B.010(19) and applicable administrative rules;¶
- (4) Provide safe leave as described in ORS 657B.010(21) and applicable administrative rules;¶
- (5) Allow eligible employees to take family leave, medical leave, or safe leave in a benefit year for periods of time equal to or longer than the duration of leave provided under ORS 657B.020;¶
- (6) Provide eligible employees weekly benefit amounts equal to or greater than benefits provided under ORS 657B.050;¶
- (7) Allow family leave, medical leave, or safe leave to be taken in increments or nonconsecutive periods as provided under ORS 657B.090;¶
- (8) Impose no additional conditions or restrictions on the use of family leave, medical leave, or safe leave beyond those explicitly authorized by ORS chapter 657B and applicable administrative rules;¶
- (9) Provide that the employee contributions withheld by an equivalent plan shall not be greater than the employee contributions that would be charged to employees under ORS 657B.150 and determined annually under OAR 471-070-3010;¶
- (10) Ensure employee contributions that are received or retained under an equivalent plan are used solely for equivalent plan expenses, are not considered part of an employer's assets for any purpose, and are held separately from all other employer funds;¶
- (11) Meet all equivalent plan requirements provided in ORS 657B.210 and applicable administrative rules;¶
- (12) Provide for decisions on benefit claims, to be in writing, either in hard copy or electronically if the employee has opted for electronic notification. Decisions on benefit claim approvals must include the amount of leave approved, the weekly benefit amount, and a statement indicating how the employee may contact the department to request the eligible employee's average weekly wage amount if the employee believes the benefit amount may be incorrect. Denial decisions must include the reason(s) for denial of benefits along with an explanation of an employee's right to appeal the decision and instructions on how to submit an appeal.¶
- (13) Provide an appeal process to review benefit decisions when requested by an employee that also requires the employer or administrator to issue a written decision. The employee must have at least ~~260~~ 60 calendar days from the date of the written denial to request an appeal with the employer or administrator, if applicable, or as soon as practicable if there is good cause for the delay beyond the ~~260~~ 60 calendar days as described in OAR 471-070-2400(7). The employee, and the employer, or administrator have 20 calendar days from the date the appeal is received, or as soon as practicable if there is good cause as described in OAR 471-070-2400(7), to resolve the appeal and for the employer or administrator to issue a written appeal determination letter along with an explanation of the department's dispute resolution process as described in OAR 471-070-2400 if an appeal is denied;¶
- (14) Provide that the equivalent plan employer or administrator must make all reasonable efforts to make a decision on whether to allow the claim and issue the first payment of any benefits to an employee within two weeks after receiving the claim or the start of leave, whichever is later. Subsequent benefit payments must be provided weekly by ~~the~~ fully insured equivalent plan and benefit payments may be paid according to the existing paycheck schedule for employees under an employer administered equivalent plan; and¶
- (15) Ensure a written notice poster for the equivalent plan as described in OAR 471-070-2330, will be given to all eligible employees, at the time of hire and each time the policy or procedure changes, in the language that the employer typically uses to communicate with the employee.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.210

RULE SUMMARY: Amends the administrative rule to clarify per work week.

CHANGES TO RULE:

471-070-2270

Equivalent Plans: Proration of Benefit Amounts for Simultaneous Coverage

(1) An employee is considered to have simultaneous coverage when the employee is covered by more than one employer's equivalent plan at the same time or is covered by the state plan established under ORS 657B.340 and at least one employer with an equivalent plan, at the same time. An employee does not have simultaneous coverage if they work for multiple employers covered by the state plan.

(2) An employee with simultaneous coverage at the start of a leave event shall 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. An equivalent plan employer may ask an employee whether the employee has additional Paid Family and Medical Leave Insurance (PFMLI) coverage but may not require that the employee provide details on the other employers or the plans. The employer, employee, or administrator may request information from the department as described in OAR 471-070-2260.

(3) Each equivalent plan is required to pay benefit amounts that are equal to or greater than the benefits offered under the state plan as described in OAR 471-070-2260 and ORS 657B.050 and applicable administrative rules. Upon request, the department may provide information to equivalent plan employers or administrators regarding prorated benefit amounts, if the department is aware of simultaneous coverage. Each respective plan benefit amount shall be prorated by the average number of work days typically worked per work week by the claimant for each respective plan rounded to the nearest whole cent.

(a) The state plan shall pay benefits based on the prorated weekly benefit amount and shall further prorate the weekly benefit amount as described in OAR 471-070-1440 for leave taken in work day increments.

(b) The equivalent plan shall pay benefits equal to or greater than the prorated weekly benefit amount and may further prorate the weekly benefit amount when leave is taken in work day increments based on the number of work days of leave taken in the work week.

Example 1: Alondra is employed by two employers. One employer is a state plan employer and the other is an equivalent plan employer. Alondra typically works five days per work week for the state plan employer and three days per work week for the equivalent plan employer. Alondra is unable to work for both employers due to the need to provide care for a seriously ill parent for the next five weeks. Alondra must apply for benefits separately for the state plan and the equivalent plan. Alondra's weekly benefit amount is \$1,040. Alondra will receive two separate benefit payments each week. The state plan will pay the prorated weekly benefit in the amount of \$650 [(\$1,040 weekly benefit amount divided by 8 total days worked at both jobs) x 5 days worked for the state plan employer]. The equivalent plan employer will pay at least the prorated weekly benefit in the amount of \$390 [(\$1,040 weekly benefit amount divided by 8 total days worked at both jobs) x 3 days worked for the equivalent plan employer].

Example 2: Same typical work schedule and weekly benefit amount as in example 1; however, Alondra is unable to work for the state plan employer one day per work week and is unable to work for the equivalent plan employer one day per work week (for a total of two days of leave each week) to provide care for a seriously ill parent for the next five weeks. Alondra must apply for benefits separately for the state plan and the equivalent plan.

Alondra's weekly benefit amount is still the same at \$1,040 (the state plan prorated weekly benefit amount is \$650 and the equivalent plan prorated weekly benefit amount is at least \$390). Because the leave is taken in work day increments and not an entire work week, once the prorated weekly benefit amount is determined, the state plan will further prorate the state's weekly benefit amount by the number of work days on leave. The state plan will pay weekly benefits in the amount of \$130 [(\$650 state plan portion of the weekly benefit amount divided by 5 work days) x 1 day on leave in the work week]. The equivalent plan employer may choose to further prorate the weekly benefit amount by the number of work days on leave [(\$390 equivalent plan portion of the weekly benefit amount divided by 3 work days) x 1 day on leave in the work week] for a minimum weekly benefit amount of \$130.

(4) The department shall calculate prorated benefit amounts when:

(a) The department receives an application for an employee that provides current employment information from a state plan employer(s) and one or more equivalent plan employer(s). The department shall verify coverage under the equivalent plan as described in OAR 471-070-2230 to determine a prorated benefit amount for benefits offered under the state plan.

(b) The department receives a request from an equivalent plan employer or administrator for an employee's benefit information in accordance with OAR 471-070-2260. The department shall verify whether the employee has coverage under more than one equivalent plan and, if covered, include the prorated benefit amounts to the

employer. The department will provide prorated benefit amounts to any other equivalent plan employer or administrator that covers the employee also.¶

(5) Should the department receive information about changes in simultaneous coverage after information is provided to an equivalent plan employer or administrator in accordance with OAR 471-070-2260 and under this rule, the department shall calculate or re-calculate the proration, as applicable, and notify all employers, administrators, or employees of the change. Any overpayments made by the Oregon PFMLI program shall be recovered in accordance with OAR 471-070-1510.

Statutory/Other Authority: ORS 657B.340, ORS 657B.210

Statutes/Other Implemented: ORS 657B.210

AMEND: 471-070-2400

RULE SUMMARY: Amends the administrative rule to increase the appeal timeframe to appeal the employer and employee dispute to the department from 20 calendar days to 60 calendar days. This will align with the appeal timeframe in OAR 471-070-8005.

CHANGES TO RULE:

471-070-2400

Equivalent Plans: Disputes between an Equivalent Plan Employer and Employee, Request for Hearing

(1) As required by ORS 657B.420, the department will provide a dispute resolution process to assist in resolving disputes between employers or equivalent plan administrators, as applicable, and employees regarding coverage and benefits provided under an employer's approved equivalent plan if the appeal with the employer or administrator is not otherwise resolved.

(2) Prior to the department providing a dispute resolution process, the employee and employer or administrator must follow the equivalent plan appeal process described in OAR 471-070-2220(13).

(3) In the event that the employee and employer or administrator are unable to resolve an appeal on a coverage or benefit decision through the equivalent plan's appeal process, the employee may request a dispute resolution assistance through the department. The dispute resolution request must:

(a) Be in writing, by phone, online, or in another format approved by the department.

(b) Include a copy of the employer or administrator appeal decision and any documents related to the dispute, including documents supporting or referencing the employer's or administrator's decision.

(c) Be received within ~~260~~ 60 calendar days of the issuance of the appeal decision, or as soon as practicable if there is good cause as described under section (7) of this rule, for the delay beyond ~~260~~ 60 calendar days.

(4) The department shall review the dispute resolution request and issue an advisory decision based on the equivalent plan benefit requirements within 20 calendar days of the receipt of the dispute resolution request.

(5) If the employer or administrator does not comply with the department's administrative dispute decision, the employee may still submit a wage claim with the Oregon Bureau of Labor and Industries under ORS chapter 652.

(6) The payment of any benefits not placed in issue by the request for the administrative hearing shall continue during the appeal process.

(7) Good cause for late appeal or dispute resolution request includes, but is not limited to, the following:

(a) Difficulty obtaining verification;

(b) Factors or circumstances beyond the employee's, employer's, administrator's, or department's reasonable control that prevented them from providing information;

(c) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents the employee or employer from timely providing information; or

(d) A demonstrable inability to reasonably access a means to respond in a timely manner, such as an inability to file a leave report due to a natural disaster or a significant and prolonged outage.

Statutory/Other Authority: ORS 657B.420

Statutes/Other Implemented: ORS 657B.420, ORS 183.635

AMEND: 471-070-2450

RULE SUMMARY: Amends the administrative rule to expand the reason the department may terminate an equivalent plan if a business closure occurs. Specifies the appeal timeframe for the employer to appeal the notice of termination is 20 calendar days. Clarifies when contributions collected from employees that are still in the employer's trust must be paid to the department and become final once the plan is terminated and the employer receives an invoice from the department for contributions due.

CHANGES TO RULE:

471-070-2450

Equivalent Plans: Termination by the Department

(1) The department may terminate an employer's equivalent plan due to reasons that include, but are not limited to:

(a) Misuse of employee contributions withheld or retained by the employer;

(b) Failure to adhere to the department approved equivalent plan or to report substantive equivalent plan changes to the department;

(c) Failure to adhere to applicable Paid Family and Medical Leave Insurance (PFMLI) program requirements, including but not limited to OAR 471-070-2220 and equivalent plan reporting requirements;

(d) Failure to file for reapproval as required in OAR 471-070-2210;

(e) Employer insolvency;

(f) Termination of the insurance policy by the plan administrator;

(g) Closure of a business; or

(gh) Failure to respond timely to the department's reasonable inquires for information about the equivalent plan.

(2) If the plan administrator plans to terminate an employer's insurance policy, the administrator must provide notice to the department at least 30 calendar days prior to the termination date. The termination date must be effective on the last day of a calendar quarter. The administrator's notice to the department should include:

(a) The original effective date of the fully insured equivalent plan policy; and

(b) The effective date of the termination requested by the administrator.

(3) If the department seeks to terminate an equivalent plan, the department will send the employer and administrator, if applicable, a notice of termination 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. The notice must provide:

(a) The reason(s) for the termination;

(b) Instructions on how to resolve the reason(s) for termination; and

(c) The effective date of termination, which must be the last day of a calendar quarter, absent further specified action by or on behalf of the employer.

(4) An employer may appeal the notice of termination in accordance with ORS 657B.410 and applicable administrative rules within 20 calendar days of the notice of termination.

(5) The employer or administrator must notify all employees of any equivalent plan termination within ten business days of after the date on the notice of termination sent by the department that the termination becomes effective.

(6) All applicable equivalent plan requirements, including but not limited to those outlined within OAR 471-070-2220 and equivalent plan reporting requirements as outlined in OAR 471-070-2230, remain in effect until the effective date of any termination.

(7) The employer or administrator must pay or continue to pay benefits under the terms of the equivalent plan to eligible employees that were approved for or receiving benefits under the equivalent plan on the effective date of termination until the total amount of the benefit claim is paid, the duration of leave ends, or the benefit year ends, whichever occurs first. If the employer or administrator does not pay the benefits, the employee may file an appeal with the employer as described in OAR 471-070-2220(13) and then a dispute resolution request with the department as described in OAR 471-070-2400.

(8) Within 30 calendar days after the effective date of the termination of an equivalent plan, the employer must send to the department all reporting requirement information on benefit claims paid, amounts of contributions collected or owing, and administrative expenses incurred as specified in OAR 471-070-2230 from the date of the last report provided to the department under the equivalent plan reporting requirements to the date of termination.

Example: Donald Mouse Partnership's equivalent plan became effective April 1, 2023. On January 31, 2024, Donald Mouse Partnership provided the aggregate equivalent plan information from April 1, 2023 to December

31, 2023. The equivalent plan is terminated effective March 1, 2024. By April 1, 2024, Donald Mouse Partnership must send the aggregate equivalent plan information from January 1, 2024 to February 29, 2024.¶

~~(9) Upon~~Once the effective date of the termination of an equivalent plan, the employer must send to the department~~department receives the report specified in section (8) of this rule, the department will provide an invoice of the contribution amounts due, if any. The contribution amount due is calculated based on any contributions withheld from employee's wages that remain in the possession of the employer~~upon the effective date of the equivalent plan termination, minus an amount equal to the amount of any benefits due to be paid as required under section (7) of this rule and any anticipated administrative expenses. Once all required benefits are paid under section (7) of this rule, the employer must immediately send to the department~~any remaining contribution amounts for the final report on any additional benefit claims paid or administrative expenses incurred after the date of the last report provided under section (8) of this rule. Once the department receives the report, the department will provide an invoice of any additional contribution amounts due. Any remaining contribution amounts due are deposited~~into the PFMLI Trust Fund.¶

(a) Any contributions become due and payable to the department on the effective date of termination, unless the employer timely requests an appeal in accordance with section (4) of this rule.¶

(b) Interest upon the contribution amount due from the employer shall accrue from the date of termination~~invoice(s)~~until paid to the department, in accordance with ORS 657B.320(3).¶

(10) Upon the effective date of an equivalent plan termination, the employer must begin paying employee and employer contributions, if required, in accordance with ORS 657B.150 and other applicable statutes and rules.¶

(11) After the department terminates an equivalent plan, the employer may not reapply for an equivalent plan approval within three years following the date of termination.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.210, 657B.220, 657B.240

AMEND: 471-070-2455

RULE SUMMARY: Amends the administrative rule to remove the authority to allow the successor in interest to terminate an equivalent plan anytime there is a substantial reduction of personnel as it goes beyond the statute.

CHANGES TO RULE:

471-070-2455

Equivalent Plans: Termination and Withdrawal by Successor in Interest

(1) A successor in interest may request to terminate an equivalent plan that was in effect on the date of acquisition within 90 days after becoming a successor in interest ~~or whenever there is a substantial reduction of personnel, as defined in OAR 471-070-2200,~~ resulting from the acquisition in accordance with ORS 657B.260. The request to terminate may be submitted online, by phone, or in another method prescribed by the department. The successor in interest must provide written documentation of the acquisition, and any other relevant information regarding the acquisition required by the department.¶

(2) A successor in interest may request to withdraw from the equivalent plan in accordance with OAR 471-070-2460.¶

(3) If a request to terminate or withdraw is approved, the department will notify the successor in interest of the effective date of the termination or withdrawal. A successor in interest whose request to terminate is approved is subject to sections (5) through (10) of OAR 471-070-2450. A successor in interest whose request for withdrawal is approved is subject to sections (3) through (8) of OAR 471-070-2460.¶

(4) If a request to terminate or withdraw is denied, the department will notify the successor in interest of the reason for the denial. The successor in interest may appeal the decision to deny a request to terminate or withdraw an equivalent plan, in accordance with ORS 657B.410 and applicable administrative rules.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.260

AMEND: 471-070-2460

RULE SUMMARY: Amends the administrative rule to clarify when contributions collected from employees that are still in the employer's trust must be paid to the department and become final once the plan is withdrawn and the employer receives an invoice from the department for contributions due.

CHANGES TO RULE:

471-070-2460

Equivalent Plans: Employer Withdrawal

- (1) An employer may withdraw from an approved equivalent plan that has been in effect for at least one year by submitting a withdrawal form online, by phone, or in another method prescribed by the department.¶
- (2) The employer must provide notice to the department by submitting a withdrawal form at least 30 calendar days prior to the effective date of withdrawal. The effective date of the withdrawal is the later of one of the following dates:¶
 - (a) A date that is at least 30 calendar days after the date the withdrawal form is sent to the department and that is the last day of the immediately following calendar quarter; or¶
 - (b) The date that the equivalent plan has been in effect for one year.¶
- (3) The employer or administrator must provide notice of the withdrawal from an equivalent plan to its employees at least 30 calendar days prior to the effective date of withdrawal. The notice, at a minimum, must include the effective date of the equivalent plan withdrawal and information about the state plan in accordance with ORS 657B.440.¶
- (4) All equivalent plan requirements, including but not limited to those included in OAR 471-070-2220 and the equivalent plan reporting requirements, remain in effect until the effective date of the withdrawal, except as specified in section (5) of this rule.¶
- (5) The employer or administrator must pay or continue to pay benefits under the terms of the equivalent plan to eligible employees that were approved or receiving benefits under the equivalent plan on the effective date of the withdrawal until the total amount of the benefit claim is paid, the duration of leave ends, or the benefit year ends, whichever occurs first. If the employer or administrator does not pay the benefits, the employee may file an appeal with the employer as described in OAR 471-070-2220(13) and then a dispute resolution request with the department as described in OAR 471-070-2400.¶
- (6) Within 30 calendar days after the effective date of the withdrawal of an equivalent plan, the employer must send to the department all reporting requirement information on benefit claims paid ~~and administrative expenses incurred from, amounts of contributions collected or owing, and administrative expenses incurred as specified in OAR 471-070-2230 between~~ the last report provided to the department under the equivalent plan reporting requirements ~~to~~ and the date of the withdrawal.¶

Example: XYZ Partnership's equivalent plan became effective July 1, 2023. On January 31, 2024, XYZ Partnership provided the aggregate equivalent plan information from July 1, 2023 to December 31, 2023. XYZ Partnership requested a withdrawal from the equivalent plan with an effective date of November 1, 2024 as the partnership is no longer in business. By December 1, 2024, XYZ Partnership must send the aggregate equivalent plan information from January 1, 2024 to October 31, 2024.¶
- (7) ~~Upon withdrawal of an equivalent plan, the employer must immediately send to the department~~ Once the department receives the report specified in section (6) of this rule, the department will provide an invoice of the contribution amounts due, if any. The contribution amount due is calculated based on any contributions withheld from employee's wages that remain in the possession of the employer upon the effective date of the withdrawal, minus an amount equal to the amount of any benefits due to be paid as required under section (5) of this rule and any anticipated administrative expenses. Once the all required benefits are paid under section (5) of this rule, the employer must immediately send to the department any remaining contribution amounts for the final report on any additional benefit claims paid or administrative expenses incurred after the date of the last report provided under section (6) of this rule. Once the department receives the report, the department will provide an invoice of any additional contribution amounts due. Any remaining contribution amounts due are deposited into the PFMLI Trust Fund. ¶

(a) Any contributions become due and payable on the effective date of the withdrawal.¶

(b) Interest upon the amount due from the employer shall accrue from the date of the withdrawal invoice(s) until paid to the department, in accordance with ORS 657B.320(3).¶

(8) Upon the effective date of the withdrawal of an equivalent plan, the employer must begin paying employee and employer contributions, if required, in accordance with ORS 657B.150 and other applicable statutes and rules.¶

[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.240
Statutes/Other Implemented: ORS 657B.240