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ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 471
EMPLOYMENT DEPARTMENT

FILED

04/27/2022 6:49 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Administrative provisions related to Paid Family Medical Leave Insurance program benefits

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/30/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Anne Friend
503-947-1471
OED_Rules@employ.oregon.gov

875 Union Street NE
Director's Office
Salem, OR 97311

Filed By:
Anne Friend
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 05/19/2022

TIME: 9:00 AM - 11:00 AM

OFFICER: Anne Friend

ADDRESS: Virtual

Oregon Employment Department

Salem, OR 97311

SPECIAL INSTRUCTIONS:

Please see our webpage for registration instructions:

<https://www.oregon.gov/EMPLOY/Agency/Pages/OED%20Administrative%20Rules.aspx>

DATE: 05/21/2022

TIME: 10:00 AM - 12:00 PM

OFFICER: Anne Friend

ADDRESS: Virtual

Oregon Employment Department

Salem, OR 97311

SPECIAL INSTRUCTIONS:

Please see our webpage for registration instructions:

<https://www.oregon.gov/EMPLOY/Agency/Pages/OED%20Administrative%20Rules.aspx>

DATE: 05/24/2022

TIME: 4:00 PM - 6:00 PM

OFFICER: Anne Friend

ADDRESS: Virtual

Oregon Employment Department

Salem, OR 97311

SPECIAL INSTRUCTIONS:

impacted by systemic oppression and requires the redistribution of resources, power, and opportunity to those communities.

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

In accordance with ORS 657B.010 through ORS 657B.120, the PFMLI Division administrative rules are intended to provide details on aspects of PFMLI benefits, like who is eligible for benefits, how to file an application, what verification is needed, what communication is required to employers, and penalty amounts. The administrative rules on the state plan's PFMLI benefits seeks to ensure that employees have timely and equitable access to benefits when an eligible employee has made contributions to the PFMLI Trust Fund established under ORS chapter 657B. The PFMLI Division recognizes the administration of benefits is the heart of the program and the administrative rules were developed with a focus on accessibility and compensation as well as a racial equity lens into potential structural barriers that may hinder use of the PFMLI program.

An equitable program requires identification of and strategies to overcome structural barriers or burdens. PFMLI Division started by using universal language that is consistent with terms and processes used for Unemployment Insurance, Oregon Family Leave Act (OFLA), Family Medical Leave Act (FMLA), and the Oregon Department of Revenue where appropriate, and simplified complexities where possible within the PFMLI benefit administrative rules. The consistency of the language helps employees and employers in understanding and use of the program and helps the PFMLI Division in its ability to translate consistently into other languages.

Historically marginalized groups face systemic barriers in accessing and coverage of health care systems. Those barriers include racism and discrimination that can result in underdiagnoses of serious health conditions, limited access to local health care services, and prohibitive costs for health care services. This impacts in particular Black, Indigenous, Latin/o/a/x people, Asian, Pacific Islander, women, people with disabilities, LGBTQIA+ communities, migrant workers, socio-economically disadvantaged people, individuals with limited English proficiency, and new immigrant communities.

Safe leave benefits are new to paid family leave programs in general. While there is not current PFMLI program data to reflect this, victims of Domestic Violence, Harassment, Sexual Assault, or Stalking (DVHSAS) face a number of structural barriers in reporting abuse and accessing support services, such as safety and privacy concerns, economic concerns/dependency, religious or cultural beliefs, bias or anticipated bias by police services or the court system, limited access to services, and fear of repercussions. Such barriers exist not only for accessing existing victim services, but potentially for accessing PFMLI benefits. The rates of DVHSAS among historically marginalized groups are higher, including Black, Latin/o/a/x, American Indian, and non-Hispanic multiracial women and men, lesbian and bisexual women and bisexual men, transgender individuals, and women with disabilities.

These are just a few examples of potential racial equity impact from the benefit administrative rules. The requirements established in these benefit rules could also have an equity impact for employees access to the state PFMLI plan, potentially impacting Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander, women, people with disabilities, LGBTQIA+ communities, migrant workers, socio-economically disadvantaged people, individuals with limited English proficiency, new immigrant communities, and individuals with non-technical experience or resources to navigate these requirements due to systemic and institutional barriers. While the rules aim to ensure equitable benefits for employees, these may not be sufficient to prevent all barriers for those employees, who may have an equity impact as identified above.

Are there strategies to mitigate the unintended consequences?

The PFMLI Division seeks to mitigate the possible barriers identified primarily through widespread and targeted program of education and varied, accessible user support services. Instructions, Frequently Asked Questions (FAQ) and resource pages will be created to assist with explanation of the rules and the claim process. Requirements will be written in plain language, and the PFMLI Division will seek to provide these materials in multiple languages for employers and employees. The guidebooks will be supplemented with frequently asked questions, instructional videos, and other tools. The PFMLI Division and agency staff are committed to being accessible to both employees and employers through various forms of communication, such as phone, email, mail, online, and an automated chat bot. Staff will be trained to support employees, employers, health providers, insurers, and community members, with the aim of enabling all to understand the PFMLI program and complete the application and administration requirements and thus help mitigate the potential equity impact.

In an attempt to mitigate some of the potential systemic barriers in accessing and coverage of health care systems, the benefit administrative rules were written broadly for verification requirements; including a vast list of acceptable documents for demonstrating eligibility, which meets or exceeds other PFMLI programs; provides for out of state and out of country health providers to complete verification forms; and refrains from asking non-necessary medical questions.

In order to address safe leave structural barriers, the benefit administrative rules allow covered individuals to provide a self-attestation when unable, for good cause, to provide a verification document from a third party and provide an expanded timeframe for submitting benefit applications. This allows victims of DVHSAS to prioritize their safety and wellbeing first and apply for benefits when feasible without losing access to those benefits.

In addition, the division will be conducting focused outreach and engagement activities from now until implementation with employers and employees, with a focus on immigrant or non-English speaking individuals, Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander, and other people of color owned businesses, and rural or small businesses, which will include awareness raising about PFMLI benefits.

The PFMLI benefit rules aim to establish straightforward and streamlined processes for submitting claim applications and receiving benefits for eligible employees. Examples of such processes include establishing a benefit qualification at \$1,000 in subject wages or taxable income from self-employment, the ability to submit applications online or via paper, and document options for leave verification. These support access for employees who could face barriers completing the application online or if faced with a complex application process.

FISCAL AND ECONOMIC IMPACT:

Any fiscal or economic impact for PFMLI benefits is the result of the statute being implemented. There is no fiscal or economic impact associated with these new 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 PFMLI benefits will likely have an impact on state agencies, local governments, and other

public bodies because their employees (claimants) may be eligible for PFMLI benefits. The state agencies, units of local government, and the public may need to provide additional information requested by the department to verify claimant information and accept leave notices from their employees.

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

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

Oregon has approximately 126,000 small businesses with fewer than 50 employees that employ 33.62 percent of the state's workforce. Oregon has approximately 120,000 small businesses with fewer than 25 employees that employ 24.19 percent of the state's workforce.* It is likely that all small businesses will have employees take PFMLI leave at some point; therefore, the benefit rules will apply to their employees.

*Based on Unemployment Insurance 2020 Tax Wage file.

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

The two benefit rules related to employee notice to employers prior to commencing leave and communication to employers about employee application for benefits gives businesses the opportunity to notify the department within ten calendar days of receiving a notice from the department. A response is not mandatory but the business can let the department know if the claimant did not provide the required notice per the business's written policy and procedures or any additional information. The department estimates the administrative cost to respond to the notice adds minimal administrative costs and should take well under an hour to respond.

Changes to an employer's handbook would likely need to be made based on the PFMLI statutory enactment, regardless of what the rule states as employees will need to know the employers requirements for PFMLI. However, the department estimates the administrative cost to expand current written policies and procedures for PFMLI leave notice will take approximately two hours as the written policy and procedure is already required for OFLA and FMLA. If the business does not already have a written policy and procedure for notice requirements as they don't meet the OFLA requirements, the department estimates it will take approximately one day for the business to create a written policy and procedure and up to four hours of legal review. In 2021 in Oregon, on average, an employment/labor lawyer charges \$312 per hour therefore up to four hours of legal review would cost up to \$1,248 (\$312 per hour x 4 hours).

During the RAC meeting it was mentioned that updating a written policy and procedure could take more than one day as it has to go through review. One RAC member provided feedback that it would cost their employer significantly more than that. The department asked for additional feedback as thought the cost was overstated as it the cost for updating the entire employee handbook and not one section and didn't receive any additional feedback.

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

It will take, on average, well under an hour to respond to any notice the department sends to a business about a claimant's benefit leave. The employer may respond to the notice electronically via our new Frances system, and there will be other options to respond via mail or telephone for employers without access to technology/equipment.

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

The PFMLI Advisory Committee, which serves as the Rulemaking Advisory Committee (RAC) for these rules, 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.

The PFMLI Division also formed a benefits workgroup that consisted of 15 members appointed by the PFMLI Division Director, which consisted of employee and business representatives. There are three PFMLI Advisory Committee members on the workgroup. The purpose of the benefit workgroup is to engage with representatives and stakeholders about specific aspects relating to PFMLI benefits in Oregon. The workgroup utilized the information and insights it gathered in the course of its work to assist the PFMLI Advisory Committee in developing recommendations to provide to the department as it relates to the implementation of the program and the administrative rules drafted for benefits. The workgroup met 14 times over the course of a year, the first meeting occurred in July 2020 and the last meeting occurred in October 2021. We also emailed materials to the workgroup in November 2021 and requested feedback.

Small businesses may also sign up to participate in our town halls, receive PFMLI emails, listen to PFMLI Advisory Committee meetings, attend RAC meetings, and are invited to provide feedback on the proposed draft rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

471-070-1000, 471-070-1010, 471-070-1020, 471-070-1030, 471-070-1100, 471-070-1110, 471-070-1120, 471-070-1130, 471-070-1200, 471-070-1210, 471-070-1220, 471-070-1230, 471-070-1310, 471-070-1320, 471-070-1420, 471-070-1440

ADOPT: 471-070-1000

RULE SUMMARY: Defines terms in the Paid Family and Medical Leave Insurance program's rules related to program benefits.

CHANGES TO RULE:

471-070-1000

Benefits: Definitions

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

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

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

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

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

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

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

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

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

(b) "Psychological assistance" means providing comfort, reassurance, companionship to a family member, or completing administrative tasks for the family member, or arranging for changes in the family member's care, such

as transfer to a nursing home.¶

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

(a) Under the age of 18; or¶

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

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

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

(9) "Domestic violence," as the term is used for a safe leave purpose described in ORS 659A.272, means abuse as defined in ORS 107.705.¶

(10) "Harassment," as the term is used for a safe leave purpose described in ORS 659A.272, means the crime of harassment described in ORS 166.065. ¶

(11) "Health care provider" means:¶

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

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

(B) A dentist;¶

(C) A direct entry midwife;¶

(D) A naturopath;¶

(E) A nurse practitioner;¶

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

(G) An optometrist;¶

(H) A physician;¶

(I) A physician's assistant;¶

(J) A psychologist;¶

(K) A registered nurse; or¶

(L) A regulated social worker.¶

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

(12) "Serious health condition" means an illness, injury, impairment, or physical or mental condition of a claimant or their family member that:¶

(a) Requires inpatient care in a medical care facility such as a hospital, hospice, or residential facility such as a nursing home or inpatient substance abuse treatment center;¶

(b) In the medical judgment of the treating health care provider poses an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;¶

(c) Requires constant or continuing care, including home care administered by a health care professional;¶

(d) Involves a period of incapacity. "Incapacity" is the inability to perform at least one essential job function, or to attend school or perform regular daily activities for more than three consecutive calendar days. A period of incapacity includes any subsequent required treatment or recovery period relating to the same condition. The incapacity must involve one of the following:¶

(A) Two or more treatments by a health care provider; or¶

(B) One treatment plus a regimen of continuing care.¶

(e) Results in a period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity, such as asthma, diabetes, or epilepsy;¶

(f) Involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's Disease, a severe stroke, or terminal stages of a disease. The employee or family member must be under the continuing care of a health care provider, but need not be receiving active treatment;¶

(g) Involves multiple treatments for restorative surgery or for a condition such as chemotherapy for cancer, physical therapy for arthritis, or dialysis for kidney disease that if not treated would likely result in incapacity of

more than three calendar days.¶

(h) Involves any period of disability due to pregnancy, childbirth, miscarriage or stillbirth, or period of absence for prenatal care; or ¶

(i) Involves any period of absence from work for the donation of a body part, organ, or tissue, including preoperative or diagnostic services, surgery, post-operative treatment, and recovery.¶

(13) "Sexual Assault," as the term is used for a safe leave purpose described in ORS 659A.272, means any sexual offense described in ORS 163.305 to 163.467, 163.472 or 163.525.¶

(14) "Stalking," as the term is used for a safe leave purpose described in ORS 659A.272, means:¶

(a) The crime of stalking described in ORS 163.732; or¶

(b) A situation that results in a victim obtaining a court's stalking protective order or a temporary court's stalking protective order under ORS 30.866.¶

(15) "Subject Wages" means PFMLI wages that are paid and reported for an employee, as defined in ORS 657B.010(13), or an employee of a tribal government who has elected coverage under ORS 657B.130.¶

(16) "Work day" means any day on which an employee performs any work for an employer and is an increment of a work week. The number of work days in a work week is based on the average number of work days worked by an employee at all employment. There are a maximum of seven work days in a work week. If a work day spans two work days, such as a shift beginning on day one at 10 p.m. and ending on the next day at 5 a.m., the work day will count on the calendar day in which the shift began. ¶

(17) "Work week" means seven days beginning on a Sunday at 12:01 a.m. and ending on the following Saturday at midnight. If a claimant works a variable or irregular schedule, the number of work days in a work week is determined by counting the total number of work days worked in the preceding 12 work weeks and dividing the total by 12 and rounding down to the nearest whole number.

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

Statutes/Other Implemented: ORS 657B.090, 657B.010

ADOPT: 471-070-1010

RULE SUMMARY: Clarifies when certain employees, self-employed individuals that have elected coverage, and employees of tribal governments where the tribal government has elected coverage are eligible for Paid Family and Medical Leave Insurance benefits.

CHANGES TO RULE:

471-070-1010

Benefits: Eligibility and Qualification for Benefits

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

(a) Be one of the following:

(A) An employee;

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

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

(b) Earn at least:

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

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

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

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

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

(e) Have current Oregon employment or self-employment for which they are requesting leave from work;

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

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

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

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

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

(2) An individual may not exceed 12 weeks of paid leave per child when taking family leave for the purpose of caring for and bonding with a child during the first year after the child's birth or during the first year after the initial placement of the child through foster care or adoption, regardless of whether a new benefit year starts during the first year following birth or initial placement.

Statutory/Other Authority: ORS 657B.340

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

ADOPT: 471-070-1020

RULE SUMMARY: Clarifies the assignment of subject wages and taxable income from self-employment into specific calendar quarters.

CHANGES TO RULE:

471-070-1020

Benefits: Assignment of Wages and Income

(1) For purposes of Paid Family and Medical Leave Insurance (PFMLI) benefits, subject wages shall be assigned to the calendar quarter in which they are paid, in the same manner that PFMLI contributions are payable pursuant to ORS 657B.150.¶

(2) For purposes of PFMLI benefits, taxable income from self-employment shall be assigned to the quarters in which the contributions are paid in accordance with OAR 471-070-2030.¶

(3) Subject wages and taxable income from self-employment in a calendar quarter that are included in the base year or alternate base year of a claim for benefits may not be included in a different base year or alternate base year of any subsequent claim.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.050

ADOPT: 471-070-1030

RULE SUMMARY: Establishes a maximum amount of Paid Family and Medical Leave Insurance benefits a claimant is eligible to receive in a single benefit year

CHANGES TO RULE:

471-070-1030

Benefits: Maximum Amount of Benefits in a Benefit Year

In any given benefit year, a claimant shall not receive Paid Family and Medical Leave Insurance benefits established under ORS 657B.340 that exceed an amount equal to:

(1) The employee's weekly benefit amount multiplied by 12 for any combination of family, medical, or safe leave; or

(2) The employee's weekly benefit amount multiplied by 14 for any combination of family, medical, or safe leave for 12 weeks and two additional weeks of leave for limitations related to pregnancy, childbirth or related medical condition, including but not limited to lactation for a total of 14.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.020, 657B.050

RULE SUMMARY: Clarifies the application process and manner an individual must use when applying for Paid Family and Medical Leave Insurance benefits.

CHANGES TO RULE:

471-070-1100

Benefits: Application for Benefits

(1) To request Paid Family and Medical Leave Insurance (PFMLI) benefits provided under the state plan established in ORS 657B.340, a claimant must submit an application for benefits. An application must be submitted online or by another method approved by the department. For the application to be approved by the department, the application must be complete and must include, but is not limited to, the following:

(a) Claimant information, including:

(A) First and last name;

(B) Date of birth;

(C) Social Security Number or Individual Taxpayer Identification Number; and

(D) Contact information, including mailing address and telephone number.

(b) Documentation verifying the claimant's identity;

(c) Information about the claimant's current employment or self-employment for which they are requesting leave from work:

(A) Business name(s) and dates of employment or self-employment;

(B) Business address and contact information for all employers or self-employed businesses;

(C) Average number of work days worked per work week; and

(D) Any current breaks from work or anticipated future breaks from work that are unrelated to PFMLI leave.

(d) Information about the notice given to any employers under ORS 657B.040 and OAR 471-070-1310, if applicable, and the date(s) any notice was given;

(e) Information about the claimant's leave schedule, including:

(A) Employer(s) from which leave is being taken;

(B) Anticipated leave dates; and

(C) Whether the leave is to be taken in consecutive, or nonconsecutive, periods.

(f) The type of leave taken by the claimant, which must be one of the following:

(A) Family leave;

(B) Medical leave; or

(C) Safe leave.

(g) Verification of the reason for the leave, including:

(A) For family leave to care for or bond with a child, verification consistent with OAR 471-070-1110;

(B) For family leave to care for a family member with a serious health condition, verification consistent with OAR 471-070-1120 and an attestation that the claimant has a relationship equal to "family member" under ORS 657B.010, and is caring for, a family member with a serious health condition;

(C) For medical leave, verification consistent with OAR 471-070-1120; or

(D) For safe leave, verification consistent with OAR 471-070-1130.

(h) If the claimant is requesting up to two additional weeks of leave for limitations related to pregnancy, childbirth or a related medical condition, documentation that the claimant is currently pregnant or was pregnant within the year prior to the start of leave;

(i) Information about the claimant's eligibility to receive Workers' Compensation under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657; and

(j) A written or electronically signed statement declaring under oath that the information provided in support of the application for PFMLI benefits is true and correct to the best of the individual's knowledge.

(2) An employee who has PFMLI coverage solely through an employer with an equivalent plan approved under ORS 657B.210, must apply for PFMLI benefits by following the employer's equivalent plan application guidelines.

(3) An employee who is simultaneously covered by more than one employer's equivalent plan approved under ORS 657B.210 or that is simultaneously covered by the state plan and at least one employer with an equivalent plan, must apply separately under all plans they are covered under and from which they are taking leave by following the respective application guidelines for each plan.

(4) A complete application for PFMLI may be submitted to the department up to 30 calendar days prior to the start of family, medical, or safe leave and up to 30 calendar days after the start of leave. Applications submitted outside of this timeframe, either early or late, will be denied, except in cases where a claimant can demonstrate an application was submitted late for reasons that constitute good cause under section (6) of this rule.

(5) In cases where a claimant demonstrates good cause for the late submission of an application, the department may accept the application up to one year after the start of leave.¶

(6) Good cause for the late submission of an application is determined at the discretion of the department and includes, but is not limited to, the following:¶

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

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

Statutory/Other Authority: ORS 657B.340, ORS 657B.100, 657B.090

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

ADOPT: 471-070-1110

RULE SUMMARY: Clarifies the method for verifying a request to take Paid Family and Medical Leave Insurance when the qualifying purpose is related to family leave to care for and bond with a child.

CHANGES TO RULE:

471-070-1110

Benefits: Verification of Family Leave to Care for and Bond with a Child

(1) A claimant applying for Paid Family and Medical Leave Insurance (PFMLI) benefits to care for and bond with a child during the first year after the child's birth must provide one of the following forms of verification:¶

(a) The child's birth certificate;¶

(b) A Consular Report of Birth Abroad;¶

(c) A document issued by a health care provider of the child or pregnant parent;¶

(d) A hospital admission form associated with delivery; or¶

(e) Another document approved by the department for this purpose.¶

(2) A claimant applying for PFMLI benefits to care for and bond with a child during the first year after the placement of the child through foster care or adoption must provide one of the following forms of verification:¶

(a) A copy of a court order verifying placement;¶

(b) A letter signed by the attorney representing the prospective foster or adoptive parent that confirms the placement;¶

(c) A document from the foster care, adoption agency, or social worker involved in the placement that confirms the placement;¶

(d) A document for the child issued by the United States Citizenship and Immigration Services; or¶

(e) Another document approved by the department for this purpose.¶

(3) The verification required in sections (1) and (2) of this rule must show the following:¶

(a) Claimant's first and last name as parent or guardian of the child after birth or placement of the child through foster care or adoption;¶

(b) Child's first and last name; and ¶

(c) Date of the child's birth or placement.

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

Statutes/Other Implemented: ORS 657B.090

ADOPT: 471-070-1120

RULE SUMMARY: Clarifies the method for verifying a request to take Paid Family and Medical Leave Insurance when the qualifying purpose is related to family leave or medical leave due to a serious health condition.

CHANGES TO RULE:

471-070-1120

Benefits: Verification of a Serious Health Condition

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

(1) The health care provider's first and last name, type of medical practice/specialization, and their contact information, including mailing address and telephone number;

(2) The patient's first and last name;

(3) The claimant's first and last name, when different from the patient identified in section (2) of this rule;

(4) The approximate date on which the serious health condition commenced or when the serious health condition created the need for leave, and reasonable estimation of the duration of the condition or recovery period for the patient; and

(5) Other information as requested by the department to determine eligibility for the PFMLI benefits; including:

(a) For medical leave, information sufficient to establish that the claimant has a serious health condition; or

(b) For family leave, information sufficient to establish that the claimant's family member has a serious health condition.

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

Statutes/Other Implemented: ORS 657B.090

ADOPT: 471-070-1130

RULE SUMMARY: Clarifies the method for verifying a request to take Paid Family and Medical Leave Insurance when the qualifying purpose is related to safe leave.

CHANGES TO RULE:

471-070-1130

Benefits: Verification of Safe Leave

(1) A claimant applying for Paid Family and Medical Leave Insurance benefits for safe leave must provide verification of the basis for the safe leave, including any of the following forms of documentation:¶

(a) A copy of a federal agency or state, local, or tribal police report indicating that the claimant or the claimant's child as defined in OAR 471-070-1000(6) was a victim of domestic violence, harassment, sexual assault, or stalking;¶

(b) A copy of a protective order or other evidence from a federal, state, local, or tribal court, administrative agency, or attorney that the claimant or the claimant's child appeared in or was preparing for a civil, criminal, or administrative proceeding related to domestic violence, harassment, sexual assault, or stalking; or¶

(c) Documentation from an attorney, law enforcement officer, health care provider, licensed mental health professional or counselor, member of the clergy, or victim services provider that the claimant or the claimant's child was undergoing treatment or counseling, obtaining services, or relocating as a result of domestic violence, harassment, sexual assault, or stalking.¶

(2) In cases where a claimant can demonstrate good cause for not providing one of the forms of documentation in section (1) of this rule, the claimant may instead provide a written statement attesting that they are taking eligible safe leave. Good cause for not providing the documentation is determined at the discretion of the department and includes, but is not limited to, the following: ¶

(a) Difficulty obtaining verification due to a lack of access to services; or ¶

(b) Concerns for the safety of the claimant or the claimant's child.

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

Statutes/Other Implemented: ORS 657B.090

ADOPT: 471-070-1200

RULE SUMMARY: Establishes timelines for the claimant to respond to requests for additional information from the Oregon Employment Department.

CHANGES TO RULE:

471-070-1200

Benefits: Claim Processing: Additional Information

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

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

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

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

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

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

Statutes/Other Implemented: ORS 657B.090

ADOPT: 471-070-1210

RULE SUMMARY: Clarifies situations when the claimant must alter information provided on the initial application for benefits within 10 calendar days of any changes.

CHANGES TO RULE:

471-070-1210

Benefits: Updates to a Claim for Leave

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

(a) Name;

(b) Mailing address;

(c) Telephone number;

(d) Current employment or self-employment;

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

(f) Leave schedule;

(g) Type of leave taken; or

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

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

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

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

ADOPT: 471-070-1220

RULE SUMMARY: Establishes a method for a claim for Paid Family and Medical Leave Insurance benefits to be cancelled.

CHANGES TO RULE:

471-070-1220

Benefits: Cancellation of a Claim

A claim may be cancelled at any time provided: ¶

(1) A request to cancel has been submitted online or in another method approved by the department; ¶

(2) No leave was taken under the claim; ¶

(3) Benefits have not been paid for the claim. Benefits are considered paid if a payment has been mailed or electronically sent to the claimant's bank or other financial institution, or the payment was distributed but intercepted; and ¶

(4) No disqualification has been issued by the department and no appeal of a disqualification or denial has been requested. ¶

Example: Solomon was approved for 3 weeks of consecutive leave for a scheduled surgery starting on March 1, 2024. The claim started a new benefit year and established the weekly benefit amount for the benefit year.

However, Soloman decides to postpone the surgery until August 1, 2024 and requests to cancel the claim. No leave was taken and no benefits were paid. The request is cancelled by the department. The benefit year and weekly benefit amount are also cancelled. When Soloman applies again for benefits for the surgery in August, a new benefit year is started and a new weekly benefit amount is established.

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

Statutes/Other Implemented: ORS 657B.090

ADOPT: 471-070-1230

RULE SUMMARY: Establishes procedures for the Oregon Employment Department when issuing an administrative decision on an application or a claim for the Paid Family and Medical Leave Insurance benefits. Written notice of the decision will be provided to the claimant.

CHANGES TO RULE:

471-070-1230

Benefits: Administrative Decisions

(1) Administrative decision shall be made on timely submitted applications and claims in accordance with ORS 657B.100 and shall be based on information available from the following sources: the department's records, information provided or obtained from the claimant, employers, or other sources as appropriate, including, but not limited to, health care providers and other state agencies.¶

(2) Written notice of administrative decisions shall be provided to the claimant and delivered to the claimant's last known address as shown in the department's records or delivered electronically when permitted, if the claimant has opted for electronic notification. ¶

(3) The administrative decision shall contain, at a minimum:¶

(a) Identification of the claimant;¶

(b) Identification of the issues, citing the laws and rules involved;¶

(c) The department's conclusion and the facts and reasons underlying those conclusions;¶

(d) A statement allowing benefits, including the frequency and duration, or denying benefits;¶

(e) The date of the decision; and¶

(f) A statement advising the claimant of their appeal rights and the manner in which an appeal may be submitted.

Statutory/Other Authority: ORS 657B.340

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

RULE SUMMARY: Clarifies situations when an employee is and is not required to provide a written notice to their employer at least 30 calendar days before commencing paid family, medical, or safe leave. Clarifies the manner the written notice must be issued and the penalty amount of 25 percent of the first weekly benefit amount if the written notice isn't issued.

CHANGES TO RULE:

471-070-1310

Benefits: Employee Notice to Employers Prior to Commencing Leave

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

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

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

(a) Employee's full name; ¶

(b) Type of leave; ¶

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

(d) Anticipated timing and duration of leave. ¶

(4) Written notice includes, but is not limited to, handwritten or typed notices, and electronic communication such as text messages and email that is consistent with the employer's policies and sent to the proper individual. Whether leave is to be continuous or is to be taken intermittently, notice need only be given one time, but the employee shall advise the employer as soon as practicable if dates of scheduled leave change, are extended, or were initially unknown.¶

(5) An employer that requires eligible employees to provide a written notice before the eligible employee commences leave, or immediately thereafter, as applicable, must outline the requirements in the employer's written policy and procedures. A copy of the written policy and procedure must be provided to all eligible employees at the time of hire and each time the policy and procedure changes and in the language that the employer typically uses to communicate with the employee. If the employer requires the employee to provide a written notice, the policy and procedures must include a description of the penalties under section (8) of this rule that may be imposed by the department for not complying with the employer's notice requirements. ¶

(6) The department will notify the employer pursuant to OAR 471-070-1320(1) when a claimant has applied for paid family, medical, or safe leave benefits. The employer may respond to the notice from the department within 10 calendar days from the date of the notice to report if the claimant did not provide the required notice per the employer's written policy and procedures. The employer may respond to the department's notice either online or by another method approved by the department. The response must include:¶

(a) A description of the notice, if any, that was provided by the employee to the employer about the leave and the date it was provided; ¶

(b) A copy of the written policy and procedure provided to employees under section (5) of this rule; and ¶

(c) The date when the written policy and procedure was provided to the employee. ¶

(7) If the employer does not respond to the department's notice as described in section (6) of this rule within 10 calendar days from the date of the notice, the claimant's application for benefits shall be processed using the information available in the department's records. ¶

(8) If the department determines that the claimant did not provide the required leave notice to the employer, the department may impose a penalty by issuing a decision and reducing the first weekly benefit amount payable under ORS 657B.090 by 25 percent. The penalty will be a 25 percent reduction, except when it would reduce the weekly benefit amount below the minimum benefit amount provided in ORS 657B.050(2)(b). The claimant may appeal the imposition of the penalty in accordance with ORS 657B.410 and applicable administrative rules.¶

Example 1: Sanomi did not provide the required notice to their employer about taking family leave. Sanomi's weekly benefit amount is \$140. A 25 percent reduction of their benefit amount in the first week equals \$35 (\$140

x .25), so the first weekly benefit amount would be reduced to \$105 (\$140 - \$35). However, the minimum weekly benefit amount is \$120, so Sanomi's first weekly benefit payment would be \$120 instead. ¶

(9) For leave taken in increments of less than a full work week, the total penalty amount shall be divided by the number of work day increments contained in a work week and deducted from benefits paid for that number of work days. ¶

Example 2: Joy did not provide the employer with the required leave notice. Joy normally works an average of four work days in a work week and was unable to work the entire week due to taking medical leave. Joy's weekly benefit amount is \$400, which is prorated to \$100 per work day of leave because Joy only works an average of four days in a work week. The penalty amount is \$25 per work day (\$100 x .25). Joy's benefit amount is reduced to \$75 (\$100 per work day minus \$25 penalty per work day) for each of the first four work days of leave taken, as four days equals one work week. ¶

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

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

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

Statutes/Other Implemented: ORS 657B.040

ADOPT: 471-070-1320

RULE SUMMARY: Clarifies the employer will be notified by the Oregon Employment Department when a claimant is taking leave once a claim for Paid Family and Medical Leave Insurance benefits has been received or updated and establishes timelines for the employer to respond to the provided notice.

CHANGES TO RULE:

471-070-1320

Benefits: Communication to Employers and Employee Application for Benefits

(1) After a claimant has filed an application or updated their claim for Paid Family and Medical Leave Insurance (PFMLI) benefits, the department shall notify any employers that the claimant is requesting leave from and provide information about the employee's claim.¶

(2) Employers may respond to the notice from the department within 10 calendar days of the date on the notice to report any additional information about the employee's PFMLI claim. Employers shall respond to the department's notice online or through another method approved by the department. If the employer fails to provide information within 10 calendar days, the claimant's application for benefits shall be processed using the information available in the department's records. If the employer later provides additional information, the department may reprocess the claim, taking into account the additional information. ¶

(3) The department may need to determine whether a claimant has coverage under an equivalent plan approved under ORS 657B.210 and the effective dates of any coverage the claimant has, or information about a claim for benefits that the claimant has filed under an equivalent plan. The department may request additional information from the claimant's equivalent plan employer and administrator, if applicable, after the claimant files an application with the department. When this information is requested, equivalent plan employers or administrators must respond to the department's request within 10 calendar days from the date on the request for additional information.¶

(4) After a claimant's application for benefits has been processed by the department and a decision is issued to the claimant, the department shall notify the claimant's employers and administrators, if applicable, whether the claimant's application for benefits was approved or denied by the department, and, if approved, the dates and period of leave that the claimant is approved for.

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

Statutes/Other Implemented: ORS 657B.040

ADOPT: 471-070-1420

RULE SUMMARY: Clarifies that leave periods may be taken in consecutive and nonconsecutive periods when claiming Paid Family and Medical Leave Insurance benefits and describes that leave must be taken from all employers and from all self-employed work for the entirety of the work day to receive benefits.

CHANGES TO RULE:

471-070-1420

Benefits: Leave Periods and Increments

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

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

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

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

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

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

Statutory/Other Authority: ORS 657B.340

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

ADOPT: 471-070-1440

RULE SUMMARY: Describes how the weekly benefit amount will be prorated when Paid Family and Medical Leave is taken in an increment less than a work week.

CHANGES TO RULE:

471-070-1440

Benefits: Weekly Benefit Proration

(1) A claimant who takes leave in work day increments shall be paid a prorated benefit amount based on the number of work days of leave taken in the work week.

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

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

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

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

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

Statutes/Other Implemented: ORS 657B.090