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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 471  
EMPLOYMENT DEPARTMENT

**FILED**

12/21/2022 11:55 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Definition and administrative provisions related to small employers and department representatives for Paid Leave Oregon

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/31/2023 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.*

CONTACT: Anne Friend  
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Salem, OR 97311

Filed By:  
Anne Friend  
Rules Coordinator

HEARING(S)

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

DATE: 01/17/2023

TIME: 10:00 AM - 12:00 PM

OFFICER: Anne Friend

REMOTE MEETING DETAILS

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

PHONE NUMBER: 503-983-1966

CONFERENCE ID: 1616421856

SPECIAL INSTRUCTIONS:

ADA requests - email Rules@employ.oregon.gov at least 3 days before the hearing.

The hearing will be held using the Zoom platform. Webinar ID 161 642 1856

DATE: 01/23/2023

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: 1612427664

SPECIAL INSTRUCTIONS:

ADA requests - email Rules@employ.oregon.gov at least 3 days before the hearing.

The hearing will be held using the Zoom platform. Webinar ID 161 242 7664

## NEED FOR THE RULE(S)

In order to implement and administer the Paid Leave Oregon program, the Oregon Employment Department is promulgating permanent rules to in accordance with Oregon Revised Statute (ORS) chapter 657B.

The Attorney General (AG) may consent to representation of an agency in contested case hearings by an agency representative. The agency wishing to be represented by agency representatives must adopt a rule authorizing the representation. The Employment Department (Department) has a well-developed process with agency representatives representing the Department in Unemployment Insurance contested case hearings before the Office of Administrative Hearings. Representation by agency representatives for the Paid Leave Oregon program, administered by the Department, will avoid undue duplication of processes and hearings and provide better service to the public. As allowed by ORS 183.452, the Department submitted a request to the Oregon Department of Justice and the AG for use of agency representation. The AG issued a final decision to allow employees of the Department to represent the Department in appeals on November 30, 2022.

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## DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

- Paid Leave Oregon statute - ORS chapter 657B ([https://www.oregonlegislature.gov/bills\\_laws/ors/ors657B.html](https://www.oregonlegislature.gov/bills_laws/ors/ors657B.html));
- Unemployment Insurance (<https://www.oregon.gov/employ/unemployment/pages/default.aspx>);
- Workers' Benefit Fund (<https://www.oregon.gov/dcbs/pages/wbf.aspx>);
- Oregon Sick Time (<https://www.oregon.gov/boli/workers/pages/sick-time.aspx>);
- Oregon Family Leave Act (OFLA) (<https://www.oregon.gov/boli/workers/pages/oregon-family-leave.aspx>);
- Federal Medical Leave Act (FMLA) (<https://www.dol.gov/agencies/whd/fmla>);
- Oregon Administrative Procedures Act contested cases statute and administrative rules – ORS chapter 183 and OAR Chapter 137, Division 3 ([https://www.oregonlegislature.gov/bills\\_laws/ors/ors183.html](https://www.oregonlegislature.gov/bills_laws/ors/ors183.html) and <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=283>); and
- Washington State's Paid Leave program and administrative rules were used to compare their small employer count (<https://apps.leg.wa.gov/wac/default.aspx?cite=192-560-020>; <https://apps.leg.wa.gov/wac/default.aspx?cite=192-560-030>)

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

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

A commitment to equity acknowledges that not all people, or all communities, are starting from the same place due to historic and current systems of oppression. Equity is the effort to provide different levels of support based on an individual's or group's needs in order to achieve fairness in outcomes. Equity actionably empowers communities most impacted by systemic oppression and requires the redistribution of resources, power, and opportunity to those communities. While adopting our administrative rules for employer size and representation, the Paid Leave Oregon Division 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 rules, the Paid Leave Oregon Division has been careful to ensure that we think through any racial inequity that may occur. Today, many small-business services and supports are easily accessible to white-owned and English-speaking businesses. Due to historic exclusion and racial disparities, Black, Indigenous, Latin/o/a/x,

Asian, Pacific Islander and other people of color and their small businesses, experience discrimination and other barriers in learning about requirements of, and access to, governmental and other programs, at a higher rate than their white counterparts. Therefore, it is important to determine the employer size as closely as possible without creating additional barriers like reporting requirements.

In developing the method for determining whether an employer has fewer than 25 employees, the Paid Leave Oregon Division determined the employer count includes out-of-state employees to achieve equity across the program. This will ensure a more solid trust fund is established and that all large businesses, not just large businesses with staff only in Oregon, are paying their fair share of the employer-portion of the contribution rate and will support equity in rate-paying for Oregon based employers and employees. The Division also incorporated a more accurate reflection of the true number of employees an employer has by taking into account the employee count each month instead of quarterly but didn't go too far in the calculation that it took more reporting requirements for the businesses than necessary. Employers already use the monthly employee count when reporting for Unemployment Insurance purposes so counting employees monthly will not create additional reporting barriers.

While the statute, ORS 657B.410, requires an appeal process with the Office of Administrative Hearings (OAH), the Division understands the appeal process in itself can cause stress, anxiety, barriers, and biases. The appeal process can cause stress, anxiety, barriers, and biases specifically for people of color, for speakers of diverse languages, for individuals with a disability, for regions without reliable internet services, for women experiencing domestic violence, stalking, harassment and others. Allowing the Oregon Employment Department (Department) to represent themselves instead of the Department of Justice (DOJ) attorneys, will hopefully reduce some of the stress and anxiety when the claimant is attending the hearing, particularly claimants of color and their small businesses as the appeal shall create a less intimidating experience as they will not hear or see that an attorney is representing the Department. Requiring the Department to be represented by the DOJ in all hearings would add both to the cost of administering the program and the employer and worker contributions required to support the program, which would negatively impact business owners of color and who are more likely to have less revenue than their white counterparts. Having the DOJ represent in all hearings could also create a more confrontational, intimidating experience for those who believe the Department's original decision as wrong and wish to challenge it.

The nature of the administrative appeal process is intended to have a second independent review to assure decisions are fair and in compliance with the governing statutes and administrative rules by the OAH. While the OAH will have the authority to make rulings/decisions on Paid Leave Oregon appeals, the Paid Leave Oregon Division commits to monitoring and evaluating the programs use, the decisions issued by OAH, non-utilization of processes (appeals), the effects of litigation with new administrative rules, appeal outcomes, and case law created.

Are there strategies to mitigate the unintended consequences?

The Paid Leave Oregon 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 businesses and employees paying Paid Leave Oregon contributions. The Paid Leave Oregon Division's goal is to ensure equitable outcomes for businesses and individuals as we implement Paid Leave for Oregonians. The complexity of the legal system and language differences produce barriers and bias across the board. Individuals may experience cultural biases, prejudice, inherent fears of the legal system, and preconceived ideas about adverse consequences based on race and financial status. Below are some strategies the Paid Leave Oregon Division has implemented or plans to implement within the draft administrative rules to mitigate unintended consequences:

- Create a one-pager in plain language on how to calculate employer size;
- Create frequently asked questions and resources page in plain language to assist with explanation of employer size;

- Have the information and tools more accessible that allows more individuals ability to file an appeal, understand how Paid Leave Oregon appeal process works, and be better equipped to complete the process;
- Make the Division's processes transparent; therefore, making the program more accessible;
- Widespread and prioritized instruction and varied and accessible user support services;
- Conduct focused outreach and engagement activities from now until implementation with payroll vendors and employers, prioritizing immigrants and speakers of diverse languages, Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander, and other people of color owned businesses, and rural areas and small businesses, which will include raising awareness about Paid Leave Oregon and how the employer size is calculated;
- Build a universal glossary of terms that is consistent with the judicial system by using the same appeal language as Unemployment Insurance and the model rules for contested cases;
- Collaborate with data team to make sure we are gathering enough information to further analyze who is appealing;
- 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 657B;
- Monitor a number of data elements, develop Key Performance Measures (KPMs), and report out regularly on potential inequitable gaps in service and accessibility in the Paid Leave Oregon program; and
- Continuously explore ways to make changes within the policy and technology solution when racial disparities begin to arise in the program

The Paid Leave Oregon Division also plans to provide ongoing anti-bias and trauma-informed training for staff to assist staff in understanding and identifying racial equity impacts in our policies and procedures.

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#### FISCAL AND ECONOMIC IMPACT:

The fiscal or economic impact associated with amending the method to determine the employer size, is estimated to change about 2,500 businesses from a large business to a small business. While this means some employers that would have been required to pay their share of contributions will now have the option not to, the impact is indeterminate. Because the Paid Leave Oregon program has not begun, all projections are estimates and the impact is indeterminate as it depends on how many employers are really changed from large too small. Additionally, it is indeterminate how many small employers will opt to pay the employer contributions so they can be eligible for small employer assistance grants.

There is no fiscal or economic impact associated with the new administrative rule for representative by a Department employee.

The fiscal and economic impact of appeals being represented by a Department employee was already built in when the statute was passed and no additional impact is anticipated due to the draft administrative rule.

Failure to promulgate this rule, however, would result in a fiscal impact, in that it would create additional costs for the Department in administering the Paid Leave Oregon program since the Department of Justice would charge for all the time spent representing the Employment Department in hearings.

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#### COST OF COMPLIANCE:

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

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

The administrative rules on employer size will only impact state agencies, units of local government and the public if they are close to 25 employees on average over the course of a year.

The administrative rule on Paid Leave Oregon representation will likely have an impact on state agencies, local governments, and other public bodies if needing to appeal a decision made by the Department on contributions. The state agencies, units of local government, and the public may have a Department employee represent Paid Leave Oregon in the appeal, making it easier to work with the Department.

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 estimated of the 6,000 (126,000 small businesses with fewer than 50 employees minus 120,000 small businesses with fewer than 25 employees), 2,500 businesses may switch from being a large business to a small business for Paid Leave Oregon purposes.

It is estimated that five percent of or 6,000 (120,000 small businesses x 5%) small businesses will have a contribution adjustment made by the Department. Of those 6,000 businesses that the contributions are adjusted, it is estimated that 10 percent or 600 (6,000 small businesses adjusted x 10%) will appeal. This estimate was based on Unemployment Insurance data but increased slightly due to Paid Leave Oregon being a new program and more businesses are covered under the Paid Leave Oregon program than Unemployment Insurance

\*Based on from Unemployment Insurance 2020 Tax Wage file.

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

The administrative rule that requires calculating a headcount of the average number of employees for the pay period that includes the 12th of each month from the last calendar year, will require employers to keep track of their payroll records for the year to determine the count. The count should still include all out-of-state employees and subtract the number of replacement workers, which will require some reporting and recordkeeping. For many employers, this may be the same amount that is already reported on the Oregon combined payroll report for Unemployment Insurance. It is estimated that determining the headcount each year, will take approximately one hour to complete. Per the Bureau of Labor Statistics report released September 16, 2021\*, the total compensation (wages, salaries and benefits) for a professional and related occupation for an employer for private industry workers is \$56.24 per hour. Each small business is different, so the amount of time the reporting requirements and recordkeeping may take will vary.

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

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

It is estimated that one additional hour of labor is needed to determine the headcount once each year.

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) 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.

Small businesses may also sign up to participate in our town halls (out of five town halls, there were 724 attendees), receive Paid Leave Oregon emails (105,000 unique email addresses are in 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.

The rule amendments for employer size is an amendment to a previously promulgated rules, and the changes are being made because, despite the robust employer involvement in the previously promulgated rules, small businesses raised concerns more recently about the rule impact in community engagement conversations, leading to the amendments today.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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RULES PROPOSED:

471-070-3150, 471-070-3160, 471-070-8000

AMEND: 471-070-3150

RULE SUMMARY: Employer Size: Definitions - Defines terms used by the Paid Family and Medical Leave Insurance Division necessary to regulate contributions and award assistance grants. Makes the temporary rule permanent.

CHANGES TO RULE:

471-070-3150

Employer Size: Definitions

(1) "Employee count" means a headcount of all of an employer's employees ~~with wages subject to Oregon Paid Family and Medical Leave Insurance (PFMLI) contributi~~, including employees in Oregon and all out-of-state employees, excluding the number of replacement employees hired to temporarily replace eligible employees during PFMLI Oregon Paid Family and Medical Leave Insurance (PFMLI) leave.¶

(2) "Employer size" means ~~the an employer's average number of employees infor the employee count that were employed by an employer during the preceding four quarters~~ preceding 12 month period and is based on the number of employees on the employer's payroll for the pay period that includes the 12th of each month.¶

(3) "Large employer" means an employer whose employer size is 25 or more employees.¶

(4) "New employer" means an employer that has not previously operated or had employees in or outside of Oregon.¶

(5) "Small employer" means an employer whose employer size is less than 25 employees.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.360

AMEND: 471-070-3160

RULE SUMMARY: Amends the method for how to determine whether an employer has fewer than 25 employees for the Paid Family and Medical Leave Insurance program. The method is averaging over 12 months. Makes the temporary rule permanent.

CHANGES TO RULE:

471-070-3160

Employer Size: Method to Determine Number of Employees Employed by an Employer

(1) ~~The~~ Employer size is based on the average of the employer's monthly employee counts as defined in OAR 471-070-3150(2).

(a) ~~An employer's quarterly employee count is based on numbers provided on the Oregon Quarterly Tax Report or the Oregon Annual Report~~ the number of employees on the employer's payroll for the pay period that includes the 12th of the month, and is the sum of:

(A) ~~The number of employees within Oregon Paid Family and Medical Leave Insurance (PFMLI) wages; and~~

(B) ~~The number of out-of-state employees.~~

(b) ~~The employee count may not include any replacement employees hired to temporarily replace eligible employees during periods of PFMLI leave.~~

Example 1: For second quarter, which covers April to June, an Oregon Paid Family and Medical Leave Insurance (PFMLI) leave.

Example 1: ABC Construction has weekly pay periods covering Sunday to Saturday. For October 2022, the 12th of the month is included within the pay period covering October 9th to October 15th. ABC Construction paid 15 employees in Oregon and 8 employees in the Oregon Quarterly Tax Report; eight out-of-state employees; and one replacement worker. The employer Washington during the pay period covering October 9th to October 15th. ABC Construction's employee count for the second quarter October 2022 is 273 employees (2015 Oregon PFMLI employees + 8 out-of-state employees - 1 replacement worker).

Example 2: For fourth quarter, which covers October to December, a domestic employer reports,

Example 2: Suzana Vucic, a domestic employer, has monthly pay periods. For April 2024, the 12th of the month is included within the pay period covering April 1st to April 30th. Suzana Vucic paid two employees in the Oregon Annual Report; zero out-of-state employees; and zero replacement workers. The employer, including one employee temporarily hired to replace an employee during a period of PFMLI leave, and 0 employees out-of-state during the pay period covering April 1st to April 30th. Suzana Vucic's employee count for the fourth quarter April 2024 is two1 employees (2 Oregon PFMLI employees + 0 out-of-state employees - 01 replacement workers).

(2) Employer size is not rounded.

(3) For calendar year beginning on January 1, 2023:

(a) Quarterly filers employer size shall be determined by April 30, based on the employee count reported for the first quarterly Oregon Quarterly Tax Report of 2023, which covers January to March 2023. Notices on employer size shall be sent by the department to the employer's last known address or electronically when permitted, if the employer has opted for electronic notification, as shown Example 3: Top Notch Temps has biweekly pay periods. The employer is based in Idaho and opened an office in Oregon in September 2024. For July 2024, the 12th of the month is included within the pay period covering July 12th to 26th. Top Notch Temps was not operating in Oregon during the department's records by June 1, 2023. Employer size determined from the first quarterly Oregon Quarterly Tax Report will be the size for the entire 2023 calendar year.

Example 3: For first quarter of 2023, an employer reports 20 on employees the Oregon Quarterly Tax Report; three out-of-state employees; and zero replacement workers. The pay period covering July 12th to 26th and had no Oregon employees or replacement workers and had 40 employees working in Idaho. Top Notice Employer's' employee count for 2023 first quarter is 23 July 2024 is 40 employees (20 Oregon PFMLI employees + 340 out-of-state employees - 0 replacement workers). ~~Because the e~~

(2) Employer size is under 25, the employer is a small employer for the entire 2023 calendar year starting on January 1, 2023 not rounded.

(b3) Annual filers e Employer size shall be determined based on the 2023 Oregon Annual Report and calculated as stated in subsection (3)(a)ly for each calendar year based ofn this rule. The notice average of the monthly employer size shall be sent by the department 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 by March 1, 2024.

(4) For calendar year beginning on January 1, 2024:

(a) Quarterly filers employer size shall be determined on or before September 30, 2023, based on the average of three counts from January to December in the previous calendar year.

Example 4: Abraham's Furniture Depot has the following employee counts for 2022: January - 25; February - 26; March - 26; April - 24; May - 23; June - 22; July - 24; August - 25; September - 26; October - 26; November - 26; December - 24. The monthly employee counts on the Oregon Quarterly Tax Reports for the first quarter of 2023, which covers January are added together and then divided by 12 months to March 2023, and the second quarter of 2023, which covers April to June 2023. Notices arrive at the average employee count of 24.75 [(25+26+26+24+23+22+24+25+26+26+26+24 = 297) / 12 months = 24.75]. Abraham's Furniture Depot is a small employer size shall be sent by the department 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 by November 15, 2023. This determination of employer size will be the employer size for the entire 2024 calendar year.

Example 4: An employer has an employee count of 27 for first quarter of 2023 and an employee count of 24 for second quarter of 2023. The employer's size is for all of calendar year 2023.

Example 5: Sally's Tree Farms has the following employee counts for 2025: January - 15; February - 15; March - 14; April - 16; May - 10; June - 12; July - 20; August - 40; September - 45; October - 50; November - 55; December - 50. The employee counts are added together and then divided by 12 months to arrive at the average employee count of 258.5 [(27 + 24)15+15+14+16+10+12+20+40+45+50+55+50) = 342 / 12 quarters]. Because the average employer size is 25, the employer months = 28.5]. Sally's Tree Farms is a large employer for all 2024 of calendar year.

(b) Annual filers employer size shall be determined based on the 2023 Oregon Annual Report and calculated as stated in subsection (4)(a) of this rule. The notice on employer size shall be 2026.

Example 6: Reliable Transport has locations in California and Nevada and starts operating in Oregon in September 2026. The employee counts for 2026, which cover for the sent by the departmire year event 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 by March 1, 2024.

(5) For calendar years beginning on or after January 1, 2025:

(a) Quarterly filers employer size shall be determined on or before September 30 each year for the following year by averaging though Reliable Transport did not start operating in Oregon until September because Reliable Transport operated out-of-state, are: January - 20; February - 20; March - 21; April - 20; May - 20; June - 19; July - 20; August - 21; September - 30; October - 30; November - 31; December - 30. The employee counts are reported for the preceding four completed quarters added together and then divided by 12 months on the Oregon Quarterly Tax Reports. Notices on employer size determinations shall be sent by the department 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 by November 15.

Example 5: [See PDF link below]

(b) Annual filers to arrive at the average employee count of 23.5 [(20+20+21+20+20+19+20+21+30+30+31+30) = 282 / 12 months = 23.5]. Reliable Transport is a small employer for all of calendar year 2027.

(4) For new employers, employer size shall be determined based on the Oregon Annual Report quarterly until the employer has operated for and calculated as stated in subsection (5)(a) of this rule. The notice entire calendar year. At the end of each quarter, the average monthly employer size counts from the preceding 12 months shall be used by the department 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 to determine the employer size for the quarter.

Example 7: Cafe Senad is a new business only in Oregon that started operating in May 2027. Cafe Senad's first quarterly payroll reports by March 1.

(6) For new Oregon employers, employer size for the first calendar year is determined is filed for the second quarter of 2027 (April to June). Employer size for the 2027 second quarter is based on the average employee counts for the first quarter July 2026 to June 2027. Cafe Senad's employees that are reported on the Oregon Quarterly Tax Report. Notice on employer size shall be sent by the department to t counts are: May 2027 - 25; June 2027 - 30; and 0 for all other months. 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 within 45 days of the submission of the counts are added together and then divided by 12 months to arrive at the average employee count of 4.58 [(0+0+0+0+0+0+0+0+25+30) = 55 / 12 months = 4.58]. Cafe Senad is a small employer's first quarterly Oregon Quarterly Tax Report. For the second calendar year, employer size shall be the average for the second quarter of 2027 and is not required to pay the employer contributions for the second quarter.

Employer size for the 2027 third quarter is based on the average employee counts for the preceding year's third quarter to the second quarter of the following year. If the employer did not report for all four of those quarters, because the employer was not yet established in Oregon, the average of the reported quarters is used to determine the employer size for the second calendar year. Notice on October 2026 to September 2027. Cafe Senad's employee counts are: May - 25; June - 30; July - 42; August - 44; September - 44; and 0 for all other



months. The employee counts are added together and then divided by 12 months to arrive at the average employee count of 15.41 [(0+0+0+0+0+0+0+25+30+42+44+44) = 185 / 12 months = 15.41]. Cafe Senad is a small employer size for the second calendar year shall be sent by the department to the employer's last known address third quarter of 2027 and is not required to pay the employer contributions for electronically when permitted, if the employer has opted for electronic notification, as shown in the department the third quarter. ¶

Employer size for the 2027 fourth quarter is based on the average employee count's records by November 15. ¶  
Example 6: A new employer has employees in Oregon starting September 2025. For third quarter of 2025, which covers June to September 2025, the employer reports 15 employees on the Oregon Quarterly Tax Report; 25 out-of-state employees; and zero replacement worker. The employer's employee count for third quarter of 2025 is 40 employees (15 Oregon PFMLI employees + 25 out-of-state employees - 0 replacement workers). Because for January to December 2027. Cafe Senad's employee counts are: May - 25; June - 30; July - 42; August - 44; September - 44; October - 50; November - 52; December - 55; and 0 for all other months. The employee counts are added together and then divided by 12 months to arrive at the average employee count of 28.5 [(0+0+0+0+25+30+42+44+44+50+52+55) = 342 / 12 months = 28.5]. Cafe Senad is a large employer for the fourth quarter 4 of 2027 and must pay the employer size is over 25, the employer is a large employer for the entire 2025 calendar year. ¶

(7) If an employer has not filed all of the required contributions for the fourth quarter. ¶

(5) An employer that determines there is a need to correct their employer size after submitting their Oregon Quarterly Tax Reports(s) or Oregon Annual Report or any of the required reports are incomplete at the time shall amend the reports and update the employer size determination is made by the department, the employer will be considered a large employer and required to contributions. ¶

(a) If the employer changes from a small employer to a large employer, then the employer shall pay the employer contributions until all required reports are completed and filed. ¶

(8) Employer size determinations will be reassessed when either: with the amended reports. Penalties and interests may be assessed in accordance with ORS 657B.320, 657B.910, and associated administrative rules. ¶

(ab) The Oregon Quarterly Tax Reports or Oregon Annual Reports that were missing or incomplete If the employer changes from a large employer to a small employer, then the employer shall be a re-submitted; or ¶

(b) If the Oregon Quarterly Tax Reports or Oregon Annual Reports previous employer contributions paid. The departments are amended, including amendments by ment may require verification of the employer count before as the result of an audit credit is applied. ¶

(96) When reassessment of an employer size determination department may verify employee count at any time by requesting employee count information under section (7) ords of this rule results in a change in the employer size, the liability for employer contributions will also be reassessed. An employer that rough employer audits or other requests for information and documentation from employers. The department may reassess employer size based on the verification received or other information gathered by the department. ¶

(a) If the department determines that an employer designation should be changed from a small employer to a large employer will, then the employer shall be assessed the any employer contributions for previous quarters. An employer that due. Penalties and interests may be assessed in accordance with ORS 657B.320, 657B.910, and associated administrative rules. ¶

(b) If the department determines that an employer designation should be changed from a large employer to a small employer will, then the employer may be credited the previous employer contributions paid in error. ¶

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.360

ADOPT: 471-070-8000

RULE SUMMARY: Establishes that an officer or employee of the Oregon Employment Department may represent the department in certain hearings for Paid Family and Medical Leave Insurance. Makes the temporary rule permanent.

CHANGES TO RULE:

471-070-8000

Appeals: Department Representation in Hearing

(1) Subject to the approval of the Attorney General, an officer or employee of the Oregon Employment Department is authorized to appear on behalf of the department in the following types of hearings conducted before the Office of Administrative Hearings:¶

(a) Administrative decisions related to Paid Family and Medical Leave Insurance (PFMLI) benefits under ORS 657B.100 and 657B.120 and applicable rules.¶

(b) Administrative decisions related to PFMLI contributions under ORS 657B.130 to 657B.175 or 657B.370 and applicable rules.¶

(c) Administrative decisions related to PFMLI penalties imposed under ORS 657B.910 or 657B.920 and applicable rules. ¶

(d) Administrative decisions related to PFMLI employer assistance grants under ORS 657B.200 and applicable rules. ¶

(e) Administrative decisions related to PFMLI equivalent plans under ORS 657B.210 and applicable rules. ¶

(2) The agency representative may not make legal argument on behalf of the agency.¶

(a) "Legal argument" includes arguments on:¶

(A) The jurisdiction of the agency to hear the contested case;¶

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and¶

(C) The application of court precedent to the facts of the particular contested case proceeding.¶

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:¶

(A) The application of the statutes or rules to the facts in the contested case;¶

(B) Comparison of prior actions of the agency in handling similar situations;¶

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;¶

(D) The admissibility of evidence;¶

(E) The correctness of procedures being followed in the contested case hearing.

Statutory/Other Authority: ORS 657B.340, 183.452

Statutes/Other Implemented: ORS 657B.410, 183.452