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ARCHIVES DIVISION

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

CHAPTER 471  
EMPLOYMENT DEPARTMENT

**FILED**

06/29/2022 11:55 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Administrative provisions related to Paid Leave Oregon (PFMLI) program benefits

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/01/2022 11:55 PM

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

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Filed By:  
Anne Friend  
Rules Coordinator

HEARING(S)

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

DATE: 07/21/2022

TIME: 10:00 AM - 12:00 PM

OFFICER: Anne Friend

ADDRESS: PFMLI Rulemaking Hearing

Virtual Public Rulemaking Hearing

Director's Office

Salem, OR 97311

SPECIAL INSTRUCTIONS:

[https://www.zoomgov.com/webinar/register/WN\\_EpE3b6HWSOeFDUxRGWDVJQ](https://www.zoomgov.com/webinar/register/WN_EpE3b6HWSOeFDUxRGWDVJQ)

DATE: 07/23/2022

TIME: 9:00 AM - 11:00 AM

OFFICER: Anne Friend

ADDRESS: PFMLI Rulemaking Hearing

Virtual Public Rulemaking Hearing

Director's Office

Salem, OR 97311

SPECIAL INSTRUCTIONS:

[https://www.zoomgov.com/webinar/register/WN\\_bjoGwHGgTvKBn-E1rwwFqQ](https://www.zoomgov.com/webinar/register/WN_bjoGwHGgTvKBn-E1rwwFqQ)

DATE: 07/26/2022

TIME: 4:00 PM - 6:00 PM

OFFICER: Anne Friend

ADDRESS: PFMLI Rulemaking Hearing

Virtual Public Rulemaking Hearing

Director's Office

Salem, OR 97311

SPECIAL INSTRUCTIONS:

[https://www.zoomgov.com/webinar/register/WN\\_AbRlqof2S2q5PFtyP84ufA](https://www.zoomgov.com/webinar/register/WN_AbRlqof2S2q5PFtyP84ufA)

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NEED FOR THE RULE(S)

In order to implement and administer the Paid Family and Medical Leave Insurance (Paid Leave Oregon) program, the Oregon Employment Department (Department) is promulgating permanent administrative rules in accordance with ORS chapter 657B. ORS 657B.410 makes appeals of Paid Leave Oregon determinations by the Department subject to contested case provisions under ORS chapter 183. As allowed by ORS 183.630(2), the Department has submitted a request to the Oregon Department of Justice (DOJ) and the Attorney General (AG) for an exemption for the Paid Leave Oregon program from the Attorney General's Model Rules for contested cases. The proposed procedural rules for Paid Leave Oregon contested cases are modeled on the Department's procedural rules for Unemployment Insurance program hearings, modified where appropriate to be consistent with statutes in ORS chapter 183 and ORS chapter 657B. The AG's final decision on the requested exemption from the Model Rules of procedure will not be made until the Paid Leave Oregon contested case rules are in final form, but the Paid Leave Oregon program is consulting closely with DOJ, as well as consulting with the Chief Administrative Law Judge of the Office of Administrative Hearings (OAH) and others on the proposed rules. The Paid Leave Oregon program will diligently pursue the exemption and believes that if the AG has any concerns that might prevent such an exemption, that they can be addressed to the AG's satisfaction before the rules are adopted.

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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));
  - Oregon Employment Department Unemployment Insurance Taxes statute and administrative rules – ORS chapter 657 and OAR Chapter 471, Division 31 ([https://www.oregonlegislature.gov/bills\\_laws/ors/ors657.html](https://www.oregonlegislature.gov/bills_laws/ors/ors657.html) and <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=2338>);and
  - 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>)
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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 inequities that families of color face when trying to access government programs. While adopting our administrative rules for appealing the decision made by the Department, the Paid Leave Oregon Division looked at the racial equity impact of the administrative rules and answered the below questions.

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.

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

ORS 657B.410, requires an appeal process to be established and shall comply with provisions for a contested case

under ORS chapter 183. ORS chapter 183 requires the Department to use the Office of Administrative Hearings for contested cases. The Division understands the appeal process in itself can cause stress, anxiety, barriers, and biases. The nature of the administrative appeal process is intended to have a second independent review to assure decisions are fair, equitable, and in compliance with the governing statutes and administrative rules. Even though through ORS chapter 183 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. Having less formal procedural rules than the Model Rules is hoped to mitigate barriers.

In 2021, Washington's Paid Leave program conducted a non-utilization study of their paid leave program . Below is some information gathered from the study:

Gender:

- Those who identified as female had higher rates of approval and receipt of benefits.
- Those who identified as male, non-binary, or who preferred not to disclose their gender, had higher rates of denial and of approval without receipt of benefits.

Racial-Ethnic Identity:

- Those who identified as white, East Asian, and who preferred not to disclose their racial-ethnicity identity had higher rates of approval and receipt of benefits.
- Those who identified as Native Hawaiian, American Indian or Alaska Native, and Black or African American had the highest rates of denial.

Age:

- Customers ages 30 to 39 had higher rates of approval and receipt of benefits, likely related to the high numbers of approved bonding and pregnancy complication claims. Customers ages 18 to 29, 40 to 49, and 50 to 59 had lower rates of approval and receipt of benefits, aside from those whose age was not available.
- Aside from customers whose ages weren't available, customers ages 18 to 29 had the highest rates of denial.

Are there strategies to mitigate the unintended consequences?

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:

- Specific/direct outreach with resource tools describing the appeal and hearing process and providing assistance in multiple languages as determined by the Department's equity framework;
- 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;
- Provide a qualified interpreter free of charge in contested case hearings for people who request language assistance and ensure that all parties are informed of this right;
- Provide an assistive communication device free of charge in contested case hearings upon request and ensure that all parties are informed of this right;
- Allow for postponement of hearings in certain circumstances;
- Expand the benefit appeals timeframe from 20 days to 60 days to allow more time for individuals to learn the appeal process and submit a request for hearing;
- Expand the way an appeal request can be submitted to make it easier for individuals to appeal (via mail, fax, email, in

person, or through the Department's secured website); and

- Provide different ways to appear for a hearing (i.e. telephone, in-person, and video conferences).

Inexperience, misinterpretation of law, inconsistent procedures, and lack of managerial oversight may all contribute to a poor quality hearing. Below are some strategies the Paid Leave Oregon Division will monitor to help mitigate these unintended consequences of a poor quality hearing:

- Conduct regular program evaluation, including analysis of demographics such as race, gender, and age;
- Develop core steps in reviewing the outcome of contested cases. Include steps that could identify bias, influence, or incorrect interpretation of statutes;
- Review court case decisions and contested case decisions timely to determine if changes are needed in the Division's administrative rules, internal procedures, or a statutory change is needed in ORS chapter 657B;
- Monitor and develop safeguard tools within building the process of the application in the system, continually checking for errors and/or immediate action to default notifications; and
- Review program evaluation data and build transparency in the program design.

The Paid Leave Oregon Division also plans to provide ongoing anti-bias and trauma-informed training for rulemaking staff and ongoing community engagement to help determine racial equity impacts.

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#### FISCAL AND ECONOMIC IMPACT:

There is no fiscal or economic impact associated with these new administrative rules as ORS 657B.410 allows an appeal process from determinations made by the Department. The fiscal and economic impact of appeals was already built in when the statute was passed and no additional impacts are anticipated due to these draft administrative rules.

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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 Paid Leave Oregon appeals 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 need to appeal within 20 days and provide additional information to explain why the adjustment made by the Department is incorrect.

##### 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 that five percent of these, 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 Unemployment Insurance 2020 Tax Wage file.

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

Small businesses that disagree with a contribution determination made by the Department will need to request an administrative hearing appeal in writing within 20 days after the administrative decision is issued. Along with an appeal, the small business must provide evidence or reasoning why it disagrees with the Department's determination.

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

Small businesses that disagree with a contribution determination made by the Department will have increased administration in the filing of the appeal and attending the hearing. Allowing these rules will permit combined hearings on Unemployment Insurance program and Paid Leave Oregon program contribution issues, mitigating the impact. This will likely take human resource, payroll, or administrative staff to submit the appeal and attend the hearing. Per the Bureau of Labor Statistics report released September 16, 2021\*, the total national compensation (wages, salaries and benefits) for a professional and related occupation for an employer for private industry workers is \$56.24 per hour. Each appeal is different, so the hours needed for the appeal may vary. The estimated time to gather the evidence or reasoning why the employer disagrees with the Department's determination and submit the appeal to the Department via mail, fax, e-mail, in person, or through the Department's secured website is approximately one hour. The estimated time an administrative hearing takes with the Department and OAH is approximately five hours, though if there are multiple or particularly complex issues it could take longer. Therefore, the submission and attendance of a typical appeal is estimated to take approximately six hours or \$337.44 (6 hours x \$56.24). As stated above, out of 120,000 small businesses, about 600 are estimated on average to bring an appeal and those would be impacted.

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

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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.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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RULES PROPOSED:

471-070-1300, 471-070-1330, 471-070-1410, 471-070-1500, 471-070-1510, 471-070-1520, 471-070-1550, 471-070-1560

ADOPT: 471-070-1300

RULE SUMMARY: Written Notice Poster to Employees of Rights and Duties- Clarifies when the written notice poster must be displayed or delivered to remote worker by the employer and in what language.

CHANGES TO RULE:

471-070-1300

Benefits: Written Notice Poster to Employees of Rights and Duties

(1) The director shall make available to employers a model Paid Family and Medical Leave Insurance (PFMLI) notice poster that meets the requirements of ORS 657B.440. ¶

(2)(a) Each employer must display the department's notice poster, or another poster approved by the department, in each of the employer's buildings or worksites in an area that is accessible to and regularly frequented by employees; and ¶

(b) An employer with employee(s) assigned to remote work must provide, by hand delivery, regular mail, or through an electronic delivery method, a copy of the department's notice poster, or another poster approved by the department, to each employee assigned to remote work. The notice poster must be delivered or sent to each employee assigned to remote work upon the employee's hire or assignment to remote work. ¶

(3)(a) For employers that have employee(s) working in buildings or worksites, the notice poster displayed under (2)(a) of this rule by the employer must be displayed in the language the employer typically uses to communicate with the employee. If the employer uses more than one language to communicate with employees assigned to a building or worksite, then the employer must display copies of the notice poster in each of the languages that the employer would typically use to communicate with the employees assigned to that building or worksite; and ¶

(b) For employers that have employee(s) assigned to remote work, the notice poster provided under (2)(b) of this rule by the employer must be provided in the language the employer typically uses to communicate with each employee assigned to remote work. ¶

(4) An employer offering an equivalent plan approved under ORS 657B.210 must follow the employer notice poster requirements specified in OAR 471-070-2330. ¶

[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, 657B.440

Statutes/Other Implemented: 657B.440, 657B.070

RULE SUMMARY: Clarifies that an employer must restore an employee returning from paid leave to the employee's former position. Requires employers to maintain health care benefits the employee had prior to taking leave.

CHANGES TO RULE:

471-070-1330

Benefits: Job Protection

(1) An employer must restore an employee returning from Paid Family and Medical Leave Insurance (PFMLI) leave to the employee's former position, if the position still exists, even if the former position has been filled by a replacement worker during the employee's PFMLI leave. The employee's former position is the position held by the employee at the time PFMLI leave commenced, regardless of whether the job has been renamed or reclassified. (For example, a delivery driver must be returned to the same route, at the same rate of pay and benefits, on the same shift, and working from the same location as when the driver started PFMLI leave.)¶

(2) For the purposes of this rule, any worker hired or reassigned during an eligible employee's leave to perform the same work in the same position that the eligible employee held before the leave was taken is a replacement worker. When the eligible employee on PFMLI leave notifies the employer that the eligible employee is ready to return to work, the employer must give the eligible employee the opportunity to work any hours that the replacement worker would otherwise have been scheduled to work beginning on the day following the date the eligible employee notified the employer they were ready to end their leave and return to work.¶

(3) The employee is not entitled to return to the former position if the employee would have been terminated or reassigned from their current position to another position if PFMLI leave had not been taken.¶

(4) If the position held by the employee at the time PFMLI leave began has been eliminated, and not merely renamed or reclassified, then:¶

(a) If the employer is a large employer as defined in OAR 471-070-3150, the employer must restore the employee to any available, equivalent position for which the employee is qualified. ¶

(A) An available position is a position that is vacant or not permanently filled.¶

(B) An equivalent position is a position that is virtually identical to the employee's former position in terms of employment benefits, pay, and working conditions, including privileges, perks, and status. It must involve substantially the same or similar duties and responsibilities, which must entail equivalent skill, effort, responsibility, and authority. ¶

(b) If the employer is a small employer as defined in OAR 471-070-3150, the employer may, at the employer's discretion and based on business necessity, restore the employee to a different position. The different position must offer the same employment benefits, pay, and working conditions, including privileges, perks, and status as the employee's former position and must have similar job duties and responsibilities as the employee's former position. ¶

(5)(a) Unless the terms of a collective bargaining agreement, other employment agreement, or the employer's policy provides otherwise, an employee on PFMLI leave is not entitled to accrue employment benefits during a period of leave. Employment benefits include but are not limited to: accrual of seniority, production bonuses, or other non-health-care-related benefits that would accrue while the employee is working;¶

(b) Benefits an employee was entitled to prior to starting PFMLI leave, including, but not limited to seniority or pension rights, must be restored in full upon the employee's return to work. The benefits do not have to be restored, however, if such benefits have been eliminated or changed for similarly situated employees;¶

(c) An employee is not entitled to a right, benefit, or position of employment other than a right, benefit, or position to which the employee would have been entitled to if the employee had not taken PFMLI leave; and¶

(d) An employee is subject to layoff on the same terms or under the same conditions as similarly situated employees who have not taken PFMLI leave.¶

(6) During any PFMLI leave, an employer must maintain any health care benefits the employee had prior to taking such leave, for the duration of the leave, as if the employee had continued in employment continuously during the period of leave.¶

(a) An employer continuing health care insurance coverage for an employee on PFMLI leave may require that the employee pay only the same share of premium costs during the leave that the employee paid prior to the leave.¶

(b) If an employee cannot or will not pay their share of the premium costs, the employer may elect to discontinue health care benefit coverage, unless doing so would render the employer unable to restore the employee to full benefit coverage once the employee returns to work. If coverage lapses because an employee has not made required premium payments, upon the employee's return from PFMLI leave the employer must restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including being subject to any

new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage. ¶

(c) If the employer pays (directly or indirectly, voluntarily or as required by state or federal statute) any part of the employee's share of health or other insurance premium while an employee is on PFMLI leave, the employer must receive permission from the employee to deduct from their pay until the amount is repaid. The employer may deduct up to 10 percent of the employee's gross pay each pay period after the employee returns to work until the amount is repaid. ¶

(d) If an employee fails to return to work - unless the failure to return to work is because of a serious health condition or safe leave for which the employee would be entitled to PFMLI leave or another circumstance beyond the employee's control - the employer may recover the employee's share of benefits paid by the employer. The employer may use any legal means to collect the amount owed for the employee's share of benefits paid by the employer, including deducting the amount from the employee's final paycheck. ¶

(7) An employer may require an employee to follow the employer's established leave policy regarding reporting to the employer any changes to the employee's leave status. ¶

(8) If an employee gives clear notice of intent in writing not to return to work from PFMLI leave, except as required by other state or federal law, the employer's obligations under ORS chapter 657B to restore the employee's position and maintain any health care benefits cease on the date of the notice is given to the employer. ¶

(9) The protections provided under ORS 657B.060 and this rule apply only to an eligible employee who was employed by the employer for at least 90 consecutive calendar days prior to taking PFMLI leave. ¶

(10) It is an unlawful employment practice to discriminate against an eligible employee who has invoked any provision of ORS chapter 657B or this rule. An employee who alleges a violation of any provision of ORS chapter 657B or this rule may bring a civil action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.060, 657B.070



ADOPT: 471-070-1410

RULE SUMMARY: Clarifies the process for how the department will examine a benefit application and issue an initial determination for the benefit year.

CHANGES TO RULE:

471-070-1410

Benefits: Initial and Amended Monetary Determinations

(1)(a) When a claimant files an application for benefits as described in OAR 471-070-1100, which establishes a new benefit year, the department shall examine the application for benefits and, on the basis of information available, shall make an initial determination of:

(A) The total amount of subject wages and for an individual that elected coverage under OAR 471-070-2010, taxable income from self-employment paid to or earned by the claimant during the base year or alternate base year;

(B) Whether or not the amount in section (1)(a)(A) of this rule is sufficient to meet the eligibility requirement under OAR 471-070-1010(1)(b); and

(C) The claimant's weekly benefit amount under ORS 657B.050, provided the claimant is eligible for benefits under section (1)(a)(B) of this rule.

(b) The department's initial determination shall be applicable to all weeks of the benefit year respecting which the claim was filed, except that the department's determination may be amended with respect to any week or weeks of the benefit year as described under section (2) of this rule.

(c) The department shall notify the claimant of the initial determination made under this section.

(2)(a) A claimant who receives an initial determination under section (1) of this rule may request that the determination be amended. Upon receipt of such a request, the department will investigate by examining records of wages and income submitted to the department by the claimant, employers, and state agencies in an attempt to locate or remove subject wages or taxable income from self-employment alleged by the claimant to be missing or reported incorrectly.

(b) If, as the result of an investigation, the subject wages or taxable income from self-employment either make a previously ineligible claimant eligible for benefits, or increase or decrease the weekly benefit amount of a previously approved claim, then the department will issue an amended determination.

(c) The amended determination shall replace the initial determination made under section (1) of this rule and shall be applicable to all weeks of the benefit year respecting which the claim was filed.

(d) If, as the result of an investigation, all or part of the requested wages or income are not included in the determination, the department will so notify the claimant.

(3) Unless the claimant files a request for hearing with the department regarding the initial or amended determination, the determination shall become final once the time for requesting a hearing has passed. The department shall pay or deny benefits in accordance with the determination, unless otherwise provided by law. The request for hearing must be filed not later than 60 days after the delivery of the initial or amended determination unless the department mails the determination, in which case the request for hearing must be filed not later than 60 days after the date the determination is mailed to the last-known address of the claimant.

[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.050, 657B.100

ADOPT: 471-070-1500

RULE SUMMARY: Clarifies the process of the department's review of an overpaid benefit amount to determine the cause of the overpayment.

CHANGES TO RULE:

471-070-1500

Benefits: Review of Overpaid Benefits

(1) The department may review an overpayment of benefits to determine the cause of the overpayment and whether the claimant is liable for repayment of the benefits and any applicable penalties.¶

(2) The department's review of the overpayment shall be used to determine whether:¶

(a) The overpayment may be waived under ORS 657B.120(5); ¶

(b) Interest may be applied under OAR 471-070-1510(3) to any amount owed;¶

(c) Penalties shall be applied under ORS 657B.120(3)(b); and ¶

(d) The claimant shall be disqualified from claiming benefits under ORS 657B.120(3)(a);¶

(3) The department shall review information provided by the claimant or other parties and from the department's records in making its determination under this rule.¶

(4) The claimant may be held liable for repayment of benefits they were not entitled to, even though all relevant information was provided before a decision was issued, when the claimant should reasonably have known the payment was improper.¶

(5) The claimant will always be liable for repayment of benefits when an overpayment is the result of a claimant willfully making a false statement or willfully failing to report a material fact in order to obtain Paid Family and Medical Leave Insurance benefits.¶

(6) In deciding if a claimant is liable for repayment of benefits, the department may also consider factors which may affect the claimant's ability to report all relevant information to the department.

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

Statutes/Other Implemented: ORS 657B.120

ADOPT: 471-070-1510

RULE SUMMARY: Clarifies the process for repayment of an overpaid benefit through the deduction of future benefits or through collection.

CHANGES TO RULE:

471-070-1510

Benefits: Repayment of Overpaid Benefits; Interest

(1) The director may issue an assessment to a claimant for an overpayment each time a claimant receives Paid Family and Medical Leave Insurance (PFMLI) benefits to which the claimant was not entitled.¶

(2) If the director determines that a claimant has received benefits to which the claimant was not entitled:¶

(a) The claimant may be required to repay the amount of benefits that the claimant was overpaid:¶

(b) The director may secure the repayment of the overpaid benefits through the deduction from future benefits otherwise payable to the claimant under ORS 657B.100; and¶

(c) The director may deduct all or any part of the claimant's future weekly benefits up to the amount of the prior overpayment.¶

(3)(a) If the department determines that a claimant is at fault for an overpayment, due to the claimant's error, false statement, or failure to report a material fact, then the claimant may be liable for interest on the overpayment amount. Interest that the claimant is liable for shall be paid and collected at the same time repayment of benefits is made by the individual, at the rate of one and a half percent per month or fraction of a month. Interest will accrue, beginning on the first day of the month that begins 60 days after the administrative decision establishing the overpayment becomes final.¶

(b) If the department determines that a claimant is not at fault for an overpayment, then the claimant shall not be liable for interest on the amount to be repaid as a result of the overpayment.¶

(4)(a) Deductions from PFMLI benefits under section (2)(b) of this rule shall be applied solely to the amount of overpaid benefits for which the claimant is liable.¶

(b) Amounts collected through other means shall be applied first to penalties, then interest, and then to the overpaid benefit amount.¶

(5) Deductions for the repayment of benefits paid erroneously may be deducted from benefits due to the claimant with no time limitations.

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

Statutes/Other Implemented: ORS 657B.120

ADOPT: 471-070-1520

RULE SUMMARY: Clarifies when the director may waive the amount of overpaid benefits. Clarifies that a claimant may request another waiver if the waiver is denied by the department if their situation significantly changes.

CHANGES TO RULE:

471-070-1520

Benefits: Waiving Recovery of Overpayments-

(1) In accordance with ORS 657B.120(5), the director may waive, in whole or in part, the amount of Paid Family and Medical Leave Insurance (PFMLI) benefits if:

(a) The benefits were paid based on an error other than a willful provision of a false statement, nondisclosure of a material fact, or misrepresentation by a claimant, and

(b) Recovery would be against equity, good conscience, or administrative efficiency.

(2) The director may determine that recovery of overpaid benefits is against equity and good conscience if the individual requesting a waiver has limited means to repay the benefits and has total allowable household expenses that equal or exceed 90% of the total household income, not including PFMLI benefits received. The department will use the current year's Internal Revenue Service (IRS) Collection Financial Standards to determine total allowable household expenses. The director may allow expenses higher than those provided for in the IRS Collection Financial standards if the claimant requesting a waiver provides documentation showing that using those IRS Collection Financial Standards would leave the claimant unable to provide for basic living expenses.

(3) If the director grants a waiver, the department will stop collection activity of any overpaid benefits subject to the waiver. The department will give written notice of any waiver that is granted, indicating the amount of the overpaid benefits for which the waiver is granted.

(4) Waivers granted are effective the Sunday of the week in which the request for waiver was filed with the department. The date of the post mark from the United States Postal Service, a date stamp from an Employment Department office, an embedded fax date, or the electronic filing date as described in OAR 471-070-0850, whichever is earliest, will be used to determine the date of filing.

(5) If a request for waiver is denied, the department will notify the claimant of its decision. The claimant may submit another request for waiver if their situation changes significantly enough to establish that recovery of the benefits would be against equity and good conscience. No subsequent request for waiver of benefits may be granted, unless the claimant satisfactorily demonstrates in writing the significant change in financial situation and provides supporting documentation.

(6) Overpaid benefits that have been recovered from the claimant prior to the filing of a waiver request will not be waived or refunded.

(7) If a person is paid more than once for the same week(s), recovery of only the amount in excess of the final entitlement is eligible to be waived.

(8) In applying ORS 657B.120(5), a waiver will not be granted if the overpayment is a result of a willful false statement or a willful failure to report a material fact as determined under ORS 657B.120(3).

(9) Overpayments caused by the negotiation of an original and a replacement check that were issued for the same period will not be waived.

(10) The determination whether to waive overpayments under ORS 657B.120(5) and this rule shall be made by employees authorized by the director by delegation and may be made with or without the request for a waiver from the claimant.

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

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

Statutes/Other Implemented: ORS 657B.120

ADOPT: 471-070-1550

RULE SUMMARY: Clarifies when the director may assess a civil penalty of up to \$1,000 against an employer each time the employer makes or causes to be made a willful false statement or willful failure to report material facts.

CHANGES TO RULE:

471-070-1550

Benefits: Penalties for Employer Misrepresentation

(1) In accordance with ORS 657B.120(2), the director may assess a civil penalty of up to \$1,000 against an employer each time the employer makes or causes to be made a willful false statement or willful failure to report a material fact regarding the claim of an eligible employee or regarding an employee's eligibility for Paid Family and Medical Leave Insurance benefits.¶

(2) The director may consider the following mitigating and aggravating circumstances when determining whether to assess a civil penalty under section (1) of this rule and the amount assessed:¶

(a) Whether the employer knew or should have known they were making or causing to be made a false statement or failing to report a material fact;¶

(b) Prior violations, if any, of ORS chapter 657B by the employer;¶

(c) Whether a violation of ORS chapter 657B by the employer resulted in harm to an employee;¶

(d) Whether a violation of ORS chapter 657B by the employer resulted in erroneous or incorrect benefit or assistance grant payments;¶

(e) The magnitude and seriousness of a violation of ORS 657B.120(1).¶

(3) It is the responsibility of the employer to provide the director any mitigating evidence concerning liability for or the amount of the civil penalty to be assessed.¶

(4) The director shall consider all mitigating circumstances presented by the employer for the purpose of determining the amount of the civil penalty to be assessed.¶

(5) Any amount in penalties due under ORS 657B.120(2) and this rule may be collected by the director in a civil action against the employer brought in the name of the director.

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

Statutes/Other Implemented: ORS 657B.120

ADOPT: 471-070-1560

RULE SUMMARY: Clarifies that a claimant is disqualified from receiving Paid Leave Oregon benefits when they willfully make a false statement or willfully fail to report a material fact in order to receive Paid Leave Oregon benefits for a period of 52 consecutive weeks.

CHANGES TO RULE:

471-070-1560

Benefits: Disqualification and Penalties for Claimant Misrepresentation

(1) In accordance with ORS 657B.120(3), it is unlawful for a claimant to willfully make a false statement or willfully fail to report a material fact in order to obtain Paid Family and Medical Leave Insurance (PFMLI) benefits.¶

(2) If the director determines that a claimant has made a willful false statement or a willful failure to report a material fact in order to obtain PFMLI benefits, then the claimant shall be:¶

(a) Disqualified from claiming benefits for a period of 52 consecutive weeks beginning from the date that the claimant made the willful false statement or willful failure to report the material fact;¶

(b) Assessed for any amount of benefits the claimant received to which the claimant was not entitled to; and¶

(c) Liable for a penalty under ORS 657B.120(3)(b).¶

(3) When determining the rate of the penalty imposed under ORS 657B.120(3)(b), the department will review the number of occurrences of willful false statement or willful failures to report material facts. An occurrence shall be counted each time a claimant willfully makes a false statement or willfully fails to report a material fact in order to obtain PFMLI benefits. The department shall use the date the claimant failed to report a material fact or willfully made a false statement or representation as the date of the occurrence. The penalty shall be imposed as follows:¶

(a) For the first occurrence, or the second occurrence within five years of any previous disqualification or imposition of a penalty, 15 percent of the total amount of benefits the claimant received to which the claimant was not entitled;¶

(b) For the third or fourth occurrence within five years of any previous disqualification or imposition of penalty, 20 percent of the total amount of benefits the claimant received to which the claimant was not entitled; ¶

(c) For the fifth or sixth occurrence within five years of any previous disqualification or imposition of penalty, 25 percent of the total amount of benefits the claimant received to which the claimant was not entitled; ¶

(d) For the seventh or greater occurrence within five years of any previous disqualification or imposition of penalty, 30 percent of the total amount of benefits the claimant received to which the claimant was not entitled; ¶

(e) In cases of forgery or identity theft, 30 percent of the amount of benefits the claimant received to which the claimant was not entitled, regardless of the number of occurrences.¶

(4) Any amount subject to recovery and any penalty due under this rule, OAR 471-070-1510, and ORS 657B.120 may be collected by the director in a civil action against the claimant brought in the name of the director.

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

Statutes/Other Implemented: ORS 657B.120