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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 1:31 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Administrative provisions related to Paid Family and Medical Leave Insurance employer equivalent plans

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

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

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_AbRIqof2S2q5PFtyP84ufA

NEED FOR THE RULE(S)

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

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

- Paid Leave Oregon statute – ORS chapter 657B (https://www.oregonlegislature.gov/bills_laws/ors/ors657B.html);
 - Oregon Employment Department Unemployment Insurance Taxes statute and administrative rules – ORS chapter 657 and OAR Chapter 471, Division 31 (https://www.oregonlegislature.gov/bills_laws/ors/ors657.html and <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=2338>);
 - Oregon Department of Consumer Business Services administrative rules and laws around insurance providers (<https://wcd.oregon.gov/laws/Pages/index.aspx>).
 - Washington State’s PFML administrative rules (WACs Chapter 192-500 through 192-810) (<https://app.leg.wa.gov/WAC/default.aspx?cite=192>);
 - Massachusetts Paid Family and Medical Leave statutes and rules and regulations (<https://www.mass.gov/library/mass-general-laws-c175m> and <https://www.mass.gov/regulations/458-CMR-200-family-and-medical-leave>);
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STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Paid Leave Oregon equivalent plans provide employers flexibility to decide if offering paid family, medical, and safe leave benefits to their employees through an employer administered or fully insured plan would be preferred to the state plan. This has potential advantages for employers, such as cost savings, ability to maintain existing benefits program if equivalent to the state plan or better, and an opportunity to provide higher benefits than the state plan, and thus be a more competitive employer, in a streamlined way. While employees covered by an equivalent plan must receive benefits that are equal to or greater than the state plan, it is the employer, insurance provider, or third party administrator, and not the Oregon Employment Department (department), that is responsible for the administration of the equivalent plan, including processing of claim applications, decisions on claims, and payment of benefits. The Paid Leave Oregon Division recognizes that employees covered by equivalent plans may face barriers in accessing benefits through their employer, such as denial of valid claims and non-payment of approved claims; these barriers may have a disproportionate impact on Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander, and other people of color, and immigrants and non-English speaking individuals, who may be more likely to experience discrimination and bias in decision-making on claims and may be more significantly impacted by barriers to benefits due to socioeconomic and other inequities. In establishing administrative rules on equivalent plans, the Paid Leave Oregon Division sought to minimize these potential barriers for employees accessing benefits, while supporting universal access to equivalent plans for employers.

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

The administrative rules on equivalent plans seek to ensure that employers approved to offer benefits through an equivalent plan are able to sufficiently administer the plan, while still enabling the department to ensure compliance with the plans, with the goal that employees have equitable access to benefits under the state plan and/or an equivalent plan. The requirements established in these rules could have an equity impact for employers’ access to equivalent plans, potentially impacting businesses owned by 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

may have less specialized experience or resources to navigate these requirements due to systemic and institutional barriers. However, those requirements are necessary to ensure equitable benefits for employees covered under equivalent plans. The Paid Leave Oregon Division has sought to facilitate equitable access to equivalent plans for all employers and employees where possible. In particular, OAR 471-070-2230 on reporting requirements, OAR 471-070-2250 on employee coverage requirements, and OAR 471-070-2270 on proration of benefit amounts for simultaneous coverage aims to establish straightforward and streamlined requirements for what employees must be covered and what information the department will provide and the employer will provide.

In 2021, 100,000 Oregonians held more than one job in addition to their primary job and were considered multiple jobholders, which is a rate of 4.9 percent. Those of Hispanic or Latino ethnicity had a multiple jobholding rate of 3.1 percent. Black or African Americans held multiple jobs at a rate of 5.4 percent. Whites had a multiple jobholding rate of 4.5 percent and Asians had a rate of 3.1 percent. The Division took this information into consideration when determining how to handle proration of benefits and simultaneous coverage in the proposed administrative rules.

Nonetheless, the requirements established in administrative rule, along with the other requirements established above, may have an equity impact. In addition, while the rules aim to ensure equitable benefits for employees covered by equivalent plans, these may not be sufficient to prevent all barriers for those employees, which may also have an equity impact.

Are there strategies to mitigate the unintended consequences?

The Paid Leave Oregon Division seeks to mitigate the possible barriers identified primarily through widespread and targeted program of education and varied, accessible user support services. An equivalent plan guidebook is being created that will explain the rules and requirements for equivalent plans in plain language and will seek to provide these materials in multiple languages for employers. Furthermore, the guidebook will be supplemented with frequently asked questions, instructional videos, and other resources. Staff will be trained to support employers on equivalent plans, with the aim to enable all employers to understand equivalent plans and complete the reporting and administration requirements of equivalent plans and thus help mitigate the equity impact. In addition, the Division will be conducting focused outreach and engagement activities from now until implementation with employers, with a focus on businesses owned by 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 equivalent plans.

The Division will also seek to mitigate equity impacts for employees covered by equivalent plans through program education, including focused outreach and engagement activities with non-English speaking individuals, Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander, and other people of color, and immigrants and non-English speaking individuals, to help those individuals understand the obligations of equivalent plan employers and what is different in how they access benefits. This will include the provision of guidance in multiple languages and mediums. The Division is further identifying a process to support employees who have not received benefit payments due to employer non-compliance, keeping in mind the equity impact of those non-payments.

FISCAL AND ECONOMIC IMPACT:

Any fiscal or economic impact for Paid Leave Oregon equivalent plans is the result of the statute being implemented that allows equivalent plans, as the proposed administrative rules primarily provide clarification for equivalent plans.

The Declaration of Intent in OAR 471-070-2205 still requires an equivalent plan application to be filed by May 31, 2023 otherwise the employee contributions withheld and the employer contributions must be remitted to the Department.

This does not have a fiscal impact as the Paid Leave Oregon Trust Fund already anticipates equivalent plans and the Division doesn't anticipate more equivalent plans just because there is a Declaration of Intent option.

Proration of benefits for simultaneous coverage in OAR 471-070-2270 requires the proration of benefits to be applied based on how many employers the employee works for at the time of leave. The fiscal impact to the Paid Leave Oregon Trust Fund is indeterminate as the program does not know how many equivalent plan employers will have employees that work multiple jobs. As stated above, only 4.9 percent of Oregonians work multiple jobs.

COST OF COMPLIANCE:

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

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

The administrative rules on equivalent plans could impact the State as an employer, units of local government and the public if they choose to not participate in the state Paid Leave Oregon plan but rather provide their own approved Paid Leave Oregon equivalent plan to their employees. At this time, the Division does not know which state agencies, local governments, or public will participate in equivalent plans.

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

Based on the percentage of small businesses electing to offer an equivalent plan to their employees in Washington State's Paid Leave program, it is estimated for Oregon that, of the 126,000 small businesses, approximately 59 small business employers will submit an application to have a Paid Leave Oregon equivalent plan instead of participating in the state plan.

*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 wanting to provide a Paid Leave Oregon equivalent plan to their employees beginning September 3, 2023, will need to submit an equivalent plan application no later than May 31, 2023, or submit a Declaration of Intent by November 30, 2022, and an equivalent plan application by May 31, 2023, and must withhold employee contributions starting January 1, 2023, and hold them in trust for the State of Oregon. The reporting and recordkeeping requirement to fill out a Declaration of Intent is anticipated to take less than a half an hour. The time needed to fill out an equivalent plan application is not included in this estimate for the proposed administrative rules, as the equivalent plan application is required in statute and was already in previous proposed rules.

Per OAR 471-070-2220, subsequent benefit payments must be provided weekly by the fully insured equivalent plan, unless the benefit payment is included within the established paycheck from the employer. If the equivalent plan employer pays the benefits, no additional cost for the payment subsequent benefit payments is anticipated as it will be included in the paycheck. If the fully insured equivalent plan pays the benefits, the subsequent benefit payments paid weekly should have no additional cost as the cost should be included in the overall administration of the equivalent plan for the employer.

ORS 657B.210(11) requires that an equivalent plan employer must maintain all reports, information, and records relating to the approved equivalent plan in the manner established by administrative rule. The draft administrative rule, OAR 471-070-2230, requires the filing of annual aggregate benefit usage reports and annual financial reports if the employer withholds contributions from the employee. The statute already requires the employer to maintain all reports and information so the cost to submit the aggregate information to the department is minimal and clarifying.

OAR 471-070-2260, allows the employee, employer, or administrator to request benefit information from the department in order to ensure equivalent plan benefits are equal to or better than the state plan; however, this rule does not require the employer to do so. The request for information can be done online, so the administrative time should be minimal as they will only be requesting information when an employee is requesting benefits and when the employer would like to know the eligible employees average weekly wage.

OAR 471-070-2270, along with ORS 657B.210, requires proration of benefits when an employee is simultaneously covered under more than one employer's equivalent plan at the same time, or also covered by the state plan. In 2021, 4.9 percent of Oregonians held more than one job in addition to their primary job; and not all of those individuals will claim benefits in a year or will be working for an equivalent plan employer. Therefore, the impact for small businesses with the proration of simultaneous coverage will be a minimal impact.

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

Small businesses that opt to provide an equivalent plan will need to make sure they provide benefits that are equal to or greater than the Paid Leave Oregon plan and meets all the reporting and recordkeeping requirements provided in administrative rules. This will likely take human resource, payroll or administrative staff to comply with the equivalent plan reporting requirements and payment of benefits. 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 small business is different, so the hours needed for reporting requirements and recordkeeping may vary.

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

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

The Paid Leave Oregon Advisory Committee, which serves as the Rulemaking Advisory Committee (RAC), is statutorily required to have four members represent employers, at least one of whom represents employers with fewer than 25 employees. The RAC was consulted when developing these rules.

The Paid Leave Oregon Division also formed an equivalent plan workgroup that consisted of 14 members appointed by the Paid Leave Oregon Division Director. There are three Paid Leave Oregon Advisory Committee members on the workgroup. The purpose of the equivalent plan workgroup is to engage with representatives and stakeholders about specific aspects relating to equivalent plans. The workgroup utilized the information and insights it gathered in the course of its work to assist the Paid Leave Oregon 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 equivalent plans. The workgroup met 10 times over the course of a year, the first meeting occurred in March 2020 and the last meeting occurred in February 2021.

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 individual emails 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.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

471-070-2200, 471-070-2205, 471-070-2220, 471-070-2230, 471-070-2250, 471-070-2260, 471-070-2270, 471-070-2330

AMEND: 471-070-2200

RULE SUMMARY: Amends the administrative rule to define administrative costs, administrator, and declaration of intent used in the Paid Family and Medical Leave Insurance program rules governing employer equivalent plans.

CHANGES TO RULE:

471-070-2200

Equivalent Plans: Definitions

(1) "Administrative Costs" means the costs incurred by an employer directly related to administering an equivalent plan which include, but are not limited to, cost for accounting, recordkeeping, insurance policy premiums, legal expenses, and labor for human resources' employee interactions related to the equivalent plan. Administrative costs do not include rent, utilities, office supplies or equipment, executive wages, cost of benefits, or other costs not immediately related to the administration of the equivalent plan.¶

(2) "Administrator" means either an insurance carrier/company, third-party administrator, or payroll company acting on behalf of an employer to provide administration and oversight of an approved equivalent plan.¶

(3) "Declaration of Intent" means a legally binding, signed agreement from an employer documenting the employer's intent and commitment to provide an approved equivalent plan with an effective date of September 3, 2023.¶

(4) "Employer administered equivalent plan" means an equivalent plan in which the employer offers a private plan where the employer assumes all financial risk associated with the benefits and administration of the equivalent plan, whether it is administered by the employer or a third-party administrator.¶

(25) "Equivalent plan" means a Paid Family and Medical Leave Insurance (PFMLI) plan approved by the department that provides benefits that are equal to or greater than the benefits provided by the Oregon PFMLI program established under ORS 657B.340.¶

(36) "Fully insured equivalent plan" means an equivalent plan in which the employer purchases an insurance policy from an insurance company approved to sell PFMLI products by the Oregon Department of Consumer and Business Services (DCBS) Division of Financial Regulation and the benefits related to the plan are administered through the insurance policy.¶

(47) "Successor in interest" means a successor to another's interest in property, organization, trade, or business that is carried on and controlled substantially as it was before the transfer in which there is a complete transfer to the successor of the organization, trade, or business, and substantially all of its assets.¶

(58) "Substantial reduction in personnel," as used in ORS 657B.260 and applicable administrative rules, means a situation in which the number of employees employed by the predecessor of the organization, trade, or business is reduced by at least 33 percent by the successor in interest.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.340, ORS 657B.210, 657B.260, 657B.340

RULE SUMMARY: Clarifies that equivalent plans become effective as of September 3, 2023, when benefits also begin. Clarifies how and when an employer must submit an equivalent plan application or a Declaration of Intent and includes provisions on withholding employee contributions and paying employer contributions.

CHANGES TO RULE:

471-070-2205

Equivalent Plans: Declaration of Intent to Obtain Approval of Equivalent Plan

(1) Approved equivalent plans become effective on September 3, 2023, at the same time Paid Family and Medical Leave Insurance (PFMLI) benefits may first be paid to eligible employees. However, the department is accepting equivalent plan applications beginning September 6, 2022. ¶

(2) No later than May 31, 2023, an employer who wishes to provide an equivalent plan with an effective date of September 3, 2023 must submit to the department an equivalent plan application that meets the requirements of OAR 471-070-2210. ¶

(3)(a) To be exempt from paying required quarterly contribution payments to the Oregon PFMLI program in accordance with ORS 657B.150 and OAR 471-070-3030(6), an employer that is going to provide its employees with an equivalent plan as of September 3, 2023, must receive approval of an equivalent plan application. The equivalent plan application must be submitted to the department by the following dates: ¶

(A) By November 30, 2022, to be exempt from paying and remitting the contribution payments beginning with the first quarter that starts January 1, 2023. ¶

(B) By February 28, 2023, to be exempt from paying and remitting contribution payments beginning with the second quarter that starts April 1, 2023. ¶

(C) By May 31, 2023, to be exempt from paying and remitting contribution payments beginning with the third quarter that starts July 1, 2023. ¶

(b) For equivalent plan applications submitted on or after June 1, 2023, the equivalent plan application must follow OAR 471-070-2210, and the employer is liable for all contributions required to be paid or remitted in accordance with ORS 657B.150 prior to the effective date of the equivalent plan. ¶

(4)(a) If an employer is unable to submit an equivalent plan application by the dates described in section (3)(a) of this rule, the department is allowing an interim solution under which the employer may submit a signed and certified Declaration of Intent acknowledging and agreeing to the following conditions: ¶

(A) Beginning January 1, 2023, and continuing until the department has approved the equivalent plan application, the employer shall deduct employee contributions from the subject wages of each employee in an amount that is equal to 60 percent of the total contribution rate determined in OAR 471-070-3010. ¶

(B) The employer shall hold any moneys collected under this section in trust for the State of Oregon but will not be required to pay employer contributions or remit the withheld employee contributions to the department, unless the department does not receive an equivalent plan application as described in section (3) of this rule or the Declaration of Intent is cancelled as described in this subsection and sections (5) and (6) of this rule. ¶

(C) The employer must submit the Declaration of Intent to the department no later than November 30, 2022. ¶

(D) The employer must submit an equivalent plan application no later than the May 31, 2023, deadline as described in section (3) of this rule. ¶

(b) If an equivalent plan application is not received by the department by May 31, 2023, the Declaration of Intent is cancelled and no longer effective. The employer is then responsible for paying all unpaid employer contributions and remitting all unpaid employee contributions that were held in trust for the State of Oregon for periods beginning on or after January 1, 2023, and is subject to penalties and interest as described in section (6) of this rule. ¶

(5) An employer that submitted an equivalent plan application or a Declaration of Intent as described in sections (3) and (4) of this rule, may cancel the request for approval or the Declaration of Intent by contacting the department. The employer is then responsible for paying and remitting all unpaid employer and employee contribution payments due for periods beginning on or after January 1, 2023 and is subject to penalties and interest as described in section (7) of this rule. ¶

(6) The department may cancel the approval of an equivalent plan or Declaration of Intent prior to September 3, 2023 for reasons that include, but are not limited to: ¶

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

(b) Failure to adhere to applicable PFMLI program requirements, including but not limited to OAR 471-070-2220; ¶

(c) Withheld employee contributions that were greater than the employee contributions that would have been charged to the employees under ORS 657B.150; or ¶

(d) Failure to respond timely to the department's reasonable inquiries for information about the equivalent plan or Declaration of Intent.¶

(7)(a) As of the date the equivalent plan approval or the Declaration of Intent is canceled or denied, the employer must pay and remit immediately to the department all unpaid contributions due for periods beginning on or after January 1, 2023, and is subject to penalties and interest in accordance with ORS 657B.320, 657B.920, and related administrative rules.¶

(b) An employer that is required to pay or remit contributions, penalties, and interests, in accordance with this section or sections (4), (5), or (6) of this rule may remit employee contributions previously withheld, that were held in trust for the payment of employee contributions due, but the employer is prohibited from withholding additional contributions from employees retroactively to pay any other amounts due. Employee contributions may not be used to pay penalties and interest imposed on the employer.¶

(8) An employer that has received approval of an equivalent plan application by one of the deadlines in section (3) of this rule may withhold employee contributions in accordance with ORS 657B.210 beginning January 1, 2023, but the employer will not be required to pay employer contributions or remit employee contributions in accordance with ORS 657B.150, unless the equivalent plan application approval is subsequently canceled as described in sections (5) and (6) of this rule.¶

(9) Section (3) of this rule is in effect until September 3, 2023.¶

[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.210

AMEND: 471-070-2220

RULE SUMMARY: Plan Requirements- Amends the administrative rule to require equivalent plan employers to let employees know how they can contact the department to acquire the eligible employee's average weekly wage amount. Clarifies that generally benefit payments must be provided weekly by a fully insured equivalent plan, unless the benefit payments are paid at the same time as the established paycheck from the employer.

CHANGES TO RULE:

471-070-2220

Equivalent Plans: Plan Requirements

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

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

Statutory/Other Authority: ORS 657B.340
Statutes/Other Implemented: ORS 657B.210

ADOPT: 471-070-2230

RULE SUMMARY: Clarifies the requirement for reporting of subject wages on the Oregon Quarterly Tax Report, filing annual aggregate benefit usage reports and annual financial reports if the employee pays contributions to the employer, and requires a 10 calendar day timeframe for the equivalent plan employer to respond to the department's notices.

CHANGES TO RULE:

471-070-2230

Equivalent Plans: Reporting Requirements

(1) Employers with an approved equivalent plan are required to file the Oregon Quarterly Tax Report detailing all Paid Family and Medical Leave Insurance (PFMLI) subject wages and the employee count as defined in OAR 471-070-3150 and the Oregon Employee Detail report detailing PFMLI subject wages for each employee in accordance with OAR 471-070-3030. ¶

(2) Employers with an approved equivalent plan must also file annual aggregate benefit usage reports with the department online or in another format approved by the department. The report is due on or before the last day of the month that follows the close of the calendar year or along with the application for reapproval process. The report shall include, but is not limited to, the following:¶

(a) Number of benefit applications received during the year and the qualifying leave purpose;¶

(b) Number of benefit applications approved during the year, the qualifying leave purpose, and total amount of leave; and¶

(c) Number of benefit applications denied during the year and the qualifying purpose and the number of appeals made on denials and the outcome of the appeals.¶

(3) If the employer assumes only part of the costs of the approved equivalent plan and withholds employee contributions as described in ORS 657B.210(5) the employer must additionally report the aggregate financial information with the department online or in another format approved by the department. That report is due on or before the last day of the month that follows the close of the calendar year or along with the application for reapproval process. The report shall include, but is not limited to, the following:¶

(a) Total amount of employee contributions withheld during the year;¶

(b) Total plan expenses paid during the year, including total benefit amounts paid, and total administrative costs, as applicable;¶

(c) Balance of employee contributions held in trust at end of the year;¶

(d) Balance of benefits approved but not yet paid, if plan is an employer-administered plan; and¶

(e) Administrative costs due for the year but not yet paid.¶

(4) Employers or administrators must respond within 10 calendar days from the date of any notice from the department requesting information about current or prior employees employed by an equivalent plan employer in the base year. The employer or administrator must respond to the department's notice either online or by another method approved by the department. The notice may request but is not limited to the following:¶

(a) If a benefit year was established;¶

(b) The start and end date of the established benefit year; ¶

(c) Total amount of benefits paid in the benefit year; and¶

(d) The duration of leave remaining in the benefit year.¶

(5) Employers must provide the reports required under sections (2) and (3) of this rule to report following withdrawal or termination of an approved equivalent plan.¶

[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.210, 657B.250

ADOPT: 471-070-2250

RULE SUMMARY: Clarifies the details of when an employee is covered under an equivalent plan.

CHANGES TO RULE:

471-070-2250

Equivalent Plans: Employee Coverage Requirements

(1) An employer with an approved equivalent plan is required to cover all employees under the plan as follows:¶

(a) All employees previously covered under the Oregon Paid Family and Medical Leave Insurance (PFMLI) program established under ORS 657B.340, must be covered by the employer's equivalent plan within 30 days of their start date.¶

(b) All employees previously covered by an employer that had an equivalent plan approved under ORS 657B.210, must be covered by the new employer's equivalent plan immediately as of their start date.¶

(c) All employees who were not previously covered as described under subsections (a) or (b) of this section, such as employees new to the workforce, relocating from another state, or with a gap in coverage exceeding 30 days must be covered by the employer's equivalent plan within 30 days of their start date.¶

(2) An employer must specify in their equivalent plan when employees are covered under the plan, which must be in accordance with section (1) of this rule.¶

(3) An employee described in subsection (1)(a) of this rule, who is not covered under an equivalent plan for any portion of time within the employee's first 30 days, maintains coverage under the Oregon PFMLI program established under ORS chapter 657B for that 30 day period.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.210

ADOPT: 471-070-2260

RULE SUMMARY: Clarifies how benefits are calculated for an employer's equivalent plan and what information the equivalent plan may request from the department for the benefit calculation and benefit year.

CHANGES TO RULE:

471-070-2260

Equivalent Plans: Benefit Amounts and Claims

(1) Employers with an approved equivalent plan are required to provide covered employees with benefits that are equal to or greater than benefits provided under the Oregon Paid Family and Medical Leave Insurance (PFMLI) program, including, but not limited to:¶

(a) The duration of leave for qualifying purposes as established in ORS 657B.020 and related administrative rules; and¶

(b) The amount of benefits established in ORS 657B.050 and related administrative rules.¶

(2) Benefits under an approved equivalent plan shall be administered using the benefit year defined in OR Laws 2022, Chapter 24, Section 1 and related administrative rules. ¶

(3) When an employee applies for benefits under an equivalent plan, the employer or administrator may request consent from the employee to obtain benefit information from the department in order to ensure benefits are provided in accordance with section (1) of this rule. ¶

(a) If consent is given by the employee, the employer or plan administrator may request from the department the benefit information online or by another method approved by the department. The request shall include:¶

(A) The employee's name;¶

(B) The employee's Social Security Number or Individual Taxpayer Identification Number;¶

(C) The employee's contact information;¶

(b) The request to the department may be submitted online or by another method approved by the department.¶

(c) If consent is not given by the employee, the employee may also request the benefit information from the department online or by another method approved by the department. ¶

(4) If the department receives a request for benefit information in accordance with section (3) of this rule, the department will respond to the request for information within 10 calendar days of the date of the request. If the department is not able to provide information for any reason, the department may contact the employee directly to seek the necessary information. This includes, but is not limited to:¶

(a) Requesting missing subject wage information;¶

(b) Correcting subject wage information; or¶

(c) Correcting taxpayer identification number information.

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

Statutes/Other Implemented: ORS 657B.210

ADOPT: 471-070-2270

RULE SUMMARY: Clarifies how the weekly benefit amount will be prorated when an employee is simultaneously covered by more than one equivalent plan or the Paid Family and Medical Leave Insurance program.

CHANGES TO RULE:

471-070-2270

Equivalent Plans: Proration of Benefit Amounts for Simultaneous Coverage

(1) An employee is considered to have simultaneous coverage when the employee is covered by more than one employer's equivalent plan at the same time or is covered by the Oregon Paid Family and Medical Leave Insurance (PFMLI) program established under ORS chapter 657B and at least one employer with an equivalent plan, at the same time. An employee does not have simultaneous coverage if they work for multiple employers covered by the Oregon PFMLI program.¶

(2) An employee with simultaneous coverage at the start of a leave event shall apply separately under all plans they are covered under and from which they are taking leave by following the respective application guidelines for each plan. An equivalent plan employer may ask an employee whether the employee has additional PFMLI coverage but may not require that the employee provide details on the other employers or the plans. The employer, employee, or administrator may request information from the department as described in OAR 471-070-2260.¶

(3) Each equivalent plan is required to pay benefit amounts that are equal to or greater than the benefits offered under the Oregon PFMLI program as described in OAR 471-070-2260 and ORS 657B.050 and applicable administrative rules. The department may provide information to equivalent plan employers or administrators regarding prorated benefits. Benefit amounts shall be prorated under each respective plan by prorating by the current days worked for each respective plan. The Oregon PFMLI program shall pay benefits based on the prorated amount and equivalent plans shall pay benefits equal to or greater than the prorated amount.¶

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

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

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

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

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

Statutes/Other Implemented: ORS 657B.210

ADOPT: 471-070-2330

RULE SUMMARY: Clarifies an equivalent plan employer's responsibility to include certain information in the written notice poster to employees and describes when the written notice poster must be displayed by the employer and in what language.

CHANGES TO RULE:

471-070-2330

Equivalent Plans: Written Notice Poster to Employees of Rights and Duties

- (1) The director shall make available to all employers offering an approved equivalent plan, a Paid Family and Medical Leave Insurance (PFMLI) notice poster template that meets the requirements under this rule. ¶
- (2) An employer that offers a plan approved under ORS 657B.210 shall provide a written notice poster to employees that includes: ¶
- (a) Information about benefits available under the approved plan, including the duration of leave; ¶
 - (b) The process for filing a claim to receive benefits under the plan, including any employee notice requirements and penalties established by the employer in accordance with ORS 657B.040, if applicable; ¶
 - (c) The process for an employee to appeal to the employer or administrator based on a decision made by their employer or administrator as described in OAR 471-070-2220(13); ¶
 - (d) The process for employee deductions used to finance the cost of the plan, if any; ¶
 - (e) An employee's right to dispute a benefit determination after the appeal with the employer or administrator in the manner determined by the director under ORS 657B.420 and OAR 471-070-2400; ¶
 - (f) A statement that discrimination and retaliatory personnel actions against an employee for inquiring about the family and medical leave insurance program established under ORS 657B.340, giving notification of leave under the program, taking leave under the program or claiming family and medical leave insurance benefits are prohibited; ¶
 - (g) The right to job protection and benefits continuation under ORS 657B.060; ¶
 - (h) The right of an employee to bring a civil action or to file a complaint for violation of ORS 657B.060 or 657B.070; and ¶
 - (i) A statement that any health information related to family leave, medical leave or safe leave provided to an employer or plan administrator by an employee is confidential and may not be released without the permission of the employee unless state or federal law or a court order permits or requires disclosure. ¶
- (3)(a) Each employer must display the notice poster 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 notice poster 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. ¶
- (4)(a) For employers that have employee(s) working in buildings or worksites, the notice poster displayed under (3)(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 (3)(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. ¶
- (5) An employer with an equivalent plan that does not provide coverage on the employee's first day of employment must additionally provide written notice poster to newly hired employees as described in OAR 471-070-1300. ¶

[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.210, 657B.070