

Meeting:	<b>Advisory Committee</b>							
Date/time:	<b>11/4/2020   1:30 – 3:30 pm (Virtual)</b>							
Location:	Advisory Committee meetings are open to the public with the ability to listen by audio via Zoom. If you have questions about the PFML program, please <a href="#">Email us</a>							
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	Meeting ID: 160 572 8635 Passcode: 936823							
Attendees:	P (Present)		A (Absent)		C (Conference Caller)		F (Facilitator)	
P	Gerhard Taeubel (Chair)	A	Linda Herrera (Member)	P	Eva Rippeteau (Member)	P	David Gerstenfeld (Executive Sponsor)	
P	Amanda Dalton (Member)	P	Eric Hunter (Member)	P	Paloma Sparks (Member)	P	Jeannine Beatrice (Executive Sponsor)	
P	Jenny Dresler (Member)	P	Andrea Paluso (Member)	A	Jessica Giannettino Villatoro (Member)	P	Phoebe Colman (Staff)	
P	Jason Bouley (Staff)	P	Lois Williams (Staff)	P	Robert Arnold (Staff)	P	Bre McGehee (Staff)	
P	Dean Johnson (Staff)	P	Rick Heinichen (Staff)	P	Cameron Buzzell (Staff)	P	Lili Hoag (Staff)	

## Supporting Materials

1. PFMLI Advisory Committee 10-7-2020 Meeting Notes – Final
2. Refined Administrative Rules Timeline
3. Benefit Year Discussion Paper

## Agenda

	Topic
1.	<p>Welcome, agenda review, outcomes</p> <p>Outcomes for today’s meeting:</p> <ol style="list-style-type: none"> <li>1) Share Employment Department updates</li> <li>2) Provide PFMLI program updates</li> <li>3) Share Communications activities and planning</li> <li>4) Provide workgroup activity updates, including:               <ol style="list-style-type: none"> <li>a. Sharing specific implementation/statutory topics</li> <li>b. Reviewing November schedule</li> <li>c. Sharing administrative rules tentative timeline</li> </ol> </li> </ol>
2.	<p>Employment Department updates</p> <p>Lois introduced PFMLI staff who were present for this meeting:</p>

- New Operations and Policy Analyst 4, Lili Hoag. Lili has an extensive background advocating for the PFML program over the past several years.
- Jason Bouley and Dean Johnson from Communications.
- Benefits Team, led by Rick Heinichen, along with Cameron Buzzell and Robert Arnold.
- Special Programs team, led by Kaitlynn Chritton, along with Jen Haynes and Christie Heinonen.

David Gerstenfeld provided a high level overview of agency wide updates.

#### 1) UI Programs

Since mid-March the agency has paid out \$5.4 billion in UI benefits, which is more than the agency has paid out in the prior nine years. A lot of really good progress is being made in many different areas. Most parts of the claims process are moving quicker than they ever have before. Most new claims are being handled within a couple of business days.

The Workshare program is second in the nation in terms of number of people using the program. In the beginning, it was an incredibly manual program, and longer wait times were experienced. That is no longer the case, and those claims are being handled timely.

The Pandemic Unemployment Assistance program is still experiencing some hiccups. This has been the most challenging new program for the agency. This program is providing benefits to a category of worker that traditionally does not qualify for UI benefits. The biggest challenge has been with our adjudication process. The agency has hired several hundred new adjudicators to adjudicate the backlog of around 52,000 claims (as of September). The agency has also reassigned staff from other areas and programs to adjudicate claims.

The agency is wrapping up the Lost Wages Assistance program and also working on paying claimants for their waiting week. The agency is on track to make those payments by the end of this month. The agency is conducting analysis concerning the reopening of WorkSource Oregon offices and the expiration of federal CARES Act funds. The agency is examining how it will provide services to Oregonians in this changing environment.

Relating to UI, the agency recently released information on employer taxes for next year. The trust fund and related actuarial work will be important for the Advisory Committee to look at, as well. The statutory formula has worked exceptionally well in Oregon and current projections demonstrate the continuing solvency of the trust fund. Over the past decade, 20 percent of Oregon's trust fund was actually interest earned, not taxes being paid.

#### 2) Modernization Update (Status of Procurement)

A lot of momentum has been gained in this area, and the agency is in the final stage of the procurement process. A Notice of Intent to Award (NITA) was issued. However, because one of the vendors filed a protest, the NITA was subsequently revoked and the agency has returned to stage four of the procurement process to complete some additional research. The agency hopes to issue a new NITA in the near future. This will be important for the Advisory Committee as well because the UI modernization project will directly impact Oregon businesses and how taxes are reported and collected. The agency is exploring the possibility of using that system for PFML.

#### 3) December Interim Legislative Days

The agency doesn't have anything specific scheduled for December Legislative Days, but there will likely be some interest from the Legislature and we may end up sharing some information upon request.

### 3. PFML Program updates:

#### 1) Approval of October 7, 2020 meeting notes

No comments from Advisory Committee members on meeting minutes. Minutes will be posted to the PFML web page.

#### 2) Rescheduled State Partners Team (SPT) meeting

The September SPT meeting was cancelled due to the wildfires and a decision was made to not reschedule a makeup meeting. The next meeting is scheduled for Wednesday, December 16<sup>th</sup>.

The PFML program is starting to have independent meetings with our state partners. For example, a meeting has been scheduled with Bureau of Labor and Industries (BOLI) to discuss job protections and other areas of the PFML law that intersect with regulations enforced by BOLI. The PFML program has also started working with the Department of Revenue (DOR) with regard to the requirement that DOR adopt administrative rules relating to employer reporting for PFML. Additionally, the Department of Consumer and Business Services (DCBS) has reached out to us to ask how it can help.

Currently, the PFML program is meeting with the SPT quarterly, but as the program gets closer to implementation, we may need to meet more frequently.

### 3) Agency-level strategic decision making

The agency is currently working on strategic decision-making processes for the PFML program. The PFML law allows the possibility that the program be administered by a third party, although this may not be the most effective approach. Because there is a great deal of overlap between UI taxes and PFML contributions, the agency is exploring adding the PFML contributions technology system to the UI Tax modernization project. However, the agency is still evaluating whether third-party administration for the benefits component of the program makes sense. The agency issued a Request for Information in late February, but the pandemic slowed that process down. Although a decision has not been made, the agency is beginning to reengage with this issue. The PFML program is reexamining this analysis and will update it where it can, possibly collecting information from other states with PFML programs. This work will be performed in the coming weeks and then brought to the Advisory Committee so that the committee can weigh in on this issue before the agency makes a final decision.

## 4. Communications Update:

### 1) Status of Communications RFP

The agency is in the process of acquiring vendor services to acquire communications support and assistance for the PFML program. The department is working with DAS procurement services and the Department of Justice to release the RFP in the very near future. The goal is to have the vendor on board in early 2021, although the procurement timeline has been slowed due to the pandemic and wildfires.

### 2) Town Hall Listening Sessions

The agency has conducted two virtual town halls to date, covering the topics of contributions and equivalent plans. The contributions town hall had just over 330 participants. A large portion of those attendees attended the full one-hour session. The equivalent plans town hall had a little over 200 attendees, and 100-150 attended for the whole one-hour session.

The recorded town halls have been posted on the PFML website. At last count, the contributions town hall had a little over 400 views, and the equivalent plans town hall had just over 200 views. A lot of good feedback and questions have been received by the agency as a result of the town halls.

The next town hall is scheduled for Monday, November 9<sup>th</sup> from 6:30-7:30 p.m. So far there are nearly 450 participants registered. The primary focus will be on benefits. These initial town halls are just the start of the PFML program's outreach plans.

### 3) Tribal Government Outreach

The communications team has begun creating the plan for outreach activities involving tribal governments. To obtain assistance in this effort, the team has started meeting with the agency's Diversity, Equity, and Inclusion Officer, Teresa Rainey.

On November 20<sup>th</sup>, David and Gerhard will provide an overview of the PFML program at the Economic Development and Community Services Cluster meeting. The goal of this meeting is to provide information and a program overview to tribal representatives and address any additional questions they may have about the PFML program. Representatives can then take that information back to their tribal leaderships. The communications team plans to build contacts and express its interest in subsequently meeting with each tribal government individually. These efforts will help the agency determine the level of interest across tribal governments, identify specific needs they may have, and gather input on building the program.

#### Program Resources Page

The PFML Fact Sheet and FAQs on the webpage have been translated into three additional languages (Spanish, Russian, and Vietnamese). When the communications vendor comes on board it is expected that this webpage will be updated based on its recommendations. Jason shared a link in the chat on where to find these resources. To translate the PFML webpage into other languages, scroll down to the bottom right-hand corner of the webpage; there is a Google drop down box where a user can select a preferred language.

Lili explained that, as we are beginning to write rules, the program is also reaching out to providers and individuals or groups affiliated with or impacted by domestic violence, sexual assault, and stalking. The communications team is working with the agency's language access coordinator to explore how to conduct listening sessions in various languages to make sure the program is reaching culturally specific organizations, small businesses, communities of color, and businesses of all sizes that may be less likely to seek information about the PFML program.

### 4) Other

The PFML program was contacted by BOLI to give a presentation at its annual employment law conference, which is attended by employers and their representatives from all over the state. The program anticipates that it will begin to receive requests to provide information to the public on a more frequent basis.

### 5) Administrative Rules Timelines/Plans

Lois shared the PFML Policy and Rules Milestones chart, sent out with the agenda, which includes the program's plan for rulemaking process and timelines. The program plans to have four rounds of rules; each round including a variety of topics. The program is currently experiencing staff capacity issues, and is in the process of hiring new policy staff. The program's plan is to be very transparent with the rulemaking process.

5. "Benefit Year" Discussion

Robert Arnold from the Benefits feature team shared slides on the topic of 'Benefit Year Options'. A narrative paper had previously been distributed with the agenda. (These slides were sent out to the Committee after the meeting.)

The PFMLI statute requires that the Director of the Oregon Employment Department, no later than September 1, 2021, shall adopt rules that ... "establish alternatives for employers to determine a benefit year period."

Robert reviewed definitions of 'alternate base year', 'base year', 'benefit year', and 'eligible employee's average weekly wage' (EEAWW). He explained how a base year is determined by working backward from the benefit year. Robert then went on to explain that employees with multiple employers could be in a situation where each employer has chosen a different benefit year, thereby making it challenging to determine the appropriate base year. Several options were discussed, including a floating benefit year (a period that begins on the Sunday of the week in which the claim is submitted, or to the week the claim is backdated, and ends on Saturday of the following 52<sup>nd</sup> week); a fixed calendar year; or a fixed fiscal year. Another option shared involved defaulting to the primary employer's benefit year.

Lois reiterated that the program is not looking for a recommendation at this time, but the program thought it would be beneficial to put this information in front of the committee at this time to build understanding around the topic and gain some input from the committee. Identifying the base year is important in order to calculate wages earned during that time period in order to thereby accurately calculate a worker's PFMLI benefits. Additionally, David further clarified that, from the perspective of the agency, a third party or an employer administering an equivalent plan also need to know the duration of leave available to a worker when the worker needs protected time off and files a claim for benefits. If an employee is simultaneously working for two or more employers and those employers have different benefit years, the employee may not receive the full duration of leave to which they are entitled. All parties need a way to track the amount of leave available for use and to be able to administer the program accordingly.

An issue was raised that addressed a scenario in which an employee has multiple jobs and how, in such a situation, protected leave would be triggered and benefits would be prorated. David explained that in terms of the notice to an employer about taking time off, each employer has its own procedures. If an employee is working for three employers, the employee would need to notify each of the employers from whom they are taking leave. That part of the employer/employee relationship runs independently. In terms of the protected time off, it is the same. It will vary employer to employer. In terms of the benefit amount, the aggregate of all of the base year wages is considered, because that is set out in statute.

6. “Equivalent Plans – Employer providing equivalent or better benefits”

Kaitlynn Chritton from the Equivalent Plans feature team shared slides on the topic of ‘Employers Providing Equivalent or Better Benefits’. Kaitlynn shared various fundamental challenges for equivalent plans including:

1. Equivalent plan benefits must be equal to or better than the state PFMLI plan
2. The statute allows for simultaneous coverage
3. The statute requires rulemaking to determine the method of prorating between respective plans when simultaneous coverage occurs

Kaitlynn then shared the relevant PFMLI statutes, including

- ORS 657B.210(2)(a)-(b)
- ORS 657B.210(9)
- ORS 657B.210(10)(a)-(b)
- ORS 657B.010(12)

Further, Kaitlynn shared how other states (including California, New Jersey, New York, and Washington) are administering these provisions relating to equivalent plans. Lastly, Kaitlynn shared outstanding questions and opened the topic up for discussion.

One member asked, if the employer can’t know what the EEAWW is without interacting with the department, couldn’t the program provide wage data and ask them to calculate it?

- In some cases, yes. The problem is when an employee has multiple employers in their base year, the current employer won’t have all of that information on the employee’s wage records and work history in their base year from the other employers. The employee would also have to be able to request and provide all of their wage records to the employer.

One member followed up with a scenario in which an employee has held two jobs, one making \$60,000/year, and one making \$70,000/year, and asked if the employer would be required to pay higher benefits?

- Benefits are based on the employee’s base year wages, so, under an equivalent plan, a current employer may potentially pay benefits higher or lower than what the employee is currently making. Benefits are not based on current wages; the statute requires benefits to be based upon base year wages.

One member voiced an opinion that everyone will have to get comfortable with relying on historical data, in lieu of creating a separate mechanism for getting real time wage data, which will be difficult administratively for the department and for employers.

Another member voiced concerns about employees who have received significant pay raises and how the pay raise wouldn’t be reflected in their benefit payments. Another concern was voiced that the look-back method doesn’t seem to serve the employees.

Another member explained that if an employer elects coverage under an equivalent plan, they have the choice to pay the employee their current wage in benefit payments (assuming it is higher than what the worker’s benefits would be under the state plan). The employer is not required to, but can choose to.

- David explained that using the base year wages is how the PFMLI statute requires benefits to be calculated, and that leave is supposed to run concurrently with OFLA and FMLA where applicable.

Lois invited Advisory Committee members to provide input and feedback as we begin drafting rules.

7. Workgroup Activity:

Lois reviewed the various topical discussions the feature teams are currently working on and discussing with their respective workgroups. See slides for specific topics discussed.

November calendar

- Several proposed workgroup meeting schedule changes because of holidays
- Several outreach events included (town halls, BOLI conference, tribal government presentation, etc.)
- December interim legislative days scheduled for two weeks in December

8. Review action items and decisions

## Action Items

Action	Assigned	Date Due	Completed
<i>Send out slides re: Benefit Year and Equivalent Plans</i>	<i>Lois Williams</i>	<i>November 6, 2020</i>	
<i>Send out slides re: Workgroup Updates and Calendar</i>	<i>Lois Williams</i>	<i>November 6, 2020</i>	

## Recommendations

# Benefits: Establishing a Benefit Year with Multiple Employer Options

To: PFMLI Advisory Committee  
From: Robert Arnold, Operations and Policy Analyst 2  
Date: 11/04/2020

## STATEMENT OF ISSUE

[ORS 657B.010\(5\)](#) defines “benefit year” as the 12-month period determined by the Director of the Employment Department. [ORS 657B.340\(2\)\(c\)](#) says that the director must adopt rules to “Establish alternatives by which an employer may determine a benefit year period, including on a calendar year and noncalendar year basis.” Allowing employers to determine their benefit year period could result in mismatches between the respective benefit years and respective base years for claimants that have multiple employers. How can PFMLI be administered in cases where multiple employers have different benefit year periods?

## BACKGROUND

House Bill (HB) 2005, enacted by the Oregon Legislature in 2019 and subsequently codified as ORS chapter 657B, creates the PFMLI program. The PFMLI program provides employees with compensated time off from work to care for and bond with a child during the first year of the child’s birth or arrival through adoption or foster care; to provide care for a family member who has a serious health condition; to recover from an employee’s own serious health condition; and to take leave related to domestic violence, stalking, sexual assault or harassment (safe leave). ORS chapter 657B establishes that contributions will be collected beginning January 1, 2022 and that benefits are payable beginning January 1, 2023.

[ORS 657B.010](#) contains definitions for “alternate base year”, “base year”, and “benefit year”, as well as their fixed relation to each other. It also defines the method for calculating the “eligible employee’s average weekly wage” (EEAWW):

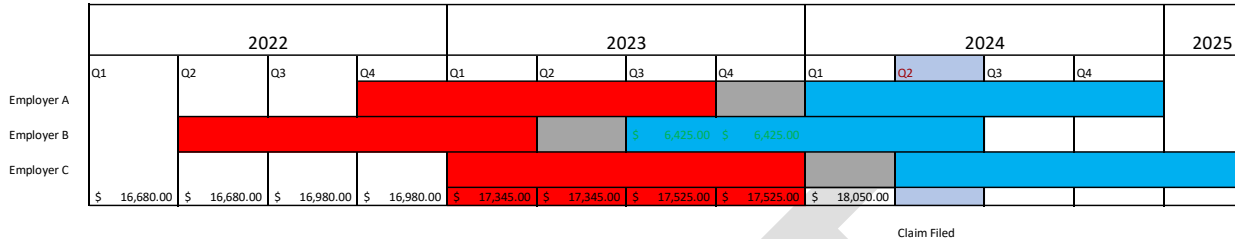
- (1) “Alternate base year” means the last four completed calendar quarters preceding the benefit year.
- (3) “Base year” means the first four of the last five completed calendar quarters preceding the benefit year.
- (5) “Benefit year” means the 12-month period as determined by the Director of the Employment Department by rule under ORS 657B.340.
- (12) “Eligible employee’s average weekly wage” means an amount calculated by the Director of the Employment Department by dividing the total wages earned by an eligible employee during the base year by the number of weeks in the base year.

[ORS 657B.025](#) states that PFMLI leave must be taken concurrently with OFLA leave, when applicable. Under OFLA [OAR 839-009-0210\(21\)](#) employers may choose a leave year. Therefore, benefit years may be different across various employers.



## RESEARCH AND ANALYSIS

Taking leave from multiple employers at the same time for a qualifying PFMLI purpose creates challenges for operating the program as written in the statute. One of the largest obstacles is trying to resolve the different methods for calculating the Weekly Benefit Amount (WBA) while using a single base year as stated in [ORS 657B.010\(12\)](#).



In this example an individual with three current employers has submitted a claim for benefits in the first week of the second quarter of 2024. Employer A has selected a calendar benefit year which begins on January 1<sup>st</sup> and ends on December 31<sup>st</sup> of each year. Employer B has selected a fiscal benefit year which begins on July 1<sup>st</sup> and ends on June 30<sup>th</sup> the following year. Employer C has selected a floating benefit year which starts the week in which the claim is submitted and ends 52 weeks later. It is important to remember that the individual submitting the claim for benefits may not have worked for any of their current employers during any of their base year quarters.

In order to pay benefits, one benefit year needs to be identified for the covered individual. This benefit year will be concurrent with the employer(s) OFLA leave, and will establish a base year (or alternate base year), from which eligibility will be derived. The graphic above shows the challenge of identifying the base year for an employee working for multiple employers with conflicting base years. The 12-month timeframe for receiving PFMLI will not match all the current employers' chosen benefit years at the same time.

Failure to identify one benefit year, base year, and eligible employee's average weekly wage prevents PFMLI from working with other aspects of the statute. For example, when trying to determine payments between the state plan and an equivalent plan, having multiple average weekly wage amounts prevents the program from correctly prorating the payments an individual would be available to receive.

Payment of individual benefits to each employer's portion on a separate schedule would cause additional issues for the employer as well as the covered individual and the program. Each current employer would be treated as a separate claim for benefits for the purpose of calculating the WBA as well as benefit period and duration of benefits. When each quarter ended, a new claim for that employer could be calculated and (potentially) additional weeks would be available.

In another example the individual is taking leave intermittently and the leave period will extend out over six months. Returning to the illustration above we see that Employer B's benefit year will expire before the leave period has ended. PFMLI will require a new application for benefits. This new benefit period will require a new calculation of the EEAWW and WBA. The amount of leave benefits available from Employer B will reset to 12 weeks while the others do not. When the individual has exhausted the benefits available from Employer A and Employer C benefit years, they will be required to return to work for those employers, thus potentially losing job protection benefits from Employer A and Employer C.

## DISCUSSION OF OPTIONS

### How can PFMLI be administered in cases where multiple employers have different benefit year periods?

ORS chapter 657B provides no guidance on these issues. Allowing employers to select their own benefit year and associated base year or alternate base year, creates considerably complicated issues for the employer, employee, and the program.

#### ➤ **Option 1: Amend the statute to define one, consistent benefit year across all employers**

Replace ORS 657B.340(2)(c) language with (for example);

Establish a benefit year period that begins on the Sunday of the week in which the claim is submitted, or to the week the claim is backdated, and ends on the Saturday of the 52nd week.

Or a fixed calendar year...

Or a fixed fiscal year...

#### *Advantages*

- Provides the most recent wage information available for the calculation of EEAWW and WBA.
- Removes confusion over multiple benefit year calculations.
- Allows PFMLI to accurately and easily monitor remaining benefit amounts.
- Reduces the potential for supplemental applications, which may place an administrative cost burden on the program, when benefit years expire before qualifying purposes end.
- Prevents individuals from filing a claim and exhausting benefits with one employer then filing another claim with a new employer that has a different benefit year.

#### *Disadvantages*

- Navigating the legislative process to amend the statute within the required timeframe.
- Prevents employers from having a choice to match the benefit year with their chosen OFLA benefit year.

#### ➤ **Option 2: Default to the Primary Employer's benefit year;**

Establish by rule that when an eligible individual submits a claim for benefits where there is more than one employer that the Benefit Year used shall be from the current employer for whom the individual works the most hours during an average workweek.

#### *Advantages*

- Provides a single PFMLI-determined benefit year, base year and alternate base year for calculating the EEAWW and WBA.
- Allows employers to choose a benefit year option matching their OFLA benefit year.
- Removes confusion over multiple benefit year calculations.
- Allows PFMLI to accurately and easily monitor remaining benefit amounts.
- Reduces the potential for supplemental applications, which may place an administrative cost burden on the program, when benefit years expire before qualifying purposes end.
- Prevents individuals from filing a claim and exhausting benefits with one employer then filing another claim with a new employer that has a different benefit year.

#### *Disadvantages*

- Makes other employers subject to the benefit year options selected by an individual's primary employer in certain cases. This could result in time off not running concurrently with the non-primary employers' OFLA leave.
- Current wage information would be needed from each current employer to establish which employer is providing the highest earnings. This information may be provided by the individual and verified by the employer, which could result in a delay of benefit payment.
- Not consistent with the current statute.

## **STAKEHOLDER FEEDBACK**

Each of the options for Benefit Year and calculations for EEAWW were presented to the Benefits Workgroup on September 22<sup>nd</sup>, 2020. Several of the Benefit Year options were preferred by various members of the Workgroup because of predictability and program forecasting (fixed calendar benefit year and fixed fiscal benefit year), and most equitable calculations of EEAWW (floating week benefit year). However, offering benefit year options may be a burden for all parties if an individual submitting a claim for benefits has multiple employers. Additionally, the optional methods presented for calculating the EEAWW when there is more than one employer are not covered in the statute and were not consistent with the intent of the original legislation as indicated by members of the workgroup who were involved in creating HB 2005.

## **CONCLUSION AND RECOMMENDATION**

## **DECISION**

After submission and review of the policy paper, documents any decision made and any conditions placed on the decision. Identifies the person or body making the decision and the date of the decision.



# Benefit Year Options

Establishing a Benefit Year with  
Multiple Employer Options



# Establish Alternatives. . .

ORS 657B.340 (2) Not later than September 1, 2021, the director shall adopt rules that are necessary to establish the program under subsection (1) of this section, including but not limited to rules that:

(a) Establish an outreach plan for the program to receive input from, and disseminate information to, employers and eligible employees.

(b) Establish a process by which employers may apply for approval of an employer-offered benefit plan under ORS 657B.210.

***(c) Establish alternatives by which an employer may determine a benefit year period, including on a calendar year and noncalendar year basis.***

# Definitions

ORS 657B.010

- (1) “Alternate base year” means the last four completed calendar quarters *preceding the benefit year*.
- (3) “Base year” means the first four of the last five completed calendar quarters *preceding the benefit year*.
- (5) “Benefit year” means the 12-month period as determined by the Director of the Employment Department by rule under ORS 657B.340.

# Definitions

## ORS 657B.010

(12) “Eligible employee’s average weekly wage” means an amount calculated by the Director of the Employment Department by dividing the total wages earned by an eligible employee during the base year by the number of weeks in the base year.

# Intent?

## **657B.025 Coordination of leave.**

Any family leave or medical leave taken under this chapter must be taken concurrently with any leave taken by an eligible employee under [ORS 659A.150 to 659A.186](#) or under the federal Family and Medical Leave Act of 1993 (P.L. 103-3) for the same purposes.

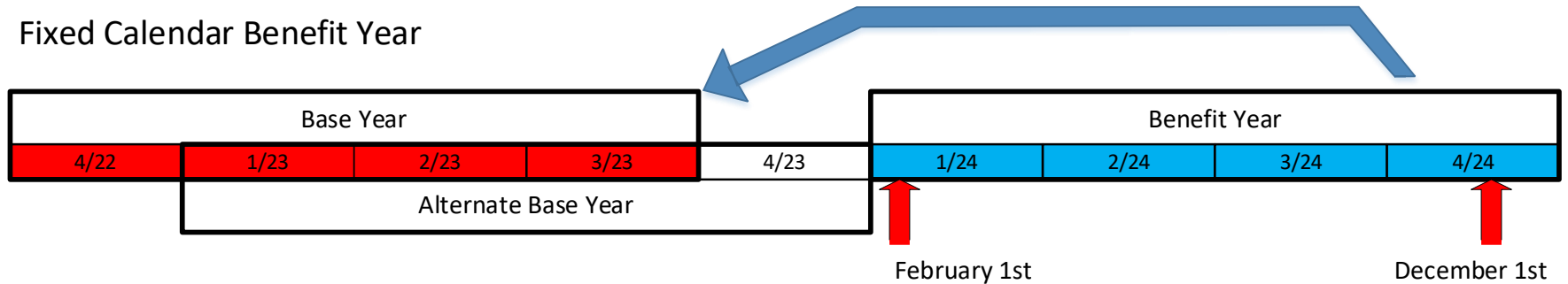


# Quarters

1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter
Jan-Feb-Mar	Apr-May-Jun	Jul-Aug-Sep	Oct-Nov-Dec

# Fixed Calendar Benefit Year

Fixed Calendar Benefit Year



The benefit year begins on January 1<sup>st</sup> every year.  
The weekly benefit amount remains the same for the entire Benefit Year.

# Definitions

## ORS 657B.010

(12) “Eligible employee’s average weekly wage” means an amount calculated by the Director of the Employment Department by dividing the total wages earned by an eligible employee during the base year by the number of weeks in the base year.

# Multiple Employers

2022				2023				2024				2025	
Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	
			Employer A Base Year					Employer A – Fixed Calendar Benefit Year					
	Employer B Base Year					Employer B – Fixed Fiscal Benefit Year							
			Employer C Base Year					Employer C - Floating Week Benefit Year					
									↑ Claim Filed				

# ➤ Option 1

- **Replace ORS 657B.340(2)(c) language with (for example);**

Establish a benefit year period that begins on the Sunday of the week in which the claim is submitted, or to the week the claim is backdated, and ends on the Saturday of the 52nd week.

Or a fixed calendar year...

Or a fixed fiscal year...

## Option 2

- **Default to the Primary Employer's benefit year;**

Establish by rule that when an eligible individual submits a claim for benefits where there is more than one employer that the Benefit Year used shall be from the current employer for whom the individual works the most hours during an average workweek.



# Equivalent Plans- Employer Providing Equivalent or Better Benefits

PFMLI Advisory Committee, November 4, 2020



# Equivalent Plan Fundamental Challenges

- 1. Equivalent plan benefits must be equal to or better than the state PFMLI benefits – ORS 657B.210(2)(a)**
  - Benefits under the state PFMLI plan are based upon the Eligible Employee's Average Weekly Wage (EEAWW)
  - Employers have no way of determining the EEAWW without the department's involvement
- 2. The statute allows for simultaneous coverage – ORS 657B.210(10)(a)**
  - The statute requires rulemaking to ensure that individuals are not paid benefits in excess of 100 percent of their EEAWW only in situations where simultaneous coverage occurs
- 3. The statute requires rulemaking to determine the method of prorating between respective plans when simultaneous coverage occurs – ORS 657B.210(10)(b)**
  - Employers have no way to prorate without the department's involvement



# Statutory Language

## **ORS 657B.210 Equivalent plans, generally; rules; fee.**

(2)The director shall review and approve an application for a plan if the director finds that:

(a) The plan is made available to all employees who have been continuously employed with an employer for 30 days.

(b) The benefits afforded to employees covered under the plan are **equal to or greater than** the **weekly benefits** and the **duration of leave** that an eligible employee would qualify for under this chapter.

# Statutory Language

## **ORS 657B.210 Equivalent plans, generally; rules; fee.**

(9) Nothing in this section prohibits an employee who is otherwise eligible from applying for coverage under the program established under ORS 657B.340 or under a separate employer-offered plan that has been approved under this section.

(10) The director shall adopt rules:

(a) To prevent the payment of benefits in excess of 100 percent of an **eligible employee's average weekly wage** to an employee who is simultaneously covered under more than one employer-offered plan or who has additional coverage under the program established under ORS 657B.340; and

(b) That require that the benefits made available to an eligible employee who is covered under more than one plan shall be prorated under each respective plan.

# Eligible Employee's Average Weekly Wage (EEAWW)

**ORS 657B.010 Definitions.** As used in this chapter:

(12) “Eligible employee’s average weekly wage” means an amount calculated by the Director of the Employment Department by dividing the total wages earned by an eligible employee during the base year by the number of weeks in the base year.

# Equal to or Greater Than

- **Weekly benefits ORS 657B.210(2)(b)** – Refers to the state weekly benefit amounts for the state plan (ORS 657B.050). The benefit amounts for the equivalent plan must be the same or greater than the state plan benefit amounts.
- **Duration of leave – ORS 657B.210(2)(b)** – Refers to the duration of benefits for the state plan (ORS 657B.020) which are 12 weeks of family and medical leave, and two additional weeks for limitations related to pregnancy, childbirth or related medical conditions.

# Other States

**California** - California allows simultaneous coverage and states that the two jobs have to share the cost of the benefit, each paying 50%

**New Jersey** - New Jersey allows simultaneous coverage if an employee has two jobs that both have equivalent plans, but if the employee has two jobs, one with an equivalent plan and one with the state plan, the business having the equivalent plan has to pay.

**New York** - New York provides the employee the combined benefits from each employer and does not prorate. NY specifically asks on their benefit application form whether the employee is taking PFL from a second job.

**Washington** - Washington does not allow simultaneous coverage or “duplication of benefits” (see RCW [50A.30.010](#) (4)). The Washington statute specifies that the employee “will receive benefits under the plan for which the employee has worked the most hours during the employee's qualifying period.”

# Questions

- Does equal to or greater than include the benefit application process and the two week benefit processing expectation required by the state plan?
- How should the department communicate the employee's EEAWW to the equivalent plan employer?
- What measures should be adopted by administrative rule to prevent an eligible employee who is covered by more than one plan from receiving payment in an amount that exceeds 100% of their EEAWW?
- How should the department find out whether an employee applying for benefits has coverage under another plan and needs their benefits to be prorated?
- Once the department identifies that an employee is not getting more than 100% of their EEAWW, can the employer decide to pay more than the employer's share (and more than the EEAWW) if their plan dictates?

**PFMLI Policy and Rules Milestones**

**Proposed: October 30, 2020**

						Formal Administrative Rulemaking Process:				
Post Draft Admin Rules On-line:	End early draft comment period	Evaluate comments, revise rules as needed, meet with stakeholder groups, prep for Advisory Committee	Meet with Advisory Committee on:	Advisory Committee Recommendation to Director by:	Executive Team review by:	Rules and Notices to OED Rules Coordinator	File Notice of Rulemaking Process	Conduct Public Hearing by:	File Permanent Rules with SOS to be effective:	
Round 1	1-Dec-20	1-Jan-21	29-Jan-21	3-Feb-21	8-Feb-21	12-Feb-21	15-Feb-21	1-Mar-21	1-Apr-21	1-Jun-21
Round 2	1-Jan-21	1-Feb-21	26-Feb-21	3-Mar-21	8-Mar-21	12-Mar-21	15-Mar-21	1-Apr-21	1-May-21	1-Jul-21
Round 3	1-Feb-21	1-Mar-21	26-Mar-21	7-Apr-21	12-Apr-21	16-Apr-21	21-Apr-21	1-May-21	1-Jun-21	1-Aug-21
Round 4	1-Mar-21	1-Apr-21	30-Apr-21	5-May-21	10-May-21	14-May-21	19-May-21	1-Jun-21	1-Jul-21	1-Sep-21

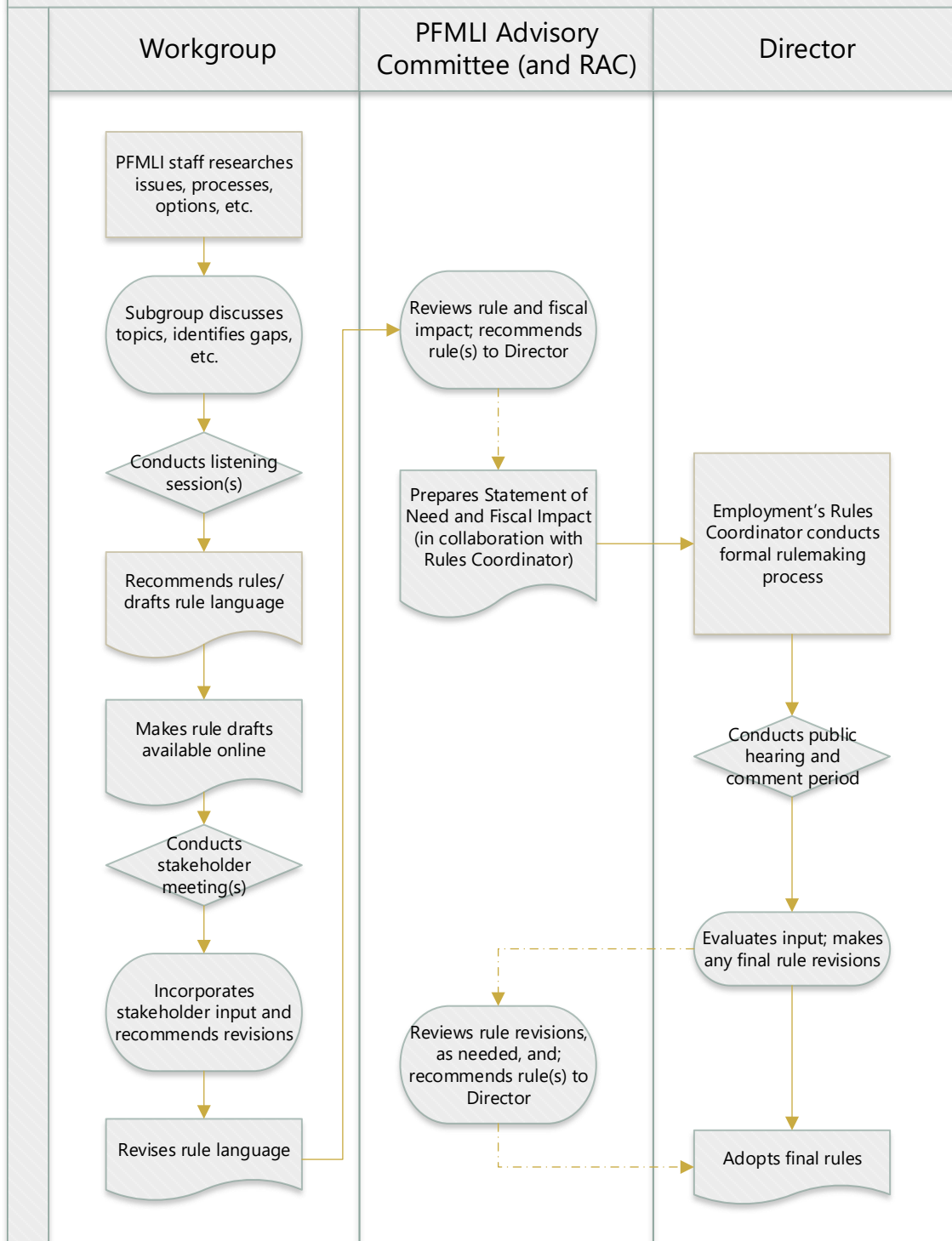
Dept of Revenue is required to promulgate some rules re: PFMLI. We will be working with DOR to establish a timeline for those rules (possibly the same as one of the rounds listed.)

We may also need to promulgate some rules with BOLI or DCBS.

Notes: 2021 Long legislative session.

Include draft rule text, as well as purpose statement, proposed rule number	Will involve pulling comments from webpage and considering them for rule revisions throughout the comment period. Will also involve updating the webpage as comment periods end for each round.	Also includes developing proposed fiscal impact and statement of need.	<b>Share:</b> --Policy paper explaining vetting process, which includes stakeholder feedback and dissenting input. --Proposed Rule text, including ORS/OAR language that gives authority or direction for the rule. --Statement of Need (for groups of rules), including fiscal impact.	Includes: --Fiscal Impact. --Statement of Need. --Rule Language in final draft form. (If amending existing rule, include track changes copy as well as clean copy.) --ORS/OAR Language that gives authority or direction for the rule.	Include either advance distribution of materials for consideration and discussion at meeting; or, introduce at meeting and allow sufficient time for post-meeting review and input. Director is part of Exec Team. Need to work with Exec Team schedule. Anne can work with Katherine to schedule time with Exec Team.	After any revisions based on the Exec Team review, materials then go to the Rules Coordinator to create a packet of the final drafts for the Director to approve for filing. Rules Coordinator creates a pdf packet of all the rule filing materials. If amending existing rule, include track changes copy.	OED Rules Coordinator needs time to enter into OARD, monitor for acceptance, etc. Rules Coordinator needs time to verify formatting and plain language before filing can occur. Rules Coordinator needs a minimum of 9 business days to ensure completion ahead of filing deadline. The filing must be entered three days before the last business day of the month in which we are filing. (EX: file/bulletin on March 1 - to Rules Coordinator no later than 2/16/20; Rules Coordinator files with SOS no later than 2/24 to have notice in the 3/1 Oregon Bulletin) The 9-day period also includes time for the Director to sign off and approve the rule filing. Depending on length of rules, the SOS may need a couple of days to review before approving the filing.	Currently planning for one public hearing per round. Public Hearing will be virtual and a set time of a minimum 2-hr. span (2-4 or 4-6 or 5-7) depending on the number of persons anticipated to participate to provide verbal input. Public comment period should end no earlier than 7 days after the public hearing to allow time for comments to come in after the hearing is held. PFMLI staff will consider all input received and revise draft rules as needed. <b>If substantive changes, will return to Advisory Committee and Exec Team with Director for further consideration.</b>	OED Rules Coordinator needs time to enter into OARD, monitor for acceptance, etc. If there are no changes to the rules from what was filed, this will be a fairly smooth process. If there are significant changes, this may take longer.
							<b>Other notice must be provided:</b> --Relevant Legislators, --Interested persons, --OED and PFMLI website, etc. will need language for both the websites and the notices when the filing documents are sent to the OED Rules Coordinator.		--Update OED and PFMLI website. --News releases go out. --Email to Legislators/ListServe go out.

# PFMLI Rulemaking Process – DRAFT 05-17-2020







# PFMLI Advisory Committee

Workgroup Updates – November 4, 2020

Lois Williams



# Equivalent Plans Workgroup

- Meeting 2<sup>nd</sup> and 4<sup>th</sup> Thursday, 10:00 am – 12:00 pm
- Recent topical discussions:
  - Benefit Application Process, Simultaneous Coverage, and Proration discussions
  - Employee & Department Perspective Flow Charts
  - Employee Coverage
- Upcoming:
  - Definitions
  - Recordkeeping
  - Reporting



# Contributions Workgroup

- Meeting 1<sup>st</sup> and 3<sup>rd</sup> Thursday, 10:00 am – 12:00 pm
- Recent topical discussions:
  - Maximum wages at multiple employers
  - Wages: compensation other than cash, disability pay, bonuses, fees, and prizes
- Upcoming:
  - Wages: tips, sick time, gifts, incidental expenses, and jury pay
  - Do all employees or only eligible employees pay contributions? (\$1,000)
  - Initial discussions on place of performance



# Benefits Workgroup

- Meeting 2<sup>nd</sup> and 4<sup>th</sup> Tuesday, 10:00 am – 12:00 pm
- Recent Topical Discussions:
  - Processing Claims Process
  - Employment and PFMLI
  - Paper Discussions:
    - Family Affinity
    - Save Leave Verification
- Upcoming:
  - Determining Benefit Amount
  - Mock Application Process
  - Paper Review on When Verification will Occur



# Self-Employed / Independent Contractors

- Meeting 2<sup>nd</sup> and 4<sup>th</sup> Wednesdays, 1:00 pm – 3:00 pm
- Recent topical discussions:
  - Termination of an Election
  - Out of State Work
- Upcoming:
  - Defining Taxable Income
  - Contributions (frequency, manner of payment, calculation amount)



# Small Employers Workgroup

- Meeting 2<sup>nd</sup> and 4<sup>th</sup> Tuesdays, 2:00-4:00 pm
- Recent topics:
  - Determining the average number of employees:
    - Out-of-state employees; Headcount v. FTE; Department of employer determination
- Upcoming:
  - Determining the average number of employees:
    - Method, Timeline
  - Initial discussions on assistance grants
- Town Hall Tuesday, November 17, 6:30-8:30 pm



# Workgroup Calendar - November

Monday	Tuesday	Wednesday	Thursday	Friday
		Advisory Committee	Contributions 10-12 BOLI Conference	
Town Hall 6:30-7:30 (Benefits)	Benefits 10-12 Small Employers 2-4	Holiday (Self-Employed 1-3)	Equivalent Plans 10-12	
	Town Hall 2-3 (Small Employers)	Self-Employed 1-3	Contributions 10-12	Tribal Cluster
	(Benefits 10-12) Small Employers 2-4	(Self-Employed 1-3)	Holiday	Holiday

