

Secretary of State
NOTICE OF PROPOSED RULEMAKING FILING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

Oregon Employment Department, Paid Leave Oregon Division		471
Agency and Division Name		Administrative Rules Chapter Number
Anne Friend	OED_Rules@employ.oregon.gov	503-947-1471
Rules Coordinator	Email	Telephone
Anne Friend	875 Union St NE, Salem OR 97311	503-947-1471
OED Program Contact	Address	Telephone

RULE CAPTION

Administrative provisions related to Paid Leave Oregon program benefits

Last Date and Time for Public Comment: July 29, 2022 at 5pm

<input type="checkbox"/> Hearing Date	Time	Address	Hearings Officer
Anne Friend			

RULEMAKING ACTION

List each rule number separately (000-000-0000) below. Attach proposed, tracked changed text for each rule at the end of the filing.

In the matter of:

Adopting: OAR 471-070-1300; OAR 471-070-1330; OAR 471-070-1410; OAR 471-070-1500; OAR 471-070-1510; OAR 471-070-1520; OAR 471-070-1550; OAR 471-070-1560

Amending: OAR 471-070-1000

Statutory Authority:

ORS 657B.120, 657B.340, 657B.440

Other Authority:

Stats. Implemented:

ORS 657B.010; 657B.050, 657B.070, 657B.100, 57B.120, 657B.440

Secretary of State
NOTICE OF PROPOSED RULEMAKING FILING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

RULE SUMMARY: *Include a summary for each rule included in this filing.*

OAR 471-070-1000: Benefits: Definitions- Defines eligible employee's average weekly wage, willful false statement, and willful failure to report a material fact, which are terms used in the Paid Leave Oregon program's rules related to benefits.

OAR 471-070-1300: Benefits: Written Notice Posting to Employees of Rights and Duties- Clarifies when the written notice must be displayed by the employer and in what language.

OAR 471-070-1330: Benefits: Job Protection- Clarifies when an employer must restore an employee returning from leave due to the Paid Leave Oregon program to the employee's former position. Requires employers to maintain health care benefits the employee had prior to taking leave.

OAR 471-070-1410: Benefits: Initial and Amended Monetary Determinations- Clarifies the process for how the department will examine a benefit application and issue an initial determination for the benefit year.

OAR 471-070-1500: Benefits: Review of Overpaid Benefits- Clarifies the process of the department's review of an overpaid benefit amount to determine the cause of the overpayment.

OAR 471-070-1510: Benefits: Repayment of Overpaid Benefits; Interest- Clarifies the process repayment of an overpaid benefit through the deduction of future benefits or through collection.

OAR 471-070-1520: Benefits: Waiving Recovery of Overpayments- Clarifies when the director may waive the amount of overpaid benefits. Clarifies the process a claimant may request if the waiver is denied by the department.

OAR 471-070-1550: Benefits: Penalties for Employer Misrepresentation- Clarifies when the director may assess a civil penalty of up to \$1,000 against an employer each time the employer makes or causes to be made a willful false statement or willful failure to report material facts.

OAR 471-070-1560: Benefits: Disqualification and Penalties for Claimant Misrepresentation- Clarifies when a claimant is disqualified from receiving Paid Leave Oregon benefits when they willfully make a false statement or willfully fail to report a material fact in order to receive Paid Leave Oregon benefits.

Need for Rule(s): Why do we need this rule?

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.

Racial Equity Impact:

By providing paid and job protected leave, Paid Leave Oregon will allow those who do not currently have access to and cannot afford to care for themselves or their ailing family members, deal with the challenges of

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

domestic violence and similar challenges, or bond with a new child in their family, to take that time off and still receive an income. This program will provide a much needed benefit to underserved populations and help to combat the insidious impact of historical and current injustice and inequities that families of color face when trying to access government programs.

A commitment to equity acknowledges that not all people, or all communities, are starting from the same place due to historic and current systems of oppression. Equity is the effort to provide different levels of support based on an individual's or group's needs in order to achieve fairness in outcomes. Equity actionably empowers communities most impacted by systemic oppression and requires the redistribution of resources, power, and opportunity to those communities. While adopting our administrative rules for processing of benefit applications, decisions on benefits, and payment of benefits, the Paid Leave Oregon Division looked at the racial equity impact of the administrative rules and answered the below questions.

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

In accordance with ORS 657B.010 through ORS 657B.120, the Paid Leave Oregon Division administrative rules are intended to provide details on aspects of Paid Leave Oregon benefits, such as when a written notice must be provided to the employees about Paid Leave Oregon benefits, job protection, department's benefit determinations, overpaid benefits, and penalty amounts. The administrative rules on the state plan's Paid Leave Oregon benefits seek to ensure that employees have timely and equitable access to benefits when an eligible employee has made contributions to the Paid Family and Medical Leave Insurance Trust Fund established under ORS chapter 657B. The Paid Leave Oregon Division recognizes the administration of benefits is the heart of the program and the administrative rules were developed with a focus on accessibility and compensation as well as a racial equity lens into potential structural barriers that may hinder use of the Paid Leave Oregon program.

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

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

Are there strategies to mitigate the unintended consequences?

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

Individuals may experience cultural biases, fear of a state program, and systemic barriers in accessing and coverage of health care systems. While the statute requires job protection, the Division understand that processes related to job protection can cause stress, anxiety, barriers, and biases. Below are some strategies the Paid Leave Oregon program has implemented or plans to implement within or related to the draft administrative rules to mitigate unintended consequences:

- Written notice must be hand delivered or regular mail to each employee’s individual worksite;
- Written notice displayed in the language the employer typically uses to communicate with the employee and display copies of the notice in each of the languages the employer would typically use to communicate;
- Frequently asked questions and resource pages will be created to assist with explanation of the rules;

Below are some strategies the Paid Leave Oregon program will monitor to help mitigate the above unintended barriers of the use of benefits:

- Widespread and targeted education and varied and accessible user support services;
- Instructions and employee guidebooks will be in plain language and seek to provide materials in multiple languages for employers and employees;
- Guidebooks will be supplemented with frequently asked questions, instructional videos, and other tools;
- Staff will be trained to support employees, employer’s, health providers, insurers, and community members, with the aim to enable all to understand the Paid Leave Oregon plan and complete the application and administration requirements and thus help mitigate the equity impact;
- Conduct focused outreach and engagement activities from now until implementation with employers and employees, with a focus on immigrant or non-English speaking individuals, Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander, and other people of color owned businesses, and rural or small businesses, which will include awareness raising about Paid Leave Oregon benefits;
- Conduct regular program evaluation of benefit use, including analysis of demographics such as race, gender, and age;
- Monitor and develop safeguards within the application process, continually checking for errors and/or immediate action to notifications sent to claimants;
- Review program evaluation data and build transparency in the program design; and
- Provide ongoing anti-bias and trauma-informed training for benefit staff.

Fiscal and Economic Impact:

Most fiscal or economic impact for Paid Leave Oregon benefits is the result of the statute being implemented. However, OAR 471-070-1510 requires 1.5% interest to be accrued 60 days after the administrative decision of the overpayment is final and not paid. The fiscal impact to the Paid Family and Medical Leave Insurance Trust Fund is indeterminate as it depends on how many benefit overpayments are not paid within 60 days.

Statement of Cost of Compliance:

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

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

The administrative rules on Paid Leave Oregon benefits will likely have an impact on state agencies, local governments, and other public bodies because their employees (claimants) may be eligible for Paid Leave Oregon benefits. The state agencies, units of local government, and the public may need to provide additional information requested by the department to verify claimant information and accept leave notices from their employees.

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

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

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

*Based on Unemployment Insurance 2020 Tax Wage file.

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

ORS 657B.440 requires the employer to provide written notice to each employee of the duties and rights of Paid Leave Oregon and requires at a minimum what the notice must include and must be in the language the employer typically uses. OAR 471-070-1300 requires the employer to display the notice in each building or if an employee works remotely, to provide by hand delivery or regular mail. Because the statute requires the written notice be provided and in the language the employer typically uses, the administrative draft rule creates the administrative activity of providing the written notice to each employee.

The administrative cost to provide the written notice to employees depends on how many employees are working in the building or worksite and how many work remotely. The written notice can be delivered to remote employees by hand when they are in the office on their first day or work or can be sent by regular mail. The cost to send by regular mail in an envelope is less than \$1 per notice (\$0.58 for standard-sized letter¹ and the cost of an envelope) plus the administrative time to send the notice to the employee.

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

It will take, on average, well under an hour to mail the written notice to each employee working remotely.

Describe how small businesses were involved in the development of these rule(s).

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

The Paid Leave Oregon Division also formed a benefits workgroup that consisted of 15 members appointed by the Paid Leave Oregon Division Director, which consisted of employee and business representatives.

¹ <https://www.usps.com/business/prices.htm>

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

There are three Paid Leave Oregon Advisory Committee members on the workgroup. The purpose of the benefit workgroup is to engage with representatives and stakeholders about specific aspects relating to Paid Leave Oregon benefits in Oregon. 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 benefits. The workgroup met 14 times over the course of a year, the first meeting occurred in July 2020 and the last meeting occurred in October 2021. We also emailed materials to the workgroup in November 2021 and requested feedback.

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

□ 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 Labor, Employment, and Unlawful Discrimination statutes – ORS chapter 659A (https://www.oregonlegislature.gov/bills_laws/ors/ors659A.html);
- Oregon Family Leave Act (OFLA) statutes and administrative rules – ORS chapter 659A and OAR chapter 839, Division 9 (<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=3834>);
- Family and Medical Leave Act (FMLA) statute and regulations – 29 USC Ch. 28 and Treas. Reg. 29 CFR part 825 (<https://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter28&edition=prelim> and <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-V/subchapter-C/part-825>);
- 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>);
- Workers’ Compensation statutes and administrative rules – ORS chapter 656 and OAR chapter 436 (https://www.oregonlegislature.gov/bills_laws/ors/ors656.html and <https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=76>);
- Washington State’s PFML administrative rules (WACs Chapter 192-500 through 192-810) (<https://app.leg.wa.gov/WAC/default.aspx?cite=192>);
- California Disability Insurance/Paid Family Leave (UIC 2601 to 3308 and rules and regulations 22 22R [https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=UIC&division=1.&title=&part=2.&chapter=&article= and [6](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I05076D10D4B711DE8879F88E8B0DAAAE&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)]];</div><div data-bbox=)

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

- Connecticut Paid Family & Medical Leave Act statute and regulations (https://www.cga.ct.gov/current/pub/chap_557.htm#sec_31-49e and <https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00025-R00SB-00001-PA.pdf>);
- District of Columbia (DC) Paid Family Leave statutes and rules and regulations – (<https://code.dccouncil.us/us/dc/council/code/titles/32/chapters/5/subchapters/IV/> and <https://www.dcregs.dc.gov/Common/DCMR/AgencyChapterList.aspx?AgencyID=45>);
- Massachusetts Paid Family and Medical Leave statutes and rules and regulations (<https://www.mass.gov/law-library/mass-general-laws-c175m> and <https://www.mass.gov/regulations/458-CMR-200-family-and-medical-leave>);
- New Jersey Temporary Disability and Family Leave Insurance statutes and rules and regulations (<https://casetext.com/statute/new-jersey-statutes/title-43-pensions-and-retirement-and-unemployment-compensation/chapter-4321> and <https://casetext.com/regulation/new-jersey-administrative-code/title-12-labor-and-workforce-development>);
- New York Short-Term Disability/Paid Family Leave statutes and rules and regulations [<https://www.nysenate.gov/legislation/laws/WKC/A9> and [https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=I0bfea200ad0d11dda763b337bd8cd8ca&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=I0bfea200ad0d11dda763b337bd8cd8ca&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))]; and
- Rhode Island Temporary Disability/Caregiver Insurance statutes and rules and regulations (<http://webserver.rilin.state.ri.us/Statutes/TITLE28/INDEX.HTM> and <https://rules.sos.ri.gov/regulations/part/260-40-05-1>).

- Was an Administrative Rule Advisory Committee consulted?: YES or NO**
If no, why not?

The Paid Leave Oregon Advisory Committee, as required by ORS 657B.380, serves as the RAC and was consulted on May 17, 2022 while developing these administrative rules and impact statements.

PROPOSED RULE LANGUAGE

- Final Draft of Rule Language to be filed:**
- Rule Number:
- Rule Language to be filed: (Insert final rule language to be filed here. No tracked changes)

Secretary of State
NOTICE OF PROPOSED RULEMAKING FILING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

Oregon Employment Department, Paid Leave Oregon Division		471
Agency and Division Name		Administrative Rules Chapter Number
Anne Friend	OED_Rules@employ.oregon.gov	503-947-1471
Rules Coordinator	Email	Telephone
Anne Friend	875 Union St NE, Salem OR 97311	503-947-1471
OED Program Contact	Address	Telephone

RULE CAPTION

Administrative provisions related to Paid Leave Oregon program contributions

Last Date and Time for Public Comment: July 29, 2022 at 5pm

<input type="checkbox"/> Hearing Date	Time	Address	Hearings Officer
Anne Friend			

RULEMAKING ACTION

List each rule number separately (000-000-0000) below. Attach proposed, tracked changed text for each rule at the end of the filing.

In the matter of:

Adopting OAR 471-070-0010; OAR 471-070-0400; OAR 471-070-2100; OAR 471-070-2180; OAR 471-070-3040; OAR 471-070-3100; OAR 471-070-3130; OAR 471-070-3340; OAR 471-070-8540

Statutory Authority:

ORS 293.445, 657B.130, 657B.340

Other Authority:

Stats. Implemented:

ORS 293.445, 657B.010, 657B.130, 657B.150, 657B.175, 657B.210, 657B.920

RULE SUMMARY: *Include a summary for **each** rule included in this filing.*

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

OAR 471-070-0010: Definitions- Defines Paid Leave Oregon means the Paid Family and Medical Leave Insurance program as described under ORS chapter 657B.

OAR 471-070-0400: Wages: Definitions- Defines terms used by the Paid Leave Oregon program related to wages used to calculate Paid Leave Oregon contribution amounts.

OAR 471-070-2100: Contributions: Tribal Government: Election Requirements and Effective Date- Clarifies how a tribal government may elect coverage for the Paid Leave Oregon program and when the election becomes effective.

OAR 471-070-2180: Tribal Government: Termination- Clarifies when and how a tribal government may terminate a previously approved elective coverage under the Paid Leave Oregon program.

OAR 471-070-3040: Contributions: Withholding of Employee Contributions- Clarifies the maximum allowable amount an employer may deduct from an employee's subject wages. If an employer fails to deduct the employee share of the contribution rate, it cannot be deducted from the employee's future paychecks.

OAR 471-070-3100: Contributions: Place of Performance- Clarifies the process for determining if employee's wages are earned services in Oregon and subject to Paid Leave Oregon.

OAR 471-070-3130: Contributions: Successor in Interest Unpaid Contribution Liability- Clarifies when and how a successor in interest is liable for unpaid Paid Leave Oregon contributions.

OAR 471-070-3340: Contributions: Overpayment Refunds- Clarifies when and how contribution, interest, fine, or penalty overpayments will be refunded by the department without interest.

OAR 471-070-8540: Penalty Amount When Employer Fails to File Report- Clarifies when and how much of a penalty will be assessed to an employer who fails to report or pay all required contributions timely.

Need for Rule(s): Why do we need this rule?

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.

Racial Equity Impact:

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

A commitment to equity acknowledges that not all people, or all communities, are starting from the same place due to historic and current systems of oppression. Equity is the effort to provide different levels of support based on an individual's or group's needs in order to achieve fairness in outcomes. Equity actionably

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

empowers communities most impacted by systemic oppression and requires the redistribution of resources, power, and opportunity to those communities. While adopting our administrative rules for contributions, the Paid Leave Oregon Division looked at the racial equity impact of the administrative rule and answered the below questions.

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

In drafting OAR 471-070-0400 related to definitions of wages, the Paid Leave Oregon Division has been careful to ensure we think through any racial inequity that may occur, which includes what definition we used for agricultural labor and domestic services, for example. We made sure the definition wasn't too broad as a broad definition could increase the potential number of agricultural labor employees for whom housing costs wouldn't count as wages, which would decrease Paid Leave Oregon contributions but also decrease benefit payouts. However, the division tried to also keep in mind the confusion that employers and employees may have if significantly different definitions were used for programs.

In drafting the administrative rules related to contributions, tribal government election of coverage, and penalties, the Paid Leave Oregon Division has been careful to ensure that we are thinking through the racial inequity that may occur. Due to historic exclusion and racial disparities, it is likely that Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander and other people of color and their businesses, experience discrimination and other barriers in learning about requirements of, and access to, governmental and other programs, which is a risk as Paid Leave Oregon is implemented. Also based on history, the Paid Leave Oregon Division is aware that penalties could disproportionately fall on Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander and other people of color owned businesses as business owners are less likely to have staff resources dedicated to regulatory compliance, such as a human resource department. Lastly, racial equity disparities may arise around the misclassification of place of where the work is performed – this negatively impacts a person's ability to take needed leave in Oregon.

Are there strategies to mitigate the unintended consequences?

The Paid Leave Oregon Division places a high priority on developing and maintaining a diverse and inclusive culture and ensuring there is equitable access to understanding and using the program for businesses and employees paying Paid Leave Oregon contributions. The Paid Leave Oregon Division's goal is to ensure that there is equity for businesses and individuals as we implement Paid Leave for Oregonians. Below are some strategies the Paid Leave Oregon Division will monitor to help mitigate unintended barriers for contributions:

- Have the information, tools, and processes accessible;
- Work with each tribal government individually to make sure the Paid Leave Oregon program is understood and the process for an intergovernmental agreement is smooth;
- Frequently asked questions and resource pages will be created to assist with explanation of contributions, place of performance, and tribal government elections;
- Widespread and targeted education and varied and accessible user support services;
- Conduct focused outreach and engagement activities from now until implementation with employers and employees, with a focus on immigrant or non-English speaking individuals, Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander, and other people of color owned businesses, and rural areas and small businesses, which will include awareness raising about Paid Leave Oregon;

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

- Instructions and employee guidebooks will be in plain language and seek to provide materials in multiple languages for employers and employees;
- Guidebooks will be supplemented with frequently asked questions, instructional videos, and other tools;
- Monitor a number of data elements, develop Key Performance Measures (KPMs), and report out regularly on equity in the Paid Leave Oregon program ongoing; and
- Continuously explore ways to make changes within the policy and technology solution should disparities begin to arise in the program.

Fiscal and Economic Impact:

Any fiscal or economic impact is the result of the statute being implemented. There is no fiscal or economic impact associated with these new administrative rules.

Statement of Cost of Compliance:

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

ORS 657B requires state agencies, local governments and other public bodies to withhold from their employees' wages Paid Leave Oregon contributions and to remit payment of the contributions quarterly on the Oregon combined quarterly payroll report that is submitted to the Oregon Employment Department. The administrative rules for Paid Leave Oregon definitions regarding wage contributions, tribal government elections, and successor in interest has little to no effect on state agencies, local governments and other public bodies as the statute creates the requirements.

The administrative rules related to withholding of employee contributions, place of performance, overpayment refunds, and penalty amounts will likely have an impact on stage agencies, local governments, and other public bodies. While the statute requires state agencies to withhold employee contributions and defines place of performance, the administrative rules provide further guidance. They will be impacted if the employer fails to deduct the maximum allowable employee contribution, the employer is considered to have elected to pay that portion. Any employers that have employees that perform work within and outside of Oregon, will need to determine the employee's place of performance to determine if the employer and employee should be contributing to the Paid Leave Oregon program.

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% of the state's workforce. Oregon has approximately 120,000 small businesses with fewer than 25 employees that employ 24.19% of the state's workforce. Since all, or nearly all, employees are eligible for Paid Leave Oregon benefits, all, or nearly all, small business employers will be subject to these administrative rules.*

*Based on from Unemployment Insurance 2020 Tax Wage file.

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

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

There is little to no effect on those subject to the administrative rules as the administrative rules tends to be clarifying in nature from what is already required by statute and does not affect projected reporting, recordkeeping, or other administrative activities or costs. Keeping the definitions aligned, when possible, with existing state programs, reduces the cost of compliance by not having to report using multiple definitions of “wages.”

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

None known

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 a four members represent employers, with 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 a contributions 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 contributions workgroup is to engage with representatives and stakeholders about specific aspects relating to contributions. The workgroup utilized the information and insights gathered in the course of its work to assist the Paid Leave Oregon Advisory Committee in developing recommendations to provide the department as they relate to the implementation of the program and the administrative rules drafted for contributions. The workgroup met 12 times over the course of a year, the first meeting occurred in June 2020 and the last meeting occurred in January 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 on 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.

Documents Relied Upon, and where they are available:

- Paid Leave Oregon statute – ORS chapter 657B (https://www.oregonlegislature.gov/bills_laws/ors/ors657B.html);
- Domestic Workers’ Protection Act – ORS chapter 653 (https://www.oregonlegislature.gov/bills_laws/ors/ors653.html); House Bill 2168 during the 2021 Legislative Session (<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2168/Enrolled>);
- Oregon Bureau of Labor and Industries administrative rules, OAR Chapter 839, Division 20 (<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=210125>)

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

- 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>);
- Washington State’s PFML administrative rules (WACs Chapter 192-500 through 192-810) (<https://app.leg.wa.gov/WAC/default.aspx?cite=192>);
- California Disability Insurance/Paid Family Leave (UIC 2601 to 3308 and rules and regulations 22 22R [https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=UIC&division=1.&title=&part=2.&chapter=&article= and [https://www.mass.gov/law-library/mass-general-laws-c175m](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I05076D10D4B711DE8879F88E8B0DAAAE&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)]];• Massachusetts Paid Family and Medical Leave statutes and rules and regulations (<a href=) and <https://www.mass.gov/regulations/458-CMR-200-family-and-medical-leave>);

- Was an Administrative Rule Advisory Committee consulted?: YES or NO**
If no, why not?

The Paid Leave Oregon Advisory Committee, as required by ORS 657B.380, serves as the RAC and was consulted on May 17, 2022 while developing these administrative rules and impact statements.

PROPOSED RULE LANGUAGE

- Final Draft of Rule Language to be filed:**
- Rule Number:
- Rule Language to be filed: (Insert final rule language to be filed here. No tracked changes)

Secretary of State
NOTICE OF PROPOSED RULEMAKING FILING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

Oregon Employment Department, Paid Leave Oregon Division		471
Agency and Division Name		Administrative Rules Chapter Number
Anne Friend	OED_Rules@employ.oregon.gov	503-947-1471
Rules Coordinator	Email	Telephone
Anne Friend	875 Union St NE, Salem OR 97311	503-947-1471
OED Program Contact	Address	Telephone

RULE CAPTION

Administrative provisions related to Paid Leave Oregon employer equivalent plans

Last Date and Time for Public Comment: July 29, 2022 at 5pm

<input type="checkbox"/> Hearing Date	Time	Address	Hearings Officer
Anne Friend			

RULEMAKING ACTION

List each rule number separately (000-000-0000) below. Attach proposed, tracked changed text for each rule at the end of the filing.

In the matter of:

Adopting: OAR 471-070-2205; OAR 471-070-2230; OAR 471-070-2250; OAR 471-070-2260; OAR 471-070-2270; OAR 471-070-2330

Amending: OAR 471-070-2200; OAR 471-070-2220

Statutory Authority:

ORS 657B.210, 657B.340

Other Authority:

Stats. Implemented:

ORS 657B.070, 657B.210, 657B.250

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

RULE SUMMARY: *Include a summary for each rule included in this filing.*

OAR 471-070-2200: Equivalent Plans: Definitions- Amends the administrative rule to define administrative costs, administrator, and declaration of intent used in the Paid Leave Oregon programs rules governing employer equivalent plans.

OAR 471-070-2205: Equivalent Plans: Declaration of Intent to Obtain Approval of Equivalent Plan- 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.

OAR 471-070-2220: Equivalent Plans: Plan Requirements- Amends the administrative rule to clarify that generally benefit payments must be provided weekly, unless the benefit payments are paid at the same time as the established paycheck from the employer.

OAR 471-070-2230: Equivalent Plans: Reporting Requirements- Clarifies the reporting on the Oregon Quarterly Tax Report, filing quarterly aggregate financial and benefit usage reports, and timeframe requirements for changes for employers with an approved equivalent plan.

OAR 471-070-2250: Equivalent Plans: Employee Coverage Requirements- Clarifies the details of when an employee is covered under an equivalent plan coverage and the employer's responsibility for notifying employees of coverage.

OAR 471-070-2260: Equivalent Plans: Benefit Amounts- Clarifies how benefits are calculated for an employer's equivalent plan and what information needs to be requested from the department for the benefit calculation and benefit year.

OAR 470-070-2270: Equivalent Plans: Proration of Benefit Amounts for Simultaneous Coverage- Clarifies how the weekly benefit amount will be prorated when an employee is simultaneously covered by more than one equivalent plan or the Paid Leave Oregon program.

OAR 471-070-2330: Equivalent Plans: Written Notice Posting to Employees of Rights and Duties- Clarifies an equivalent plan employer's responsibility to include certain information in the written notice to employees and describes when the written notice must be displayed by the employer and in what language.

Need for Rule(s): Why do we need this rule?

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.

Racial Equity Impact:

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, and an opportunity to provide higher

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

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 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 benefits aim to establish straightforward and streamlined requirements for what employees must be covered and what information the department will provide and the employer will provide. Nonetheless, the requirements established in 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 guide 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

Secretary of State
**NOTICE OF PROPOSED RULEMAKING FILING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT**

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. There is no fiscal or economic impact associated with these new or amended administrative rules.

Statement of Cost of Compliance:

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 equivalent plan to their employees.

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

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

Oregon has approximately 126,000 small businesses with fewer than 50 employees that employ 33.62 percent of the state's workforce. Oregon has approximately 120,000 small businesses with fewer than 25 employees that employ 24.19 percent of the state's workforce.* Since all, or nearly all, employees are eligible for Paid Leave Oregon benefits, all, or nearly all, small employers will be subject to these rules.

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:

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

Small businesses wanting to provide a Paid Leave Oregon equivalent plan to their employees will need to submit an equivalent plan application or a declaration of intent by May 31, 2023, along with an equivalent plan to the Oregon Employment Department.

Subsequent benefit payments must be provided weekly, 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 administrator 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) describes 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 administrative rule requires the filing of quarterly aggregate financial and benefit usage reports. 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.

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

Small businesses that opt to provide an equivalent plan will need to make sure it provides 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.

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

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 on 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.

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/law-library/mass-general-laws-c175m> and <https://www.mass.gov/regulations/458-CMR-200-family-and-medical-leave>);

Was an Administrative Rule Advisory Committee consulted?: **YES or NO**
If no, why not?

The Paid Leave Oregon Advisory Committee, as required by ORS 657B.380, serves as the RAC and was consulted on May 17, 2022 while developing these administrative rules and impact statements.

PROPOSED RULE LANGUAGE

- Final Draft of Rule Language to be filed:**
- Rule Number:
- Rule Language to be filed: (Insert final rule language to be filed here. No tracked changes)