

**Paid Family and Medical Leave Insurance (PFMLI)
Proposed Oregon Administrative Rules - Batch 1**

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WAGES

ORS 657B.010(26) establishes that “wages” for Paid Family and Medical Leave Insurance (PFMLI) has the meaning given that term in ORS 657.105, which defines “wages” for Unemployment Insurance (UI). This section of rules mirrors the UI administrative rules that further clarify that definition of wages.

Wages: Bonuses, Fees, and Prizes

Bonuses, fees, and prizes are wages if paid or given by the employer to an employee as compensation, reward, or added remuneration for employment. Bonuses, fees, and prizes shall be included in the payroll of the employer at the time they are paid. A bonus, fee, or prize paid or received during a calendar year shall be wages earned during the calendar year paid, and the Paid Family and Medical Leave Insurance contribution rate for such year shall be applicable to any bonus, fee, or prize.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

Wages: Cafeteria Plans

Employee benefits paid through a cafeteria plan, as defined in the Internal Revenue Code Section 125, are not wages if listed as excluded in ORS 657.115, even if paid through a payroll deduction.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

Wages: Corporate Officer and Shareholder Dividends

Payments of dividends to a corporate officer or shareholder are wages to the extent that those payments are reasonable compensation for services performed for the corporation.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

Wages: Disability Payments and Accident Compensation

(1) When an employer continues the payment of wages during a disability period, or pays to the employee all or part of the difference between benefits or compensation received from an insurance carrier or State Accident Insurance Fund and the employee’s regular or usual wage, the sums so paid by the employer are wages unless excluded from the term wages by ORS 657.115 and 657.125.

(2) Lump sum or other special payments to compensate an employee for an accident sustained in the course of employment are not wages.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

Wages: Gifts

Gifts, other than tips or gratuities, received by an employee during the course of employment from persons other than the employer are not wages. The director; however, reserves the right, based on the facts in each particular case, to determine whether or not the gift is in fact a bonus, fee, or prize given as a reward or added remuneration for services rendered.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

Wages: Incidental Expenses

(1) Wages do not include:

(a) Moneys paid to employees to reimburse them for meal expenses in the event employees are required to perform work after their regular office hours; and

(b) Amounts paid to employees to reimburse them for traveling or other expenses actually incurred by them while performing service for the employer.

(2) No deduction may be made under this section unless an accurate detailed expense account is prepared by or with the knowledge of the employee and submitted to the employer in such form as will meet the requirements of the Internal Revenue Service and unless such account is preserved by the employer for a period of three calendar years.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

Wages: Jury Pay

Compensation, reimbursement, fees, lodging, meals, or other remuneration paid or provided to an individual for services performed as a juror are not wages.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

Wages: Pensions

An individual receiving a pension from a former employer shall not be considered an employee of that employer solely because of the pension, and the amount of the pension is not wages.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

Wages: Remuneration Other than Cash

(1) Subject to the provisions of (2), wages includes the cash value of all remuneration paid in any medium other than cash, except for agricultural labor and domestic service and the specific exemptions enumerated in ORS 657.115 to 657.140.

(2) Board, lodging, services, facilities, or privileges furnished by an employer shall be considered remuneration paid for services performed by an employee unless it appears that furnishing of the same was not required by the terms of the contract of hire; written or oral, express or implied; and that the value thereof was not a material factor in the determination by either party of the amount of any cash remuneration payable for such services.

(3) The cash value of non-cash remuneration shall be either:

(a) The amount of non-cash remuneration which is carried on the employer's payroll, provided such amount is comparable to values prevailing in the community; or

(b) An amount determined by the director when the value of non-cash remuneration is not carried on the employer's payroll. In such determination, board furnished by an employer as remuneration for services shall have a minimum value of 30% of the standard meal per diem rates for the 48 continental United States and the District of Columbia established by the U.S General Services Administration (CONUS meal rate) per day. The rate per day will be rounded to the nearest dollar. The rate per month will be 30 times the rounded daily rate. If room is furnished in addition to board, no additional value will ordinarily be placed upon the room. If room and board are furnished at hotels, resorts, or lodges, or if a room only, an apartment, a house, or any other consideration is provided, the value for tax purposes will be the fair market value thereof.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

Wages: Remuneration Types

(1) Wages include, but are not limited to:

(a) Dismissal or separation allowances;

(b) Paid time off;

(c) Holiday pay;

(d) Sick pay; or

(e) Vacation pay.

(2) Remuneration paid as commission or a guaranteed wage is wages.

CONTRIBUTIONS

ORS 657B.150 establishes wage reporting and contributions payment requirements for employers and employees and ORS 657B.190, 657B.320, 657B.370, 657B.910, 657B.920, and others establish consequences for employers that fail to report and make payments; this section of rules provides further details on those aspects of contributions. All definition sections may be expanded and reorganized before formal rulemaking.

Contributions: Definitions

- (1) "Legal Fees" means fees attributed to the recording or processing of a distraint warrant on behalf of the department for the purposes of collecting Paid Family and Medical Leave Insurance (PFMLI) contributions pursuant to ORS 657B.300 and search fees attributed to garnishments issued to financial institutions pursuant to ORS 18.790.
- (2) "Maximum wage amount" means the maximum employee wages per employer subject to PFMLI contributions per calendar year.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.150, 657B.300]

Contributions: Method for Determining Contribution Rate and Maximum Wage Amount

(1) Annually, the department determines the Paid Family and Medical Leave Insurance (PFMLI) contribution rate. Factors the department considers in determining the rate include, but are not limited to:

- (a) PFMLI Trust Fund balance on August 31;
- (b) Estimated number of Oregon employees;
- (c) Estimated number of employers that employ on average 25 or more employees, as described in the administrative rule on (Employer Size: Method to Determine Employer Size, below);
- (d) Estimated number of employers that employ on average fewer than 25 employees, as described in the administrative rule on (Employer Size: Method to Determine Employer Size, below), and the estimated number of those employers that commit to pay the employer contributions in accordance with administrative rule on (Assistance Grants: Employer Contributions, below);
- (e) Estimated number of tribal governments electing coverage and the estimated number of their employees;
- (f) Estimated number of self-employed individuals electing coverage;
- (g) Maximum wage amount;
- (h) Average weekly wage as defined in ORS 657B.010(2);
- (i) Estimated revenue through the end of the next calendar year, including projections of:
 - (A) Contributions paid;
 - (B) Penalties and interest paid;
 - (C) Equivalent plan application fees paid; and
 - (D) Interest accrued on the PFMLI Trust Fund;
- (j) Estimated expenditures through the end of the next calendar year, including projections on:
 - (A) Benefits paid;
 - (B) Administrative costs; and
 - (C) Assistance grants paid;

(k) Amount received from the General Fund that must be reimbursed.

(2) Estimates, for the purposes of determining the contribution rate, will consider Oregon PFMLI program data and other relevant data sources, including but not limited to, other Oregon state agencies, other states' agencies, and federal agencies.

(3) Beginning with calendar year 2024, the maximum wage amount is adjusted by the annual percentage increase (if any) in the August Consumer Price Index for All Urban Consumers, West Region (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.

(4) The director shall announce the contribution rate and maximum wage amount by November 15 each year effective for the following calendar year.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.150]

Contributions: Maximum Wage Amount

(1) Wages are subject to contributions up to the maximum wage amount earned from each employer per calendar year.

(2) If an employee works for multiple employers, each employer must:

(a) Withhold and remit employee contributions for wages earned from each employer up to the maximum wage amount; and

(b) Pay employer contributions on wages earned from each employer up to the maximum wage amount, when applicable.

Example 1: An engineer works for a hotel chain from January to August 2026 and earns \$130,000. The hotel chain will withhold and remit employee contributions and pays employer contributions on the engineer's total wages of \$130,000. The engineer then works for a school district from September to December 2026 and earns \$60,000. The school district will withhold and remit employee contributions and pays employer contributions on the engineer's total wages of \$60,000, without consideration of previous wages paid by the hotel chain.

Example 2: An attorney works full-time for a law firm and part-time for a marketing company throughout 2023. The attorney earns \$165,000 from the law firm. The maximum wage amount for 2023 is \$132,900. The law firm will withhold and remit employee contributions and pays employer contributions on \$132,900 of the attorney's wages. After contributions are withheld and paid on \$132,900 of wages, the law firm stops withholding and paying contributions on the attorney's wages. The attorney earns \$40,000 wages from the marketing company. The marketing company will withhold and remit employee contributions and pays employer contributions on the attorney's earnings of \$40,000, without consideration of the wages paid by the law firm throughout the year.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.150]

Contributions: Wage Reporting and Contribution Payments

(1) All employers must file a combined quarterly payroll report to report Oregon Paid Family and Medical Leave Insurance (PFMLI) wages earned, employee PFMLI contributions collected, and employer PFMLI contributions due, except those employers listed in (2) of this rule.

(2) Domestic employers may file an annual combined payroll report if they have on average less than 25 employees as calculated per administrative rule (*Employer Size: Definitions, see below*).

(3) Contribution payments are due quarterly and payable for each calendar quarter with respect to PFMLI wages paid within that calendar quarter unless specified under (4) of this rule. Quarterly contributions shall be due and payable on or before the last day of the month following the close of the calendar quarter.

(4) Domestic employers who may file an annual report, the contributions are payable for each calendar year with respect to wages paid within that calendar year. Annual contributions shall be due and payable on or before the last day of January

of the following year.

(5) When the due date falls on a Saturday, Sunday or a legal holiday, the report and payment is due on the next business day following such Saturday, Sunday or legal holiday.

(6) If an employer ceases or discontinues operations or business, or sells out, exchanges or otherwise disposes of the business or stock of goods, any contribution payable under this section is immediately due and payable, and the employer shall, within 10 calendar days, pay the contributions due.

(7) An employer who fails to pay contributions as required by (3) or (4) of this rule is delinquent. If such delinquency continues following the mailing of a notice of delinquency to the employer's last-known address as shown in the department's records, such employer may be required to report and pay contributions monthly until all delinquent contributions have been paid in full and the director approves an application pursuant to procedures adopted by the director to make quarterly reports and pay contributions as provided in this rule.

(8) When an employer has become delinquent in the payment of contributions and is required to pay said contributions monthly, such monthly contributions shall become due and payable on the last day of the month following the close of the month for which such contributions are payable. If the contributions are not so paid, the employer shall be deemed to be delinquent.

(9) Any employer found to be delinquent in the payment of contributions as provided in this rule shall be subject to the penalties as specified in ORS 657B.320, and further may be assessed an additional penalty as provided in ORS 657B.910.

(10) Employers are responsible for the payment of penalties for delinquent contributions. Employers are prohibited from withholding funds from employees for the purposes of paying penalties or applying employee contributions toward the payment of penalties.

(11) When contributions or reports have been sent to the director through the U. S. Postal Service, postage prepaid for delivery to the director, the date they are postmarked by the Post Office shall be the date of receipt by the director. Such date shall be used in the calculation of interest charges, delinquencies, penalties, or other sanctions provided by law. In the absence of a postmarked date, the date of receipt shall be the most probable date of mailing as determined by the director.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.150]

Contributions: Application of Payments

(1) Except as otherwise provided by statute, or directed by a court of competent jurisdiction, payments made to the department by or on behalf of an employer for Paid Family and Medical Leave Insurance (PFMLI) contributions; and legal fees, penalties and interest related to those PFMLI contributions; in accordance with the provisions of ORS chapter 657B shall be identified by the department as either Designated or Undesignated Payments and shall be credited to the employer's account in the following order of priority:

(a) Undesignated Payments; payments received by the department that are not designated as a payment for a specific quarter or distraint warrant will be identified as an Undesignated Payment and will be credited:

(A) To the oldest unwarranted unpaid quarter balance in the following order:

(i) Penalties;

(ii) Interest; and then

(iii) PFMLI Contributions.

(B) When all amounts due in (A) are paid, payments will be then be credited to the most recent unpaid distraint warrant in the following order:

(i) Legal Fees;

- (ii) Penalties;
- (iii) Interest; and then
- (iv) PFMLI Contributions.

(b) Designated Payments; payments received by the department that are designated as a payment for a specific quarter or distraint warrant will be identified as a Designated Payment and will be credited to the specific designated quarter or distraint warrant as follows:

- (A) Legal Fees;
- (B) Penalties;
- (C) Interest; and then
- (D) PFMLI Contributions.

(2) The director may identify categories of indebtedness for internal accounting procedures and may retire each category separately in the order of priority set forth in (1) of this rule.

(3) Nothing in this rule shall be construed in any way as abridging or limiting the authority or powers of the director granted under ORS chapter 657B.

(4) The employees listed in administrative rule on *(Contributions: Continuous Jurisdiction, below)* may act on behalf of the director for purposes of (2) and (3) of this rule.

(5) Notwithstanding any instructions to the contrary by or on behalf of the employer, payments will be applied in the manner specified in this rule.

(6) Credit balances will be treated as payments for purposes of this rule.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.150]

Contributions: Deposit, Bond, or Letter of Credit

(1) For the purposes of ORS 657B.190, the director or an authorized representative may demand a deposit, bond, or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in a form acceptable to the director to protect the Paid Family and Medical Leave Insurance (PFMLI) Fund balance when the director or an authorized representative has determined that there is sufficient evidence that a risk exists.

(2) Risk is solely determined by the director or an authorized representative and includes, but is not limited to, circumstances where an employer who continues to employ employees subject to ORS Chapter 657B:

- (a) Is currently delinquent in filing PFMLI reports or payment of PFMLI contributions; or
- (b) Was previously delinquent in filing PFMLI reports or payment of PFMLI contributions.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.190]

One Percent Penalty

(1) The director shall assess the penalty authorized by ORS 657B.910 and mail notice of the assessment of such penalty to the employer's last known address as shown in the department's records on or before October 20 each year. Such penalty shall become final on November 10 immediately following the assessment.

(2) On or after the date of the assessment, but prior to November 10 immediately following the assessment, the employer may request waiver of the penalty based on good cause as defined in administrative rule on *(Contributions: Good Cause for Failure to File Reports or Pay Contributions, below)*.

(3) If an employer makes a request for waiver of the penalty within the time prescribed in (2) of this rule, the director shall

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make a decision, either granting or denying the waiver, and mail notice thereof to the employer's last known address as shown in the department's records. If, prior to November 10 immediately following the assessment, the employer establishes good cause for failure to file all reports or pay all contributions due by September 1, the director shall grant the request for waiver and remove the penalty from the employer's account. If the employer fails to establish good cause prior to November 10 immediately following the assessment, the director shall deny the request for waiver. If the request for waiver is denied, the director shall notify the employer that a request for a contested case hearing may be filed within 20 days after mailing of the penalty waiver decision.

(4) Hearings held and administrative law judge decisions issued pursuant to (3) of this rule shall be in accordance with the adopted provisions of chapter 137, division 3 of the Oregon Administrative Rules.

(5) Judicial review of administrative law judge decisions issued pursuant to this rule shall be as provided for review of orders in contested cases in ORS 183.310 through 183.550. The director is designated as a party for purposes of hearings under this rule.

(6) Upon motion of the director or upon application of an interested employer, the director may reconsider a penalty imposed under ORS 657B.910 irrespective of whether it has become final:

(a) Such reconsideration shall be restricted to penalties resulting from clerical errors or errors of computation and may include a new decision upon any grounds or issues not previously ruled upon or new facts not previously known to the director;

(b) A new decision made as a result of reconsideration shall be subject to hearing and judicial review in accordance with this rule.

(7) A request for waiver of the penalty for good cause must be in writing. The date of any request for waiver under this rule shall be:

(a) The postmarked date on the request, if mailed; or

(b) The machine imprinted date on the request, if transmitted by facsimile device; or

(c) The date in which the request was submitted electronically; or

(d) The date the request was submitted utilizing the agency's designated web portal; or

(e) In the absence of a postmark, submittal date or machine imprinted date, the most probable date of mailing as determined by the director.

(8) The employees listed in administrative rule on (Contributions: Continuous Jurisdiction, below) may act on behalf of the director for the purposes of (1), (2), and (3) of this rule.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.910]

Good Cause for Failure to File Reports or Pay Contributions

(1) As used in ORS 657B.910 and 957B.920 and administrative rule on (*One Percent Penalty, above*), good cause will be found to exist when the employer establishes by satisfactory evidence that factors or circumstances beyond the employer's reasonable control caused the delay in filing the required report or paying the contribution due.

(2) In determining good cause under (1) of this rule, the director or an authorized representative may consider all circumstances, but shall require at a minimum that the employer:

(a) Prior to the date the report or contributions were due, gave notice to the department, when reasonably possible, of the factors or circumstances which ultimately caused the delay;

(b) Filed the required report or paid the contributions due within seven days after the date determined by the director to be the date the factors or circumstances causing the delay ceased to exist; and

(c) Made a diligent effort to remove the cause of the delay and to prevent its recurrence.

(d) Provide an official police report, or other documentation of the criminal act acceptable to the director or an authorized representative that was made within 20 days of the incident, or discovery of the incident, if the delay was due to a criminal act by any party.

(3) In applying (1) and (2) of this rule, a lack of funds on the part of the employer shall not constitute good cause for failure to pay all contributions when due.

(4) In applying (1) and (2) of this rule, failure to notify the department of an updated mailing address, shall not constitute good cause for failure to file reports.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.910, 657B.920]

Compromise of Amount Due

It shall be the policy of the director to compromise the amount due from an employer or former employer with a delinquent account pursuant to the provisions of ORS 657B.320(8) where it appears that such action would be in the best interests of all parties involved and the statutory criteria for a settlement has been met.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.320]

Continuous Jurisdiction

The following employees are designated by the director as having the authority to act for and in the name of the director in matters of reconsideration and correction of any final decision under ORS chapter 657B:

(1) Deputy Director;

(2) Division Director for Paid Family and Medical Leave Insurance;

(3) Deputy Division Director for Paid Family and Medical Leave Insurance;

(4) Any employee authorized and directed by individuals identified in (1) through (3) of this rule who, in the course of their assigned duties are tasked with the writing, review, and reconsideration or correction of decisions issued by the Paid Family and Medical Leave Insurance program.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: 657B.340]

EMPLOYER SIZE

ORS 657B.150(4) establishes that employers with fewer than 25 employees are not required to pay employer contributions and ORS 657B.360 establishes that a method shall be adopted to determine on an annual basis the number of employees employed by an employer; this section formulates that method. All definition sections may be expanded and reorganized before formal rulemaking.

Employer Size: Definitions

(1) "Employee count" means a headcount of all employees with Oregon Paid Family and Medical Leave Insurance (PFMLI) wages, plus the number of out-of-state employees, and minus the number of replacement employees hired to temporarily replace eligible employees during PFMLI leave.

(2) "Employer size" means the average number of employees in the employee count employed by an employer in a 12-month period.

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

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

[Stat. Auth.: ORS 657B.340; Stats. Implemented: 657B.360]

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

(1) To determine the employer size, first determine the employee count. An employer’s quarterly employee count is calculated as follows from the combined payroll report forms:

- (a) Count the number of employees with Paid Family and Medical Leave Insurance (PFMLI) wages;
- (b) Add the number of out-of-state employees; and
- (c) Subtract the number of replacement employees hired to temporarily replace eligible employees during periods of PFMLI leave.

Example 1: For second quarter of 2024, which covers April to June 2024, an employer reports 20 employees on the Oregon Department of Revenue’s combined payroll report Form 132; 8 out-of-state employees on Form OQ; and 1 replacement worker on Form OQ. The employer’s employee count for 2024 second quarter is 27 employees (20 + 8 – 1).

Example 2: For fourth quarter of 2025, which covers October to December 2025, a domestic employer reports 2 employees on Oregon Department of Revenue’s combined payroll report Form 132 - Domestic; 0 out-of-state employees on Form OA Domestic; and 0 replacement workers. The employer’s employee count for 2025 fourth quarter 4is 2 employees (2 + 0 – 0).

(2) For calendar year beginning on January 1, 2023, employer size is determined by April 30, based on the employee count reported for the first quarter of 2023, which covers January to March 2023. Notices on employer size shall be sent by the Oregon Employment Department (department) to the employer’s last known address as shown in the department’s records by June 1. Employer size determined from the first quarterly report will be the same for the entire 2023 calendar year.

Example 3: For first quarter of 2023, an employer reports 20 employees on Form 132; 3 out-of-state employees on Form OQ; and 0 replacement workers on Form OQ. The employer’s employee count for 2023 first quarter is 23 employees (20 + 3 – 0). Because the employee size is under 25, the employer is a small employer for the entire 2023 calendar year.

(3) For calendar year beginning on January 1, 2024, employer size is determined by September 30, 2023 based on the average of the employee counts for the first quarter of 2023, which covers January to March 2023, and the second quarter of 2023, which covers April to June 2023. Notices on employer size shall be sent by the department to the employer’s last known address as shown in the department’s records by November 15, 2023. Employer size determined by November 15, 2023 will be the employer size for the entire 2024 calendar year.

Example 4: An employer has an employee count of 27 for first quarter of 2023 and an employee count of 24 for second quarter of 2023. The employer’s size is 25.5 [(27 + 24) / 2 quarters]. Because the average employer size is 25, the employer is a large employer for all 2024 calendar year.

(4) For calendar years beginning on or after January 1, 2025, employer size is be determined by September 30 each year for the following year by determining the employee counts reported for the preceding four completed quarters. Notices on employer size determinations shall be sent by the department to the employer’s last known address as shown in the department’s records by November 15.

Example 5: An employer has the following employee counts:

Year	Quarter 1	Quarter 2	Quarter 3	Quarter 4
2023	24	28	27	24
2024	23	25	26	24
2025	25	32	28	23
2026	22	30	27	25

For 2025, the employer's size is the average of the third quarter of 2023 through the second quarter of 2024. The employer's size is 24.7 employees $[(27 + 24 + 23 + 25) / 4 \text{ quarters}]$. Because the employer size is under 25, the employer is a small employer the entire 2025 calendar year.

For 2026, the employer's size is the average of the third quarter of 2024 through the second quarter of 2025. The employer's size is 26.75 employees $[(26 + 24 + 25 + 32) / 4 \text{ quarters}]$. Because the employer size is over 25, the employer is a large employer the entire 2026 calendar year.

For 2027, the employer's size is the average of the third quarter of 2025 through the second quarter of 2026. The employer's size is 25.75 employees $[(28 + 23 + 22 + 30) / 4 \text{ quarters}]$. Because the employer size is over 25, the employer is a large employer the entire 2027 calendar year.

(5) For new Oregon employers, employer size for the first calendar year is determined by the employee count for the first quarter employees are reported. Notice on employer size shall be sent by the department to the employer's last known address as shown in the department's records within 45 days of the submission of the employer's first quarterly report. For the second calendar year, employer size is the average of the employee counts for the preceding third quarter to the second quarter; if the employer did not report for all four of those quarters because the employer was not yet established in Oregon, the average of the completed quarters is used to determine the employer size for the second calendar year. Notice on employer size shall be sent by the department to the employer's last known address as shown in the department's records for the second calendar year by November 15.

Example 6: A new employer has employees in Oregon starting September 2025. For third quarter of 2025, which covers June to September 2025, the employer reports 15 employees on Form 132; 25 out-of-state employees on Form OQ; and 0 replacement worker on Form OQ. The employer's employee count for third quarter of 2025 is 40 employees $(15 + 25 - 0)$. Because the employer size is over 25, the employer is a large employer for the entire 2025 calendar year.

(6) If an employer has not filed all of the required wage reports or any of the required wage reports are incomplete at the time the employer size determination is made by the department, the employer will be considered a large employer and required to pay the employer contributions until all required reports are filed or completed.

(7) Employer size determinations will be reassessed when either:

(a) Wage reports that were missing or incomplete are submitted; or

(b) Wage reports are amended, including amendments by the employer or as the result of an audit.

(8) When reassessment of an employer size determination results in a change in the employer size, the liability for employer contributions will also be reassessed. An employer that changes from a small employer to a large employer may be assessed the employer contributions for previous quarters. An employer that changes from a large employer to a small employer may be credited the previous employer contributions paid.

(9) Employer size is not rounded.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.360]

ASSISTANCE GRANTS

ORS 657B.200 establishes assistance grants for employers with fewer than 25 employees for when an employee takes PFMLI leave and requires the adoption of the necessary administrative rules for their implementation; this section establishes those rules.

Assistance Grants: Eligibility

(1) An employer is eligible for an employer assistance grant if:

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(a) At the time an employee starts a period of family leave, medical leave or safe leave approved by the department, the employer is a small employer as defined in administrative rule on (*Employer Size: Definitions, above*);

(b) The employer completes an employer assistance grant application and provides the required documentation to the department within the established timeframe as described in administrative rule on (*Assistance Grants: Application, below*);

(c) The employer commits to pay the employer contribution for a period of eight calendar quarters as described in administrative rule on (*Assistance Grants: Employer Contributions, below*); and

(d) The employer does not have any outstanding or delinquent reports, outstanding or delinquent contributions, or owing penalties or interest under ORS chapter 657B.

(2) An employer that hires a temporary worker to replace an eligible employee who takes family leave, medical leave or safe leave is eligible for an assistance grant of up to \$3,000 if the eligible employee taking leave is gone for seven or more working days.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.200]

Assistance Grants: Application Requirements

(1) An employer may apply for an assistance grant only after an eligible employee has been approved by the department for family leave, medical leave or safe leave and no later than four months following the last day of the eligible employee's period of leave.

(2) Application for a grant must be submitted online or in another format approved by the department. The grant application must be complete and include the following:

(a) Information about the employer applying for the grant, including:

- (A) Business Identification Number;
- (B) Business name;
- (C) Business address; and
- (D) Business contact person's name and contact information;

(b) Information about the eligible employee taking leave for which the employer is requesting the grant, including:

- (A) First and last name;
- (B) Social Security Number or Individual Taxpayer Identification Number;
- (C) Claim identification number;
- (D) Start date of the leave; and
- (E) End date or expected leave end date;

(c) Information about the grant being requested, including:

- (A) Type of grant requested; and
- (B) Grant amount requested, when applicable;

(d) Written documentation demonstrating that the employer:

- (A) Hired a temporary worker to replace an eligible employee on family leave, medical leave or safe leave, including the temporary worker's name, start date, and Social Security Number or Individual Taxpayer Identification Number; or

(B) Incurred significant additional wage-related costs due to an eligible employee's use of leave, including, but not limited to, receipts, personnel or payroll records, or signed statements; and

(e) Acknowledgement that:

(A) The employer is required to pay the employer contribution for a period of eight calendar quarters in accordance with administrative rule on *(Assistance Grants: Employer Contributions, below)*; and

(B) The employer could be required to repay an assistance grant if employer is later deemed to be ineligible in accordance with administrative rule on *(Assistance Grants: Repayment of Grants, below)*.

(3) An employer that receives a grant under ORS 657B.200(1)(b) may submit a revised grant application requesting an additional grant under ORS 657B.200(2).

(a) The revised grant application must contain:

(A) A revised leave end date or revised expected leave end date showing an extension to the period of leave initially requested; and

(B) Written documentation demonstrating that a temporary worker was hired to replace an eligible employee on family leave, medical leave or safe leave including the temporary worker's name, start date, and Social Security Number or Individual Taxpayer Identification Number.

(b) The revised grant application submitted under this section will not count against an employer's application limit under ORS 657B.200(3).

(4) An incomplete application will not be reviewed by the department and will not count against an employer's application limit under ORS 657B.200(3).

(5) The department will deny an application for reasons including, but not limited to, the employer's failure to demonstrate that:

(a) It hired a temporary worker or incurred significant additional wage-related costs; or

(b) The temporary worker hired or significant additional wage-related costs incurred was due to an employee's use of family leave, medical leave, or safe leave.

(6) A denied grant application will count against an employer's application limit under ORS 657B.200(3).

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.200]

Assistance Grants: Employer Contributions

An employer that is approved for an assistance grant must pay employer contributions for a period of eight consecutive calendar quarters beginning with the first calendar quarter after the most recent grant is approved. The employer is liable for payment of the employer contribution and subject to penalties and interests in accordance with administrative rule on *(Contributions: Reporting Requirements and Contributions Payments, above)*.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.200]

Assistance Grants: Repayment of Grants

Grants shall be repaid to the department if, within three years of receiving a grant:

(1) Amendments to a previous wage report resulted in a reassessment of the employer size that determined the employer was a large employer at the time the eligible employee started the period of family leave, medical leave or safe leave used for the grant application; or

(2) The department established the information or documentation included in the grant application was inaccurate or fraudulent and the employer was ineligible for the grant or did not meet the grant application requirements.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.200]

EQUIVALENT PLANS

ORS 657B.210 to 657B.260 establishes that an employer may apply to offer an equivalent plan for PFMLI benefits for its employees and sets requirements for the application process, provision of benefit, and withdrawal and terminations of an equivalent plan; further details are provided in the rules in this section. All definition sections may be expanded and reorganized before formal rulemaking.

Equivalent Plans: Definitions

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

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.340]

Equivalent Plans: Application Requirements and Effective Date

(1) An employer must submit an application for approval and have the application accepted by the department before offering an equivalent plan to their employees. Application must be submitted to the department online or in another format prescribed by the department. An incomplete application will not be reviewed by the department.

(2) For an equivalent plan to be approved, the equivalent plan application must be complete and include, but not limited to, the following:

(a) Information about the employer applying for the equivalent plan, including:

- (A) Business Identification Number;
- (B) Business name;
- (C) Business address; and
- (D) Business contact’s name and contact information;

(b) A copy of the equivalent plan; and

(c) Attestation that the equivalent plan meets all requirements.

(3) Employers must pay a \$250 application fee with every:

- (a) New equivalent plan application;
- (b) Re-approval equivalent plan application that has substantive amendments to the equivalent plan that was originally approved by the department; or
- (c) Amended of an equivalent plan application that was already approved by the department.

(4) Employers must pay a \$150 application fee with every re-approval equivalent plan application that does not contain substantive amendments.

(5) The new equivalent plan application fee per (3)(a) of this rule is due at the time the application is submitted to the department. The application fee is nonrefundable. If the new equivalent plan application is denied, a new equivalent plan application fee is required with each additional application.

(6) The re-approval or amended equivalent plan application fee per (3)(b)-(c) and (4) of this rule is assessed by the department after the department reviews the application and determines the appropriate application fee. The application fee is non-refundable. The application fee must be paid before the department will approve or deny the application. If the re-approval or amended equivalent plan application is denied, a new application fee is required with each additional application.

(7) An approved equivalent plan or plan amendment becomes effective on the first day of the calendar quarter immediately following the date of approval.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.210, 657B.230]

Equivalent Plans: Plan Requirements

In order for an equivalent plan to be approved by the department, an equivalent plan must:

- (1) Cover all employees who have been continuously employed with an employer for 30 days; including full-time, part-time, and temporary employees;
- (2) Allow eligible employees to take equal to or greater than the duration of leave provided under ORS 657B.020;
- (3) Provide eligible employees weekly benefits equal to or greater than benefits that would be paid if the eligible employees were covered by the program established under ORS 657B.340;
- (4) Provide eligible employees with family leave, medical leave or safe leave equal to or greater than the qualifying purposes established under ORS 657B.340;
- (5) Meet all equivalent plan requirements provided in ORS 657B.210 and applicable administrative rules;
- (6) Meet all plan requirements as established in ORS 657B.340 and applicable administrative rules, unless otherwise stated; and
- (7) Make a reasonable effort to issue the first payment of benefits to an employee within two weeks after receiving the claim or the start of leave, whichever is later.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.210]

Equivalent Plans: Recordkeeping and Department Review

- (1) Employers with an approved equivalent plan must maintain all reports, information, and records relating to the equivalent plan and any employee leave applications and benefits paid or denied for six years.
- (2) The records identified in (1) of this rule must be provided to the department for review upon request. The department may request to review the records at any time.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.210, 657B.220]

Equivalent Plans: Termination by the Department

(1) The department may terminate an employer's equivalent plan for:

- (a) Misuse of employee contributions received or retained by the employer;
- (b) Failure to adhere to the department approved equivalent plan or report equivalent plan changes to the department;
- (c) Failure to adhere to program requirements, including but not limited to administrative rules on (*Equivalent Plans: Plan Requirements, above; and Equivalent Plans: Reporting Requirements, drafted at a later date*); or
- (d) Risk of benefits paid due to insolvency.

(2) If the department seeks to terminate an equivalent plan, the department will send the employer a letter of intent to terminate that provides:

- (a) The reason(s) for the pending termination;
- (b) Instructions for informal dispute resolutions processes related to resolving issues leading to termination;
- (c) The proposed date that the termination will take effect absent action on behalf of the employer.

(3) If an employer does not respond to the letter of intent to terminate as described in (2) of this rule or the issue relating to the reason(s) for termination has not been resolved, the department will send a notice of termination to the employer's last known address as shown in the department's records stating the effective date of the termination. An employer may request an appeal to the notice of termination in accordance with ORS 657B.410.

(4) The employer is required to notify all employees of any equivalent plan termination within five business days of the effective date of the termination.

(5) All equivalent plan requirements, including but not limited to administrative rule on (*Equivalent Plans: Plan Requirements, above; and Equivalent Plans: Reporting requirements, above*), remain in effect until the effective date of the termination.

(6) An eligible employee who was receiving benefits under an equivalent plan at the time of the department's termination will receive benefits from and according with the program established under ORS 657B.340 after the effective date of the termination for the remainder of the employee's leave, if otherwise eligible, and the employee's remaining leave does not exceed the state's allocated number of weeks for the qualifying event.

(7) Upon termination of an equivalent plan, the employer must immediately remit to the department any deductions made from wages of an employee that remain in the possession of the employer upon the effective date of termination from the equivalent plan. Interest upon the amount due from the employer shall be paid and collected from the date of termination in accordance with ORS 657B.320(3).

(8) Upon the effective date of the termination, the employer is required to collect employee contributions and pay employer contributions due, if required, in accordance with ORS 657B.150.

(9) When an equivalent plan is terminated by the department, the employer may not re-apply for an equivalent plan for three years following the date of termination.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.210, and 657B.220, 657B.240]

Equivalent Plans: Termination by Successor in Interest

(1) A successor in interest may request to terminate an equivalent plan that was in effect at the date of acquisition if there is a substantial reduction of personnel resulting from the acquisition in accordance with ORS 657B.260.

(2) A successor in interest that is eligible per (1) of this rule may request to terminate an equivalent plan by submitting a request to terminate online or in another format prescribed by the department within 90 days after becoming a successor in interest. The successor in interest must provide written documentation on the acquisition and the reduction of personnel with the request.

(3) If a request to terminate is approved, the department will notify the successor in interest of the effective date of the termination. A successor in interest whose request to terminate is approved is subject to (4) through (8) of the administrative rule on (*Equivalent Plans: Termination, above*).

(4) If a request to terminate is denied, the department will notify the successor in interest of the reason(s) for the denial. The successor in interest may request a review of the decision to deny a request to terminate an equivalent plan in accordance with ORS 657B.410.

(5) If a request to terminate an equivalent plan is denied, or a successor in interest is otherwise not eligible to terminate an equivalent plan, the successor in interest may request to withdraw from the equivalent plan in accordance with administrative rule on (*Equivalent Plans: Employer Withdrawal, below*).

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.260]

Equivalent Plans: Employer Withdrawal

- (1) An employer may withdraw from an approved equivalent plan that has been in effect for at least one year by submitting a withdrawal form online or in another format prescribed by the department.
- (2) The employer must provide notice to the department by submitting a withdrawal form at least 30 days prior to the effective date of withdrawal. The effective date of the withdrawal is the later of the following; 30 days from the withdrawal form received by the department, the date when the plan has been in effect for one year, or the effective date requested by the employer.
- (3) All equivalent plan requirements, including but not limited those included in administrative rules on (*Equivalent Plans: Plan Requirements, above; and Equivalent Plans: Reporting requirements, above*) remain in effect until the effective date of the withdrawal, except as specified in (4) of this rule.
- (4) The employer must continue to pay benefits under the terms of the equivalent plan to eligible employees that were receiving Paid Family and Medical Leave Insurance (PFMLI) benefits under the equivalent plan on the effective date of the withdrawal until the total amount of the benefit claim is paid or the duration of leave ends, whichever occurs first.
- (5) Upon the effective date of the withdrawal, the employer is required to collect employee contributions and pay employer contribution due, if required, in accordance with ORS 657B.150.
- (6) Upon withdrawal of an equivalent plan, the employer must immediately remit to the department any deductions made from wages of an employee that remain in the possession of the employer upon the effective date of the withdrawal. Interest upon the amount due from the employer shall be paid and collected from the date of the withdrawal in accordance with ORS 657B.320.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.240]

SELF-EMPLOYED

ORS 657B.130 establishes that self-employed individuals may elect coverage under the PFMLI program; the rules in this section detail the self-employed election process, reporting and payment requirements. All definitions sections may be expanded and reorganized before formal rulemaking.

Self-employed: Eligibility

A self-employed individual, as defined in ORS 657B.010(22), may elect coverage under the Paid Family and Medical Leave Insurance program if the individual:

- (1) Earns at least \$1,000 in Oregon net income from self-employment in the preceding calendar year;
- (2) Completes a notice of election and provides the required documentation as described in administrative rule on (*Self-employed: Election Requirements and Effective Date, below*); and
- (3) Is not terminated from elective coverage within the previous three calendar years, in accordance with administrative rule on (*Self-Employed: Termination, below*).

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.130]

Self-employed: Election Requirements and Effective Date

- (1) An eligible self-employed individual may apply to elect coverage under the Paid Family and Medical Leave Insurance program at any time.
- (2) A notice to elect must be submitted online or in another format approved by the department. To be approved, the notice must be complete and include:
 - (a) Information about the individual applying for elective coverage, including:
 - (A) First and last name;

(B) Social Security Number or Individual Taxpayer Identification Number;

(C) Address and contact information;

(b) Information on the individual's business, when applicable, including:

(A) Business Identification Number;

(B) Business name;

(C) Business address and contact information;

(c) The individual's total Oregon net income from self-employment for the preceding calendar year;

(d) Documentation verifying:

(A) The individual's identity;

(B) The individual's Oregon net income from self-employment, including but not limited to, income reported to Oregon on the personal income tax return from the preceding calendar year;

(e) An agreement to:

(A) Pay contributions for a period of not less than three years;

(B) Provide any information and documentation on the individual's Oregon net income from self-employment that the department deems necessary for the administration of the elective coverage, including but not limited to, a copy of the Oregon personal income tax return annually;

(C) Provide additional information to confirm eligibility for elective coverage, if requested by the department; and

(f) Acknowledgement of the conditions for termination of self-employed elective coverage established in administrative rule on (*Self-employed: Termination*), including, but not limited to, coverage cannot be terminated until coverage has been in effect for at least three years.

(3) The department may deny a notice to elect if:

(a) The notice does not include the required information and documentation in accordance with this rule

(b) The self-employed individual does not meet the eligibility requirements with administrative rule on (*Self-Employed: Eligibility above*).

(4) Approved elective coverage becomes effective on the date the notice was filed with the department.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.130]

Self-Employed: Contribution Payments and Reporting Requirements

(1) A self-employed individual who elects coverage under ORS 657B.130 must contribute to the Paid Family Medical Leave Insurance (PFMLI) Fund in an amount that is equal to 60 percent of the total contribution rate up to an annual self-employed net income amount that is equal to the maximum wage amount for the calendar year.

(2) Total contribution payments will be based on the individual's total self-employed net income from the previous calendar year and shall be divided into four equal quarterly contributions payments. The contribution amount due for any partial quarter shall be pro-rated based on the number of calendar days that the elective coverage is in effect.

Example: A self-employed individual earned \$80,000 in Oregon self-employed net income in 2023 and elects coverage on May 1, 2024. Assuming a total contribution rate of one percent, the total contribution rate amount for 2024 will be \$480 (\$80,000 self-employment income x .01 contribution rate x .6 self-employed percentage) or \$120 per quarter (\$480/four quarters). The individual will not pay contributions for the first quarter of 2024 (January to March 2024) as the individual

did not elect coverage until May 1. The individual will not pay the entire contribution amount of \$120 for the second quarter of 2024 (April to June 2024), as the individual is only covered from the date of the election, May 1 and forward. In the second quarter there is a total of 91 calendar days and the individual is covered for 61 of the 91 days (May 1 to June 30); therefore, the contribution amount is pro-rated based on the calendar days the elective coverage is in effect. The pro-rated amount due for the second quarter of 2024 is \$80.44 (\$120 per quarter / 91 days in the quarter *61 days covered). The self-employed individual will pay \$120 in the third and fourth quarter of 2024 and the first quarter of 2025 for a total of four quarterly contribution payments.

(3) Quarterly contributions shall be due and payable in accordance with administrative rule on (*Contributions: Wage Reporting and Contribution Payments above*).

(4) A self-employed individual who fails to pay contributions as required by (1) through (3) of this rule is delinquent. Any individual found to be delinquent in the payment of contributions is subject to the penalties as specified in ORS 657B.320, and further may be assessed an additional penalty as provided in ORS 657B.910.

(5) When contributions have been sent to the director through the U. S. Postal Service, postage prepaid for delivery to the director, the date they are postmarked by the Post Office shall be the date of receipt by the director. Such date shall be used in the calculation of interest charges, delinquencies, penalties, or other sanctions provided by law. In the absence of a postmarked date, the date of receipt shall be the most probable date of mailing as determined by the director.

(6) The self-employed individual will annually report information and provide documentation the department deems necessary for the administrative of elective coverage.

(a) Except as specified in subsection (b), a self-employed individual must annually report to the department the prior year's self-employed net income and provide their Oregon personal income tax return on or before April 30.

(b) A self-employed individual that files their Oregon personal income tax return on extension, the last tax return information is used to calculate the quarterly contribution payments until the prior year's tax return is filed. The self-employed individual must report to the department the prior calendar year's self-employed net income and provide their Oregon personal income tax return on or before October 31.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.130, 657B.150]

Self-Employed: Termination

(1) A self-employed individual may terminate elective coverage by filing a written notice online or in another format approved by the department.

(2) A self-employed individual can terminate elective coverage that has been in effect for three years or more at any time. The termination shall take effect 30 days after the notice to terminate is filed with the department, unless a later date is requested.

(3) A self-employed individual can only terminate elective coverage that has been in effect for less than three years as follows:

(a) The reason for the termination is that the self-employed individual:

(A) Is filing a voluntary or involuntary bankruptcy petition; or

(B) Has a change in employment status or is otherwise no longer eligible for elective coverage, in accordance with administrative rule on (*Self-employed: Eligibility, above*).

(4) The notice must provide the following information:

(a) The reason for the termination and

(b) Any supporting documentation.

(5) The department may terminate a self-employed individual's elective coverage if the individual is delinquent on contributions in accordance with administrative rule on *(Self-employed: Contribution Payments and Reporting Requirements, above)*.

(6) If the department determines that a self-employed individual's election shall be terminated, the department will send the self-employed individual a letter of intent to terminate at their last known address as shown in the department's records that provides at least:

- (a) The reason(s) for the pending termination;
- (b) The instructions for informal dispute resolutions processes related to resolving issues leading to termination;
- (c) The proposed date that the termination will take effect absent action on behalf of the employer.

(7) If the self-employed individual does not respond to the letter of intent to terminate as described in (6) of this rule or the issue relating to the reason(s) for termination has not been resolved, the department will send a notice of termination to the self-employed individual's last known address as shown in the department's records stating the effect date of the termination.

(8) All contributions payable in accordance with administrative rule on *(Self-employed: Contributions Payments and Reporting Requirements, above)* are due immediately upon termination of coverage.

(9) An individual whose elective coverage is terminated by the department may not re-elect coverage for three years following the date of termination.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.130]

OUTREACH

ORS 657B.340(2)(a) requires the department establish in rule an outreach plan to receive information from and provide information to employers and eligible employees; this section of the rules provides further details on outreach.

Outreach Plan

(1) In order to both inform and receive input from Oregon employers and eligible employees about the Paid Family and Medical Leave Insurance (PFMLI) program, the department will establish an outreach and community engagement plan that identifies persons, groups, and organizations impacted by the program; include analysis of stakeholder expectations, concerns, and suggestions relating to program implementation and administration; and develop strategies for engaging with stakeholders.

(2) Outreach activities include, but are not limited to, public awareness campaigns, community outreach events, surveys, focus groups, town halls, workshops, and stakeholder interviews.

(3) The department is committed to collaborating with community-based, culture specific and advocacy organizations serving historically marginalized and immigrant communities to ensure equitable access to information.