

**Paid Family and Medical Leave Insurance (PFMLI)
Proposed Oregon Administrative Rules - Batch 2**

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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: Definitions

(1) Agricultural labor

(a) Except as provided in subsection (b) of this section, “agricultural labor” means service on a farm in connection with the production, raising, or harvesting of any agricultural or horticultural commodity, includes farming in all its branches, and among other things, also includes:

(A) Cultivating and tillage of the soil;

(B) Dairying;

(C) Raising, shearing, feeding, caring for, training, and management of livestock, bees, fur-bearing animals, wildlife, and poultry; and

(D) Practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market.

(b) “Agricultural labor” does not include, among other things, processing services that transform an agricultural commodity from its raw or natural state and services performed with respect to an agricultural product after it has been transformed from its raw or natural state.

(2) “Bonuses,” “fees,” and “prizes” means an extra payment given by an employer in consideration of performance, production, or a share of profits.

(3) Domestic service

(a) Except as provided in subsection (b) of this section, “domestic service” means general services of a household nature performed by an employee in or about a private home (permanent or temporary) of the person by whom the employee is employed. The term includes, but is not limited to, services performed as cooks, waiters/waitresses, butlers, housekeepers, child monitors, general house workers, personal attendants, baby-sitters, janitors, launderers, caretakers, gardeners, grooms, and chauffeurs of automobiles for family use.

(b) “Domestic service” does not include work performed by:

(A) A parent or spouse of the employer;

(B) A child of the employer who is under 26 years of age;

(C) Students who regularly attend elementary or secondary school during the day;

(D) Children, other than children of the employer, who are under 14 years of age;

(E) Children under 18 years of age who provide babysitting services and persons who provide babysitting on a casual basis;

(F) Persons who perform casual labor in private homes or the maintenance of private homes or their premises, including but not limited to yard work, washing windows, and shoveling snow;

(G) Individuals employed by organizations licensed as required by ORS 443.015 or 443.315;

(H) Individuals performing companionship services exempt from the provisions of the Fair Labor Standards Act of 1938 (29 U.S.C 201 et seq.);

- (I) Persons who perform house sitting duties that do not involve domestic service;
- (J) Persons who provide domestic service in exchange for an in-kind good or service; and
- (K) Services of those not of a household nature, such as services performed as a private secretary, tutor, nurse, or certified nursing assistant, even though performed in the employer's private home.

(4) "Employing unit" has the same definition as "employer" as provided by ORS 657B.010(14).

(5) "Employment" means any service performed by an employee for an employer for remuneration or under any contract of hire, written or oral, expressed, or implied.

(6) "Holiday" means any of the holidays listed in ORS 187.010(1)(b)–(k) and (2), 187.020 and any holiday designated by the employer, union contract, or otherwise.

(7) "Holiday pay" means any alternative remuneration that an employer pays an employee for a holiday, including, but not limited to, full or partial paid time off or additional pay for work on a holiday.

(8) "Paid time off" means compensated time away from work provided by an employer that the employee can choose to use for any reasons, including, but not limited to, vacation, sickness, and personal time.

(9) "Private home," as used in section (3) of this rule, means a fixed place of abode of an individual household. A separate and distinct dwelling unit maintained by a household in an apartment, house, hotel, or other similar establishment may constitute a private home, provided it is a place in which a person resides with the intention of residence or has so resided with the intention of returning. If a dwelling unit of an individual or family is used primarily as a boarding house for the purpose of supplying lodging to the public as a business enterprise, only that portion of the premises occupied by the individual or family may be considered a private home for the purposes of this rule.

(10) "Sick pay" means remuneration paid by an employer to an employee for time away from work due to sickness.

(11) "Stand-by pay" means remuneration to an employee who is required to be immediately available for work.

(12) "Vacation pay" means remuneration paid by an employer to an employee for time away from work provided by an employer to an employee to use for any reason the employee chooses.

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

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 termination of an equivalent plan. Further details are provided in the rules in this section. All administrative rules may be expanded and reorganized before formal rulemaking. Some of the equivalent plan rules were previously shared in the PMFLI Batch 1 rules and have been combined into Batch 2 rules instead; as well as we made changes to the administrative rules since Batch 1 based on feedback received.

471-070-2200

Equivalent Plans: Definitions

(1) "Employer administered equivalent plan" means an equivalent plan in which the employer offers a private plan where the employer assumes all financial risk associated with the benefits and administration of the equivalent plan.

(2) "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.

(3) "Fully insured equivalent plan" means an equivalent plan in which the employer purchases an insurance policy from an established insurance company and the benefits related to the plan are administered through the insurance policy.

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

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

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.210, 657B.260, 657B.340]

471-070-2210

Equivalent Plans: Application Requirements and Effective Date

(1) An employer must submit an application and receive department approval for an employer administered equivalent plan or a fully insured equivalent plan. The application must be submitted to the department online or by another method prescribed by the department. An incomplete application will not be reviewed by the department.

(2) For an equivalent plan to be reviewed by the department, the equivalent plan application must include, but is 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 employer administered equivalent plan or actual insurance policy for a fully insured equivalent plan; and

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

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

- (a) Application for approval of a new equivalent plan; or
- (b) Application for reapproval or amendment of an equivalent plan that has substantive amendments to the equivalent plan that was originally approved by the department.

(4) Employers must pay a \$150 application fee with every application for reapproval of an equivalent plan that has non-substantive amendments or that does not have any amendments to the equivalent plan that was originally approved by the department.

(5) There is no fee for either of the following:

- (a) Application for amendment of an equivalent plan that has substantive or non-substantive amendments to the equivalent plan that was required by legislative changes; or
- (b) Application with updates to an equivalent plan that are non-substantive amendments to the equivalent plan.

(6) "Substantive" amendments to an equivalent plan that was originally approved by the department as used in sections (3) and (5) of this rule include, but are not limited to, any of the following:

- (a) Changing from a fully insured equivalent plan to an employer administered equivalent plan;
- (b) Changing from an employer administered equivalent plan to a fully insured equivalent plan;

- (c) Changing the fully insured equivalent plan insurance policy, regardless of whether the new plan is from the same insurance provider or another insurance provider;
- (d) Changing the attestations on the equivalent plan; or
- (e) Changing other provisions of an employer-administered equivalent plan, except changes that are non-substantive amendments, as described in section (7) of this rule.

(7) "Non-substantive amendments" as used in section (4) and (5) of this rule include, but are not limited to, any of the following:

- (a) Updating solvency documents for employer administered plans; or
- (b) Updating the application for an equivalent plan that does not amend the equivalent plan, includes, but is not limited to, the following:
 - (A) Changing business or contact information, or
 - (B) Changing the policy number or effective dates for a fully insured equivalent plan.

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

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

[Stat. Auth.: ORS 657B.220, 657B.340; Stats. Implemented: ORS 657B.210, 657B.220, 657B.230]

471-070-2220

Equivalent Plans: Plan Requirements

In order for an employer administered equivalent plan or fully insured equivalent plan to be approved by the department as an equivalent plan, the plan must:

- (1) Cover all Oregon employees who have been continuously employed with an employer for at least 30 calendar days, regardless of hours worked, including full-time, part-time, and replacement workers;
- (2) Provide family leave as described in ORS 657B.010(17), ORS 657B.010(18), and ORS 657B.010(23);
- (3) Provide medical leave as described in ORS 657B.010(19) and ORS 657B.010(23);
- (4) Provide safe leave as described in ORS 657B.010(21);
- (5) Allow eligible employees to take family leave, medical leave, or safe leave in a benefit year for periods of time equal to or longer than the duration of leave provided under ORS 657B.020;
- (6) Provide eligible employees weekly benefits equal to or greater than benefits provided under ORS 657B.050;
- (7) Allow family leave, medical leave, or safe leave to be taken in increments or nonconsecutive periods as provided under ORS 657B.090;
- (8) Impose no additional conditions or restrictions on the use of family leave, medical leave, or safe leave beyond those explicitly authorized by ORS chapter 657B and applicable administrative rules, unless otherwise stated in ORS 657B.210 through ORS 657B.260;
- (9) Provide that the cost to employees covered by an equivalent plan shall not be greater than the costs charged to employees under ORS 657B.150 and determined annually by OAR 471-070-3010;
- (10) Ensure employee contributions that support the equivalent plan must be used for equivalent plan expenses and are not considered part of an employer's assets for any purpose;

- (11) Meet all equivalent plan requirements provided in ORS 657B.210 and applicable administrative rules;
- (12) Provide employee, in writing, reason(s) for denial or partial denial of coverage and benefits provided along with an explanation of the employee's appeal rights. The employee must have at least 20 days from the date of the written denial to request a dispute resolution with the employer. The employee and employer have 20 days to resolve the dispute and for the employer to issue an employer determination letter along with an explanation of appeal rights as described in OAR 471-070-2400; and
- (13) Provide that the equivalent plan administrator must make all reasonable efforts to issue the first payment of benefits to an employee within two weeks after receiving a completed claim or the start of leave, whichever is later.

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

471-070-2230

Equivalent Plans: Reporting Requirements

Employers with an approved employer administered equivalent plan or fully insured equivalent plan must regularly report the following to the department online or in another format approved by the department:

- (1) The Oregon Quarterly Combined Tax Reports detailing all Paid Family and Medical Leave Insurance (PFMLI) wages earned and the employee count as defined in OAR 471-070-3150. The quarterly report is due on or before the last day of the month following the close of the calendar quarter.
- (2) Aggregate annual information on benefit claims and plan expenses for the prior year, include, but is not limited to, the following:
- (a) Total PFMLI benefits paid during the year;
 - (b) Employee PFMLI contributions withheld from each employee's wages during the year;
 - (c) Number of claims received during the year;
 - (d) Qualifying leave purposes approved during the year;
 - (e) Number of claims denied during the year;
 - (f) Reason(s) for denial of any claims denied during the year; and
 - (g) Financial information regarding the administrative cost for the plan.
- (3) Employers must report the aggregate information specified in section (2) of this rule annually within 30 days of each anniversary of the effective date of the equivalent plan in the manner and format required by the department.

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

[Stat. Auth.: 657B.340; Stats. Implemented: ORS 657B.210, 657B.250]

471-070-2240

Equivalent Plans: Recordkeeping and Department Review

(1) Employers with an approved equivalent plan must, for a rolling period of six years from the date the equivalent plan became effective and each year thereafter, retain in the employer's records all of the following related to the equivalent plan:

- (a) Oregon Quarterly Combined Tax Reports;
- (b) Information and records relating to the equivalent plan, including but not limited to:

- (A) Any amendments to the equivalent plan;
- (B) Information regarding any disputes and appeals;
- (C) Financial information regarding the administrative cost, maintenance, and claim documentation for the plan; and
- (D) Copy of the written notice provided to employees.

(c) Employee leave applications with the current status of pending, approved, or denied; and

(d) Records regarding any employee leave taken under the equivalent plan and the total amount of benefits paid or denied during the leave.

(2) The records identified in section (1) of this rule must be provided to the department for review upon request, with reasonable notice to the employer. The department may request to review the records at any time.

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

471-070-2280

Equivalent Plans: Solvency Documentation, Deposit, Bond, or Letter of Credit

For the purposes of ORS 657B.210, if an employer has an employer administered equivalent plan, the employer must furnish to the department a deposit, bond, or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, in a form and amount acceptable to the director.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.190, 657B.210]

471-070-2400

Equivalent Plans: Disputes between an Equivalent Plan Employer and Employee, Request for Hearing

(1) As required by ORS 657B.420, the department will provide a dispute resolution process to assist in resolving disputes between employers and employees regarding coverage and benefits provided under an employer's approved equivalent plan if the dispute is not resolved.

(2) The employee must provide to the employer a request for dispute resolution within 20 days of the denial or partial denial of coverage and benefits provided. The employee and employer must try and resolve the dispute within 20 days of the employer receiving the dispute and the employer must issue an employer determination letter to the employee.

(3) In the event that the employee and employer are unable to resolve the dispute under the dispute resolution process offered by the employer, the employee may appeal by requesting an administrative hearing facilitated by the Office of Administrative Hearings in accordance with the process established by administrative rule under ORS 657B.410. The administrative hearing request must:

(a) Be in writing and may be filed online or in another format approved by the department.

(b) Include a copy of the determination letter issued by the employer regarding the dispute and any documents related to the dispute, including documents supporting or referencing the employer's determination.

(c) Be received within 20 days of the issuance of the employer's determination letter.

(4) The payment of any benefits not placed in issue by the request for the administrative hearing shall continue during the appeal process.

[Stat. Auth.: ORS 657B.420; Stats. Implemented: ORS 183.635, 657B.420]

471-070-2450

Equivalent Plans: Termination by the Department

- (1) The department may terminate an employer's equivalent plan due to reasons including, but not limited to:
 - (a) Misuse of employee contributions received or retained by the employer;
 - (b) Failure to adhere to the department-approved equivalent plan or to report substantive equivalent plan changes to the department;
 - (c) Failure to adhere to applicable Paid Family and Medical Leave Insurance (PFMLI) program requirements, including but not limited to OAR 471-070-2220 and OAR 471-070-2230; or
 - (d) Increased risk of inability to pay benefits due to employer insolvency.
- (2) If the department seeks to terminate an equivalent plan, the department will send the employer a notice of termination to the employer's last known address or via other means as agreed upon by the employer. The letter must provide:
 - (a) The reason(s) for the termination;
 - (b) Instructions on how to resolve the reason(s) for termination; and
 - (c) The effective date of termination, which will take effect absent further specified action by or on behalf of the employer.
- (3) An employer may appeal from the notice of termination in accordance with administrative rules under ORS 657B.410.
- (4) The employer must notify all employees of any equivalent plan termination within ten business days of the date on the notice of termination sent by the department.
- (5) All applicable equivalent plan requirements, including but not limited to those outlined within OAR 471-070-2220 and 471-070-2230, remain in effect until the effective date of any termination.
- (6) Upon the effective date of the termination of an equivalent plan, the employer must remit to the department a list of all eligible employees with pending and current weekly benefits, the amount of leave taken and remaining, and the reason for the leave.
- (7) Upon the effective date of the termination of an equivalent plan, the employer must remit to the department a list indicating the reason for the amount of leave taken by each eligible employee during the prior benefit year.
- (8) The employer must continue to pay benefits under the terms of the equivalent plan to eligible employees that were receiving benefits under the equivalent plan on the effective date of termination until the total amount of the benefit claim is paid or the duration of leave ends, whichever occurs first. If the employer does not pay the benefits, the state will pay the benefits in accordance 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, provided the employee's remaining leave does not exceed the state's allocated number of benefit weeks for the qualifying event, in accordance with ORS 657B.020. The department will seek reimbursement from the employer for the benefit amount that was paid by the state to the eligible employee on the employer's behalf. Interest upon the amount due from the employer shall accrue from the date of termination until the benefit amounts are paid, in accordance with ORS 657B.320(3).
- (9) Upon the effective date of the termination of an equivalent plan, the employer must immediately remit to the department any contributions withheld from employee wages that remain in the possession of the employer. Interest upon the contribution amount due from the employer shall accrue from the date of termination until paid, in accordance with ORS 657B.320(3).

(10) Upon the effective date of an equivalent plan termination, the employer must begin collecting and remitting employee contributions and paying employer contributions, in accordance with ORS 657B.150 and other applicable statutes and rules.

(11) After the department terminates an equivalent plan, the employer or a successor in interest may not reapply for an equivalent plan approval within three years following the date of termination.

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

471-070-2455

Equivalent Plans: Termination by Successor in Interest

(1) A successor in interest may only request to terminate an equivalent plan that was in effect at the date of acquisition if there is a substantial reduction of personnel, defined in OAR 471-070-2200, resulting from the acquisition in accordance with ORS 657B.260.

(2) A successor in interest that is eligible to terminate under section (1) of this rule may request an equivalent plan termination by submitting a request online or in another method prescribed by the department within 90 days after becoming a successor in interest. The successor in interest must provide written documentation of the acquisition and resulting reduction of personnel, as required by the department.

(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 sections (4) through (10) of OAR 471-070-2450.

(4) If a request to terminate is denied, the department will notify the successor in interest of the reason for the denial. The successor in interest may appeal the decision to denying 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 OAR 471-070-2460.

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

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

471-070-2460

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 method 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 30 days from the later of the following dates:

- (a) The date the withdrawal form is received by the department;
- (b) The date that the equivalent plan has been in effect for one year; or
- (c) The effective date of the withdrawal requested by the employer.

(3) The employer must provide notice of the withdrawal from an equivalent plan to its employees at least 30 days prior to the effective date of withdrawal. The notice, at a minimum, must include the effective date of the equivalent plan withdrawal and information about the state plan in accordance with ORS 657B.440.

(4) All equivalent plan requirements, including but not limited to those included in OAR 471-070-2220 and 471-070-2230, remain in effect until the effective date of the withdrawal, except as specified in section (5) of this rule.

(5) The employer must continue to pay benefits under the terms of the equivalent plan to eligible employees that were receiving 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.

(6) Upon the effective date of the withdrawal of an equivalent plan, the employer must begin collecting and remitting employee contributions and paying employer contributions, in accordance with ORS 657B.150 and other applicable statutes and rules.

(7) Upon withdrawal of an equivalent plan, the employer must immediately remit to the department any contributions withheld from employee wages that remain in the possession of the employer upon the effective date of the withdrawal, minus an amount equal to the amount of any benefits paid as required under section (5) of this rule. The remittance will be deposited into the PFMLI Trust Fund. Interest upon the amount due from the employer shall accrue from the date of the withdrawal until paid, in accordance with ORS 657B.320(3).

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

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