State of Oregon
Employment Department
Paid Family and Medical Leave Insurance

March 3, 2022

Paid Family and Medical Leave Insurance (PFMLI)
Proposed Oregon Administrative Rules - Batch 3

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Benefits

ORS 657B.010 through ORS 657B.120 establishes benefit claim administration for Paid Family and Medical Leave Insurance (PFMLI). The below rules provides further details on aspects of benefits, like who is eligible for benefits, how to file an application, how to file a weekly leave report, what verification is needed, required communication to employers, and penalty amounts . The definition section may be expanded and reorganized before formal rulemaking. We recognize that not all the rules related to benefits are included in this compilation and additional rules related to PFMLI benefits are needed.

471-070-1000 - Benefits: Definitions

(1) "Application" means the process in which a covered individual submits the required information and documentation described in OAR 471-070-1100 to request benefits for a period of leave. Approval of an application establishes a claim.

(2) "Average weekly wage" means the amount calculated by the department as the state average weekly covered wage under ORS 657.150 (4)(e) as determined not more than once per year. The average weekly wage is:

(a) Set for each fiscal year beginning July 1 and ending June 30 of the following year; and

(b) Applied for the calculation of weekly benefit amounts for benefit years starting the first full week following July 1.

(3) "Benefit year" means a period of 52 consecutive weeks beginning on the Sunday immediately preceding the day that family, medical, or safe leave commences for the claimant, except that the benefit year shall be 53 weeks if a 52-week benefit year would result in an overlap of any quarter of the base year of a previously filed valid claim. A claimant may only have one valid benefit year at a time.

(4) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(5) "Care," as the term is used in ORS 657B.010(17)(a)(B), means physical or psychological assistance as used for leave taken to care for a family member with a serious health condition.

(a) "Physical assistance" means assistance attending to a family member's basic medical, hygienic, safety, or nutritional needs when that family member is unable to attend to those needs themselves, or transporting the family member to a health care provider when the family member is unable to transport themselves.

(b) "Psychological assistance" means providing comfort, reassurance, counseling, or therapy to a family member, or completing administrative tasks for the family member, or arranging for changes in the family member's care, such as transfer to a nursing home.

(6) "Child" as the term is used for family leave to care for and bond with a child during the first year after the child's birth, foster placement, or adoption, and as the term is used for a safe leave purpose described in ORS 659A.272, means an individual described in ORS 657B.010(6) and that is:

(a) Under the age of 18; or

(b) Age 18 or older as an adult dependent substantially limited by a physical or mental impairment as defined by ORS 659A.104.

(7) "Claim" means a period of Paid Family and Medical Leave Insurance (PFMLI) benefits that starts with an application for benefits and continues through the duration of the approved leave until the approved leave or benefit amount has been exhausted or the approved timeframe for the leave has been reached. A claimant may have multiple claims in a benefit year, but may not be approved for more than the allowable benefit or leave amount as described in OAR 471-070-1030.

(8) "Claimant" means an individual that has submitted an application or established a claim for benefits.

(9) "Covered Income" means taxable income from self-employment, as defined in OAR 471-070-2000, that is paid to and reported by a self-employed individual for periods for which the individual elected coverage under ORS 657B.130 and in accordance with OAR 471-070-2010. The covered income is included in the base year or alternate base year and is used for determining the self-employed individual's weekly benefit amount.

(10) "Covered Wages" means wages that are paid and reported for an employee, as defined in ORS 657B.010(13), or an employee of a tribal government who has elected coverage under ORS 657B.130. Covered wages are included in the base year or alternate base year and are used for determining the employee's weekly benefit amount.

(11) "Domestic violence," as the term is used for a safe leave purpose described in ORS 659A.272, means abuse as defined in ORS 107.705.

(12) "Harassment," as the term is used for a safe leave purpose described in ORS 659A.272, means the crime of harassment described in ORS 166.065.

(13) "Health care provider" means:

(a) A person who is primarily responsible for providing health care to the claimant or the family member of the claimant before or during a period of PFMLI leave, who is licensed or certified to practice in accordance with the laws of the state or country in which they practice, who is performing within the scope of the person's professional license or certificate, and who is:

(A) A chiropractic physician, but only to the extent the chiropractic physician provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays;

(B) A dentist;

(C) A direct entry midwife;

(D) A naturopath;

(E) A nurse practitioner;

(F) A nurse practitioner specializing in nurse-midwifery;

(G) An optometrist;

(H) A physician;

(I) A physician's assistant;

(J) A psychologist;

(K) A registered nurse; or

(L) A regulated social worker.

(b) A person who is primarily responsible for the treatment of the claimant or the family member of the claimant solely through spiritual means before or during a period of PFMLI leave, including but not limited to a Christian Science practitioner.

(14) "Serious health condition" means an illness, injury, impairment, or physical or mental condition of a claimant or their family member that:

(a) Requires inpatient care in a medical care facility such as a hospital, hospice, or residential facility such as a nursing home;

(b) In the medical judgement of the treating health care provider poses an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;

(c) Requires constant or continuing care, including home care administered by a health care professional;

(d) Involves a period of incapacity. "Incapacity" is the inability to perform at least one essential job function, or to attend school or perform regular daily activities for more than three consecutive calendar days. A period of incapacity includes any subsequent required treatment or recovery period relating to the same condition. The incapacity must involve one of the following:

(A) Two or more treatments by a health care provider; or

(B) One treatment plus a regimen of continuing care.

(e) Results in a period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity, such as asthma, diabetes, or epilepsy;

(f) Involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's Disease, a severe stroke, or terminal stages of a disease. The employee or family member must be under the continuing care of a health care provider, but need not be receiving active treatment;

(g) Involves multiple treatments for restorative surgery or for a condition such as chemotherapy for cancer, physical therapy for arthritis, or dialysis for kidney disease that if not treated would likely result in incapacity of more than three calendar days;

(h) Involves any period of disability due to pregnancy, childbirth, miscarriage or stillbirth, or period of absence for prenatal care; or

(i) Involves any period of absence from work for the donation of a body part, organ, or tissue, including preoperative or diagnostic services, surgery, post-operative treatment, and recovery.

(15) "Sexual Assault," as the term is used for a safe leave purpose described in ORS 659A.272, means any sexual offense described in ORS 163.305 to 163.467, 163.472 or 163.525.

(16) "Stalking," as the term is used for a safe leave purpose described in ORS 659A.272, means:

(a) The crime of stalking described in ORS 163.732; or

(b) A situation that results in a victim obtaining a court's stalking protective order or a temporary court's stalking protective order under ORS 30.866.

(17) "Weekly Leave Report" means the report submitted by a claimant to the department for each week in which leave is taken during a claim, which provides the amount of leave taken in the work week and any other information needed by the department to determine the eligibility for and the amount of PFMLI benefit payments for that work week.

(18) "Work day" means an increment of a work week. The number of work days in a work week is based on the average number of work days worked by an employee at all employment. There are a maximum of seven work days in a work week. If a work day spans two work days, such as a shift beginning on day one at 10 p.m. and ending on the next day at 5 a.m. the next day, which counts as one work day.

(19) "Work week" means seven days beginning on a Sunday at 12:01 a.m. and ending on the following Saturday at midnight. If a work day spans two work weeks, such as a shift beginning on Saturday of one work week and ending on Sunday of the next work week, then the work day is included in the work week in which the shift began. If a claimant works a variable or irregular schedule, the number of work days in a work week is determined by counting the total number of work days worked in the preceding 12 work weeks and dividing the total by 12 and rounding down to the nearest whole number.

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.010, 657B.090]

471-070-1010 - Benefits: Eligibility and Qualification for Benefits

(1) For an individual to be eligible to receive Paid Family and Medical Leave Insurance (PFMLI) benefits, the individual must:

(a) Be one of the following:

(A) An employee;

(B) A self-employed individual that has elected coverage under ORS 657B.130 and in accordance with OAR 471-070-2010 and whose coverage is currently in effect; or

(C) An employee of a tribal government, where the tribal government has elected coverage under ORS 657B.130 and where the tribal government's coverage is currently in effect.

(b) Earn at least:

(A) $1,000 in covered wages in either the base year or alternate base year;

(B) $1,000 in covered income in either the base year or alternate base year; or

(C) $1,000 in a combination of covered wages and covered income in either the base year or alternate base year.

(c) Contribute to the PFMLI Fund established under ORS 657B.430 in accordance with ORS 657B.150 and OAR 471-070-2030 during the base year or alternate base year, as applicable;

(d) Experience a qualifying purpose for benefits under ORS 657B.020;

(e) Have current Oregon employment or self-employment for which they are requesting leave from work;

(f) Submit a claim for benefits in accordance with all requirements under ORS 657B.090, OAR 471-070-1100, and submit the required weekly leave reports in accordance with OAR 471-070-1430;

(g) Have not reached their maximum paid leave and benefit amounts under ORS 657B.020 and OAR 471-070-1030 in the active benefit year; and

(h) Have no current disqualifications from receiving benefits due to:

(A) The individual being eligible to receive Workers' Compensation under ORS chapter 656, or Unemployment Insurance benefits under ORS chapter 657; or

(B) A director determination under ORS 657B.120 that the individual previously willfully made a false statement or willfully failed to report a material fact in order to obtain benefits.

(2) An individual may not exceed 12 weeks of paid leave per child when taking family leave for the purpose of caring for and bonding with a child during the first year after the child's birth or during the first year after the placement of the child through foster care or adoption, regardless of whether that individual has started a new benefit year and is otherwise eligible.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.015, 657B.020]

471-070-1020 - Benefits: Assignment of Wages and Income

(1) For purposes of Paid Family and Medical Leave Insurance (PFMLI) benefits, covered wages shall be assigned to the calendar quarter in which they are paid, in the same manner that PFMLI contributions are payable pursuant to ORS 657B.150.

(2) For purpose of PFMLI benefits, covered income shall be assigned to the quarters in which the contributions are paid in accordance with OAR 471-070-2030.

(3) Covered wages and covered income in a calendar quarter that is included in the base year or alternate base year of a claim for benefits may not be included in a different base year or alternate base year of any subsequent claim.

[Stat. Auth.: 657B.340; Stats. Implemented: ORS 657B.050]

471-070-1030 - Benefits: Maximum Amount of Benefits in a Benefit Year

In any given benefit year, a claimant shall not receive Paid Family and Medical Leave Insurance benefits that exceed an amount equal to:

(1) The employee's weekly benefit amount multiplied by 12 for any combination of family, medical, or safe leave; or

(2) The employee's weekly benefit amount multiplied by 14 for any combination of family, medical, or safe leave combined with two additional weeks of leave for limitations related to pregnancy.

[Stat. Auth.: 657B.340; Stats. Implemented: ORS 657B.020, 657B.050]

471-070-1100 - Benefits: Application for Benefits

(1) To request Paid Family and Medical Leave Insurance (PFMLI) benefits provided under the state plan established in ORS 657B.340, a claimant must submit an application for benefits. An application must be submitted online or by another method approved by the department. For the application to be approved by the department, the application must be complete and must include, but is not limited to, the following:

(a) Information about the claimant, including:

(A) First and last name;

(B) Date of birth;

(C) Social Security Number or Individual Taxpayer Identification Number; and

(D) Contact information, including mailing address and telephone number.

(b) Documentation verifying the claimant's identity;

(c) Information about the claimant's current employment or self-employment for which they are requesting leave from work:

(A) Business name(s) and dates of employment or self-employment;

(B) Business address and contact information for all employers or self-employed businesses;

(C) Average number of work days worked per work week; and

(D) Any current breaks from work or anticipated future breaks from work that are unrelated to PFMLI leave.

(d) Information about the notice given to any employers under ORS 657B.040 and OAR 471-070-1310, if applicable, and the date(s) any notice was given;

(e) Information about the claimant's leave schedule, including:

(A) Employer(s) from which leave is being taken;

(B) Anticipated leave dates; and

(C) Whether the leave is to be taken in consecutive, or nonconsecutive, periods.

(f) The type of leave taken by the claimant, which must be one of the following:

(A) Family leave;

(B) Medical leave; or

(C) Safe leave.

(g) Verification of the reason for the leave, including:

(A) For family leave to care for or bond with a child, verification consistent with OAR 471-070-1110;

(B) For family leave to care for a family member with a serious health condition, verification consistent with OAR 471-070-1120 and an attestation that the claimant has a relationship equal to "family member" under ORS 657B.010, and is caring for, a family member with a serious health condition;

(C) For medical leave, verification consistent with OAR 471-070-1120; or

(D) For safe leave, verification consistent with OAR 471-070-1130.

(h) If the claimant is requesting up to two additional weeks of leave for limitations related to pregnancy, childbirth or a related medical condition, documentation that the claimant is currently pregnant or was pregnant within the year prior to the start of leave; and

(i) A written or electronically signed statement declaring under oath that the information provided in support of the application for PFMLI benefits is true and correct to the best of the individual's knowledge.

(2) An employee that has PFMLI coverage solely through an employer with an equivalent plan approved under ORS 657B.210, must apply for PFMLI benefits by following the employer's equivalent plan application guidelines.

(3) An employee that is simultaneously covered by more than one employer's equivalent plan approved under ORS 657B.210 or that is simultaneously covered by the state plan and at least one employer with an equivalent plan, must apply separately under all plans they are covered under by following the respective application guidelines for each plan.

(4) A complete application for PFMLI may be submitted to the department up to 30 calendar days prior to the start of family, medical, or safe leave and up to 30 calendar days after the start of leave. Applications submitted outside of this timeframe, either early or late, will be denied, except in cases where a claimant can demonstrate an application was submitted late for reasons that constitute good cause under section (6) of this rule.

(5) In cases where a claimant demonstrates good cause for the late submission of an application, the department may accept the application up to 180 calendar days after the start of leave.

(6) Good cause for the late submission of an application is determined at the discretion of the department and includes, but is not limited to, the following:

(a) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents an individual from timely filing an application; or

(b) A demonstrated inability to reasonably access a means to file an application in a timely manner, such as an inability to file an application due to a natural disaster or a significant and prolonged department system outage.

[Stat. Auth.: ORS 657B.090, 657B.100, 657B.340; Stats. Implemented: ORS 657B.090, 657B.100]

471-070-1110 - Benefits: Verification of Family Leave to Care for and Bond with a Child

(1) A claimant applying for Paid Family and Medical Leave Insurance (PFMLI) benefits to care for and bond with a child during the first year after the child's birth must provide one of the following forms of verification:

(a) The child's birth certificate;

(b) A Consular Report of Birth Abroad;

(c) A document issued by a health care provider of the child or pregnant parent;

(d) A hospital admission form associated with delivery; or

(e) Another document approved by the department for this purpose.

(2) A claimant applying for PFMLI benefits to care for and bond with a child during the first year after the placement of the child through foster care or adoption must provide one of the following forms of verification:

(a) A copy of a court order verifying placement;

(b) A letter signed by the attorney representing the prospective foster or adoptive parent that confirms the placement;

(c) A document from the foster care or adoption agency involved in the placement that confirms the placement;

(d) A document for the child issued by the United States Citizenship and Immigration Services; or

(e) Another document approved by the department for this purpose.

(3) The verification required in sections (1) and (2) of this rule must show the following:

(a) Claimant's first and last name as parent or guardian of the child after birth or placement of the child through foster care or adoption;

(b) Child's first and last name; and

(c) Date of the child's birth or placement.

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.090]

471-070-1120 - Benefits: Verification of a Serious Health Condition

A claimant applying for Paid Family and Medical Leave Insurance (PFMLI) benefits for their own serious health condition or to care for a family member with a serious health condition must submit verification of the serious health condition from a health care provider that includes:

(1) The health care provider's first and last name, type of medical practice/specialization, and their contact information, including mailing address and telephone number;

(2) The patient's first and last name;

(3) The claimant's first and last name, when different from the patient identified in section (2) of this rule;

(3) A brief description of the diagnosis;

(4) The approximate date on which the serious health condition commenced, and reasonable estimation of the duration of the condition or recovery period for the patient; and

(5) Other information as requested by the department to determine eligibility for the PFMLI benefits; including:

(a) For medical leave, information sufficient to establish that the claimant has a serious health condition; or

(b) For family leave, information sufficient to establish that the claimant's family member has a serious health condition.

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.090]

471-070-1130 - Benefits: Verification of Safe Leave

(1) A claimant applying for Paid Family and Medical Leave Insurance benefits for safe leave must provide verification of the basis for the safe leave, including any of the following forms of documentation:

(a) A copy of a police report indicating that the claimant or the claimant's minor child was a victim of domestic violence, harassment, sexual assault, or stalking;

(b) A copy of a protective order or other evidence from a court, administrative agency, or attorney that the claimant appeared in or was preparing for a civil, criminal, or administrative proceeding related to domestic violence, harassment, sexual assault, or stalking; or

(c) Documentation from an attorney, law enforcement officer, health care provider, licensed mental health professional or counselor, member of the clergy, or victim services provider that the claimant or the claimant's child was undergoing treatment or counseling, obtaining services, or relocating as a result of domestic violence, harassment, sexual assault, or stalking.

(2) In cases where a claimant can demonstrate good cause for not providing one of the forms of documentation in section (1) of this rule, the claimant may instead provide a written statement attesting that they are taking eligible safe leave. Good cause for not providing the documentation is determined at the discretion of the department and includes, but is not limited to, the following:

(a) Difficulty obtaining verification due to a lack of access to services; or

(b) Concerns for the safety of the claimant or the claimant's child.

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.090]

471-070-1200 - Benefits: Claim Processing; Additional Information

In addition to the information required from a claimant under OAR 471-070-1100 and OAR 471-070-1430, the department may request that a claimant provide additional information necessary to establish facts relating to eligibility or qualification for benefits. Unless a time frame is otherwise defined under statute or rule or is specified by an authorized department representative, the claimant must respond to all requests for information within the following time frames:

(1) 14 calendar days from the date of the request for information, if the request was sent by mail to the claimant's last known address as shown in the department's records.

(2) Seven calendar days from the date of the request for information, if the request was sent by telephone message, fax, email, or other electronic means.

(3) When the response to the request for information is sent to the department by mail, the date of the response shall be the date of the postmark affixed by the United States Postal Service. In the absence of a postmarked date, the date of the response shall be the most probable date of mailing as determined by the department.

(4) The time frames specified in sections (1) and (2) of this rule may be extended at the department's discretion when a claimant can demonstrate they failed to provide a timely response for good cause. Good cause exists when the claimant responds to the department as soon as practicable and establishes by satisfactory evidence that circumstances beyond

the claimant's control prevented the claimant from providing a timely response, including, but not limited to, an incapacitating serious health condition or a situation related to safe leave.

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.090]

471-070-1210 - Benefits: Updates to Application for Leave; Additional Claims

(1) After submitting an application for benefits as specified in OAR 471-070-1100, a claimant must notify the department of any changes to the information provided on their application, including, but not limited to, changes to the claimant's:

(a) Contact information;

(b) Employer(s) or self-employment;

(c) Average number of work days worked per work week;

(d) Leave schedule; or

(e) Qualifying purpose for benefits.

(2) Failure to notify the department of any changes to the information provided on an application for benefits as specified in section (1) of this rule, may result in a delay, denial, overpayment, or disqualification of weekly benefits.

(3) A claimant shall notify the department if the duration of leave is shorter than originally requested in order for the leave to be used for a future claim within the same benefit year.

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.090, 657B.100]

471-070-1220 - Benefits: Cancellation of a Claim

A claim may be cancelled at any time provided:

(1) A request to cancel has been submitted online or in another method approved by the department;

(2) A weekly leave report has not been submitted;

(3) Benefits have not been paid for the claim. Benefits are considered paid if a payment has been mailed or electronically sent to the claimant's bank or other financial institution, or the payment was distributed but intercepted in accordance with (overpayment rules); and

(4) No disqualification has been assessed and no appeal of a disqualification or denial has been requested.

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.090]

471-070-1230 - Benefits: Administrative Decisions on Applications and Weekly Leave Reports

(1) An administrative decision shall be made on timely submitted applications and weekly leave reports and shall be based on information available from the following sources: the department's records, information provided or obtained from the claimant, employers, or other sources as appropriate, including, but not limited to, health care providers and other state agencies.

(2) Written notice of administrative decisions shall be provided to the interested parties and delivered to the party' last known address or delivered electronically when permitted, if the individual has opted for electronic notification, as shown in the department's records.

(3) The administrative decision shall contain, at a minimum:

(a) Identification of the parties;

(b) Identification of the issues, citing the laws and rules involved;

(c) The department's conclusion and the facts and reasons underlying those conclusions;

(d) A statement allowing or denying benefits;

(e) The date of the decision;

(f) The date the decision will become final; and

(g) A statement advising the parties of their appeal rights and the manner in which an appeal may be submitted.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.090, 657B.100]

471-070-1310 - Benefits: Employee Notice to Employers Prior to Commencing Leave

(1) If the leave is foreseeable, an employer may require an eligible employee to give written notice at least 30 days before commencing a period of paid family, medical, or safe leave. Examples of foreseeable leave includes, but are not limited to, an expected birth, planned placement of a child, or a scheduled medical treatment for a serious health condition of the eligible employee or a family member of the eligible employee.

(2) If the leave is not foreseeable, an eligible employee may commence leave without 30 days advance notice. However, the employer may require that the eligible employee must give oral notice to the employer within 24 hours of the commencement of the leave and must provide written notice within three days after the commencement of leave. The oral notice that may be required can be given by any other person on behalf of the eligible employee taking leave. Leave circumstances that are not foreseeable include, but are not limited to, an unexpected serious health condition of the eligible employee or a family member of the eligible employee, a premature birth, an unexpected adoption, an unexpected foster placement by or with the eligible employee, or for safe leave.

(3) An employer may require written notice to include:

(a) Employee's full name;

(b) Type of leave;

(c) Explanation of the need for leave; and

(d) Anticipated timing and duration of leave.

(4) Written notice includes, but is not limited to, handwritten or typed notices, and electronic communication such as text messages and email.

(5) An employer that requires eligible employees to provide a written notice before the eligible employee commences leave, or immediately thereafter, as applicable, must outline the requirements in the employer's written policy and procedures. A copy of the written policy and procedure must be provided to all eligible employees at the time of hire and each time the policy and procedure changes and in the language that the employer typically uses to communicate with the employee. If the employer requires the employee to provide a written notice, the policy and procedures must include a description of the penalties under section (8) of this rule that may be imposed by the department for not complying with the employer's notice requirements.

(6) The department will notify the employer pursuant to OAR 471-070-1320(1) when a claimant has been approved for paid family, medical, or safe leave benefits. The employer may respond to the notice from the department within seven calendar days from the date of the notice to report if the claimant did not provide the required notice per the employer's written policy and procedures. The employer may respond to the department's notice either online or by another method approved by the department. The response must include:

(a) A description of the notice, if any, that was provided by the employee to the employer about the leave and the date it was provided;

(b) A copy of the written policy and procedure provided to employees under section (5) of this rule; and

(c) The date when the written policy and procedure was provided to the employee.

(7) If the employer does not respond to the department's notice as described in section (6) of this rule within seven calendar days from the date of the notice, the claimant's application for benefits shall be processed using the information available in the department's records.

(8) If the department determines that the claimant did not provide the required leave notice to the employer, the department may impose a penalty by issuing a decision and reducing the first weekly benefit amount payable under ORS 657B.090 by up to 25 percent. The penalty will be a 25 percent reduction, except when it would reduce the weekly benefit amount below the minimum benefit amount provided in ORS 657B.050(2)(b).

Example 1: Sanomi did not provide the required notice to their employer about taking family leave. Sanomi's weekly benefit amount is $140. A 25 percent reduction of their benefit amount in the first week equals $35 ($140 x .25), so their first weekly benefit amount would be reduced to $105 ($140 - $35). However, the minimum weekly benefit amount is $120, so Sanomi's first weekly benefit payment would be $120 instead.

(9) For leave taken in increments of less than a full work week, the total penalty amount shall be divided by the number of work day increments contained in a work week and deducted from benefits paid for that number of work days.

Example 2: Joy did not provide the employer with the required leave notice. Joy normally works an average of four work days in a work week and was unable to work the entire week due to taking medical leave. Joy's weekly benefit amount is $400, which is prorated to $100 per work day of leave because Joy only works an average of four days in a work week. The penalty amount is $25 per work day ($100 x .25). Joy's benefit amount is reduced to $75 ($100 per work day minus $25 penalty per work day) for each of the first four work days of leave taken, as four days equals one work week.

(10) The employee may request a waiver of the benefit reduction penalty for good cause. Good cause will be found when the employee establishes, by satisfactory evidence, that factors or circumstances beyond the employee's reasonable control prevented the employee from providing the required notice to the employer. Good cause includes, but is not limited to, an incapacitating serious health condition or a situation related to safe leave, for which the employee provided notice to the employer as soon as was practicable.

(11) If an employee receives their first weekly benefit payment and the department subsequently determines that proper notice to the employer was not made by the employee, an amount equal to the 25 percent benefit reduction penalty will be considered an erroneous overpayment, and that penalty amount may be collected from the employee in accordance with ORS 657B.120.

[Stat. Auth.: ORS 657B.040, 657B.340; Stats. Implemented: ORS 657B.040]

471-070-1320 - Benefits: Communication to Employers about Employee Application for Benefits

(1) After a claimant has filed an application for Paid Family and Medical Leave Insurance (PFMLI) benefits, the department shall notify any employers that the claimant is requesting leave from and provide information about the employee's claim.

(2) Employers may respond to the notice from the department within seven calendar days of the date on the notice to report any additional information about the employee's PFMLI claim. Employers shall respond to the department's notice online or through another method approved by the department. If the employer fails to provide information within seven calendar days, the claimant's application for benefits shall be processed using the information available in the department's records. If the employer later provides additional information, the department may reprocess the claim, taking into account the additional information.

(3) The department may need to determine whether a claimant has coverage under an equivalent plan approved under ORS 657B.210 and the effective dates of any coverage the claimant has, or information about a claim for benefits that the claimant has filed under an equivalent plan. The department may request additional information from the claimant's equivalent plan employer after the claimant files an application with the department. When this information is requested, equivalent plan employers must respond with information to the department's request within seven calendar days from the date on the request for additional information.

(4) After a claimant's application for benefits has been processed by the department and a decision was issued to the claimant, the department shall notify the claimant's employers whether the claimant's application for benefits was approved or denied by the department, and, if approved, the dates and period of leave that the claimant is approved for.

[Stat. Auth.: ORS 657B.040, 657B.340; Stats. Implemented: ORS 657B.040]

471-070-1420 - Benefits: Leave Periods and Increments

(1) A claimant may request family, medical, or safe leave provided under ORS chapter 657B in either consecutive, or nonconsecutive, periods of leave.

(2) Leave may be taken and benefits may be claimed in increments that are equivalent to one work day or one work week. When claiming an increment of less than a fully work week, the number of work days that can be reported during a week is established by the average number of work days worked per week reported by the claimant in their application for benefits.

(3) When benefits are claimed in an increment that is equivalent to one work day, leave must be taken from all employers and from all self-employed work for the entirety of the work day to receive benefits.

Example 1: Kelsey is taking family leave and is currently an employee at a university and an architecture firm. Kelsey works for the university in the morning of her work day and the architecture firm in the evenings on the same work day. Kelsey must take leave from both places of employment for the work day in order to claim benefits for the work day. If Kelsey only missed work from the university due to the family leave for that one work day, it would not qualify for benefits.

(4) When benefits are claimed in an increment that is equivalent to one work week, leave must be taken from all employers and from all self-employed work for the entirety of the work week to receive benefits.

Example 2: Chloe is taking medical leave and is currently an employee at a department store and a self-employed delivery driver. Chloe works four work days total per work week: Monday and Tuesday at the department store and Wednesday and Saturday as a self-employed delivery driver. Chloe must take leave for all four work days from both jobs in order to claim a full work week of benefits. If Chloe only missed work on Monday and Saturday due to medical leave, Chloe would qualify for benefits for two work days instead of a work week.

[Stat. Auth.: 657B.340; Stats. Implemented: ORS 657B.020, 657B.090]

471-070-1430 - Benefits: Weekly Leave Report

(1) In addition to submitting a complete application for benefits, to receive benefits the claimant shall submit a weekly leave report to declare the family, medical, or safe leave taken from employment during the work week. The weekly leave report must be submitted online or by another method approved by the department. For the weekly leave report to be approved, the report must be complete and include the following:

(a) The dates of the work week being claimed;

(b) The amount of family, medical, or safe leave taken during the week in an increment or increments equivalent to work days or a work week;

(c) Whether the claimant is eligible for or received Workers' Compensation under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657 during the work week;

(d) Any changes to the information provided on the application for benefits as outlined in OAR 471-070-1210; and

(e) A written or electronically signed statement declaring under oath that the information provided in support of the weekly leave claim for Paid Family and Medical Leave Insurance benefits is true and correct to the best of the claimant's knowledge.

(2) A claimant may submit a weekly leave report for a work week only after that work week has ended.

(3) A weekly leave report must be submitted no later than four weeks following the end of the work week in which the family, medical, or safe leave was taken. Weekly leave reports submitted after four weeks will be denied and weekly benefits will not be paid for those weeks, except in cases where a claimant can demonstrate that a weekly leave report was submitted late for reasons that constitute good cause as stated in section (5) of this rule.

(4) In cases where a claimant can demonstrate good cause for the late submission of a weekly leave report, the department may accept the weekly leave report and benefits may be payable up to 180 calendar days after the start of leave.

(5) Reasons constituting good cause for the late submission of a weekly leave report is determined at the discretion of the department and include, but are not limited to, the following:

(a) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents a claimant from the timely filing a weekly leave report; or

(b) A demonstrable inability to reasonably access a means to file a weekly leave report in a timely manner, such as an inability to file a leave report due to a natural disaster or a significant and prolonged department system outage.

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.090]

471-070-1440 - Benefits: Weekly Benefit Proration

(1) A claimant that takes leave in work day increments shall be paid a prorated benefit amount based on the number of work days of leave taken in the work week.

(2) The benefit amount paid for a work day is calculated by dividing the claimant's weekly benefit amount by the average number of work days that the claimant would typically work in their work week.

(3) The total benefit amount paid for leave taken in increments is calculated by multiplying the benefit amount paid for a work day by the number of work days of leave taken for the work week, rounded to the nearest whole cent, and not to exceed the weekly benefit amount.

Example 1: Allison submits an application that states their typical work week consists of five work days during the work week. The weekly benefit amount is $1,000.00. Allison files a weekly leave report stating leave was taken for three of the five days that were typically worked in the work week. The weekly benefit amount paid to Allison for this week is $600 [($1,000.00 weekly benefit amount divided by 5 work days) x 3 days on leave in the work week].

Example 2: Lamar submits an application that states their typical work week consists of three work days during the work week. The weekly benefit amount is $400.00. Lamar files a weekly leave report stating they took leave for one of the three days that they typically worked in the work week. The weekly benefit amount paid for this week to Lamar is $133.33 [($400.00 weekly benefit amount divided by 3 work days) x 1 day on leave in the work week].

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.090]

471-070-1450 - Benefits: Benefit Payments

(1) Benefits shall be paid by such method as the director may approve.

(2) The department's primary payment method to any claimant approved to receive Paid Family and Medical Leave Insurance benefits shall be through direct deposit as an electronic funds transfer. "Electronic funds transfer" has the same meaning as provided in ORS 293.525.

(3) Individuals who do not apply for direct deposit will be paid by a stored value card.

[Stat. Auth.: ORS 293.525, 657B.340; Stats. Implemented: ORS 293.525]

471-070-1460 - Benefits: Lost, Stolen, or Destroyed Benefit Checks

(1) For purposes of this rule:

(a) A benefit check is "lost" if the claimant never received an issued check, and the check's whereabouts is unknown or it was received and cannot be found.

(b) A benefit check is "stolen" if the claimant never received an issued check, or it was received and the check was taken or cashed by another without the authorization of the payee, whether or not the other person's identity is known.

(c) A benefit check is "destroyed" if an issued check has not been cashed and has been rendered nonnegotiable.

(d) "Forgery" of a benefit check has the same meaning as provided in ORS 165.007 and further defined in 165.002.

(2) If a benefit check has been issued but not cashed and the claimant completes a sworn statement that the benefit check was lost, stolen, or destroyed; the check will be reissued if at least ten calendar days from the date the original check was issued has elapsed. If the original check and replacement check are both received and cashed by the claimant, the claimant shall be liable for repayment of the overpayment to the department.

(3) If the benefit check has been issued and cashed and it is alleged that the check was not signed by the claimant or the claimant's authorized agent, a determination will be made on the validity of the endorsement:

(a) If the endorsement is determined to be the claimants or the claimant's authorized agent, the director will notify the claimant by letter and no replacement check will be issued;

(b) In the case of forgery, or an unauthorized, non-valid, or lack of endorsement, a replacement check will be issued if the claimant is due benefits, unless the claimant participated in forgery, received any portion of the benefits, or benefited from the funds.

(c) The department will advise the State Treasurer of the forged check.

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