

Meeting:	Advisory Committee				
Date/time:	3/2/2022 1:00 pm (Virtual)				
Location:	Advisory Committee meetings are open to the public with the ability to listen by audio via Zoom. If you have questions about the PFMLI program, please Email us Join ZoomGov Meeting https://www.zoomgov.com/j/1611695979?pwd=Zis5LzdNUDF5dVBNNs9zY1E0cElqQT09				
Attendees:	P (Present)	A (Absent)	C (Conference Caller)	F (Facilitator)	
F	Karen Humelbaugh (Chair)	Linda Herrera (Member)	Eva Rippeteau (Member)	David Gerstenfeld (Executive Sponsor)	
	Amanda Dalton (Member)	Eric Hunter (Member)	Paloma Sparks (Member)	Jeannine Beatrice (Executive Sponsor)	
	Jenny Dresler (Member)	Andrea Paluso (Member)	Jessica Giannettino Villatoro (Member)	Kaitlynn Chritton (Staff)	
	Jason Bouley (Staff)	Shannon Ball (Staff)	Mackenzie Hanley (Staff)	Cameron Buzzell (Staff)	
	Rebeka Gipson- King (Staff)	Kelley Ofoni (Staff)			

Agenda

Time	Docket #	Topic	Presenter
1:00 pm	1.0	Welcome	Karen Madden Humelbaugh
1:05 pm	2.0	Contribution Rate	Ayesha Khalid
1:15 pm	3.0	Legislative Concepts	Shannon Ball

Action Items

Action	Assigned	Date Due	Completed
<i>Send equity framework documents to members once finalized</i>	<i>Karen Humelbaugh</i>		

PFMLI Advisory Committee Docket

Docket Item: 2.0 – Contribution Rate

Docket Summary:

This is an update on the projected PFMLI Trust Fund balance at the end of 2023, with a one percent contribution rate, and the six months reserve solvency requirement. The update is based on DAS Office of Economic Analysis 'Economic and Revenue Forecast' for 2022 Q1, as well as more recent data from Washington State on benefit claims, self-employed opt-in, and employer equivalent plans.

Docket Materials:

PDF – PFMLI 2023 Contribution Rate Proposal 02232022

Staff Recommendation:

None, this is an informational item only.



PFMLI Contribution Rate Proposal

Ayesha Khalid
PFMLI Economist



PFMLI Contribution Rate

- ORS 657B.150 requires:
 - OED Director to set the contribution rate annually.
 - The rate cannot be more than one percent of employee wages up to a maximum of \$132,900 (with 60 percent of the rate being paid by employees and 40 percent by employers).
 - The maximum amount of employee wages adjusted annually by changes in the Consumer Price Index (CPI)-Urban Consumers, West Region.
 - Contribution rate is set so that at the end of the period for which the rate is effective, the balance in the PFMLI trust fund is not less than six months' projected expenditures (ORS 657B.150) and to minimize the volatility of contribution rates.



PFMLI Contribution Rate

- The recommendation to the Advisory Committee for the initial PFMLI contribution rate is to be one percent of employee wages (up to a maximum of \$132,900).
- This recommendation of contribution rate is based on current data and to provide as much advance notice to Oregon employees and employers as possible.
- The final rate is intended to be set in August, after an update to, and chance for any final advice from, the PFMLI Advisory Committee.

PFMLI Contribution Rate

- **Uncertainty in projections:**
 - PFMLI is a new program in Oregon so some key considerations for the initial contribution rate have larger uncertainty than usual projections.
 - Unlike Unemployment Insurance program, which has eight decades of data to analyze for trends, there is no program data for PFMLI yet.
- **General Fund Loan repayment:**
 - The initial contributions in Oregon must not only fund the payment of benefits and ongoing operational expenses but also repay the General Fund Loan for standing up the PFMLI program.



PFMLI Contribution Rate

- While Oregon projections are based in part on other states' PFMLI programs, Oregon's PFMLI program is different:
 - For example, compared to Washington State, Oregon has
 - benefit payments for Safe Leave.
 - 100 percent wage replacement for eligible employees earning less than 65 percent of State Average Weekly Wage.
 - a much lower threshold for benefits eligibility. In Oregon, to be eligible for benefits, employees only need to have earned \$1000 in a base year; in Washington, employees need to work 820 hours or more in base year to be eligible for benefits.
 - Data from other states with recent implementation of PFMLI programs is instructive, but much of it reflects the pandemic time period, which may not be typical of what will be seen in 2023.



PFMLI Contribution Rate

- Growing awareness of PFMLI programs:
 - There is more awareness of the need for PFMLI programs amongst the public now, which suggests there could be higher program uptake in Oregon than earlier anticipated.
- Change in program implementation timeline:
 - The original statutory implementation timeframe provided a year of collecting contributions before any benefits were paid, but with the legislatively adjusted timeframe, the benefits are paid only after eight months.



PFMLI Contribution Rate

- Consequences of low initial contribution rate:
 - If the initial contribution rate is set too low, the PFMLI Trust Fund could run out of money, which means no further benefits would be paid until additional contributions are received.
 - If the initial rate is set such that there are excess reserves in the Trust Fund, the minimum solvency requirement may be achieved with a reduction in the following years' contribution rate.

PFMLI Contribution Rate

- Closely observing the Economic variables:
 - The PFMLI Trust Fund Forecast is updated quarterly based on Office of Economic Analysis (OEA) Economic and Revenue Forecast.
 - The upcoming Economic and Revenue Forecast is in February.
 - If the February Economic and Revenue Forecast changes the PFMLI Trust Fund Forecast such that the statutory solvency requirement is met at a contribution rate lower than one percent, this contribution rate proposal will be updated to reflect that.



- *Solvency Requirement: (as of 11/25/2021)*
Trust Fund End Balance_{CRP} ≥ 6 months' Projected Expenditures

Contribution Rate Period	2023
6 months of Projected Expenditures	452,078,716
Balance of Projected Trust Fund	457,423,775
Difference	5,345,060
Number of months Reserve	6.1

Impact of Proposed Contribution Rate

	Annual Earnings	Weekly Earnings	Annual Employee PFMLI Contributions	Annual Employer PFMLI Contributions	One Week's PFMLI Benefits[1]
Minimum Wage Employee[2]	\$28,080	\$540	\$168.48	\$112.32	\$540
Median Income Employee	\$67,058	\$1,290	\$402.35	\$268.23	\$1,031.69
High Income Employee	\$132,900 or more	\$2,555.78 or more	\$797.40	\$531.60	\$1,428.56

[1] Based on projected State Average Weekly Wage of \$1190.47 in 2023.

[2] Using \$13.50 per hour for 40 hours per week.



PFML Trust Fund Forecast Updates

- The PFML Trust Fund forecast was updated based on:
 - DAS Office of Economic Analysis Economic and Revenue Forecast 2022 Q1
 - Updated information for second year of PFML program (i.e. 2021) in Washington state, specifically:
 - Increase in claims from 6.4% in 2020 to 6.97% in 2021
 - Increase in Self-Employed opt-in
 - Increase in number of Employer Equivalent plans
 - Updated data from Quarterly Workforce Indicators



Trust Fund Quarterly Forecast

*as of 02/23/2022	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024 Q1	2024 Q2
Beginning Fund Balance		22,500	221,148,381	413,854,325	473,135,257	489,399,766
Revenue						
General Fund Loan to PFML Insurance fund						
Collections (begin 1/1/23)		284,238,809	272,869,257	272,421,350	262,573,307	315,538,274
Fees (Employer Equivalent Plans)	22,500				35,000	
Interest and Penalties (Employer)			701,274	700,123	1,349,627	1,621,867
Interest on Fund		169	1,658,613	3,103,907	3,548,514	3,670,498
Subtotal	22,500	284,238,978	275,229,144	276,225,381	267,506,448	320,830,639
Expenditures						
General Fund Loan Repayment		53,162,258				
Benefit Payments (begin 9/3/2023)			68,644,155	205,932,465	233,307,797	233,307,797
Grant Payments				240,892	262,470	262,470
Administrative Costs		9,950,839	13,879,045	10,771,092	17,671,672	13,022,232
Subtotal		63,113,097	82,523,200	216,944,449	251,241,939	246,592,498
Ending Fund Balance	22,500	221,148,381	413,854,325	473,135,257	489,399,766	563,637,906



- *Solvency Requirement: (as of 02/23/2022)*
Trust Fund End Balance_{CRP} ≥ 6 months' Projected Expenditures

Contribution Rate Period	2023
6 months of Projected Expenditures	497,834,437
Balance of Projected Trust Fund	473,135,257
Difference	(24,699,180)
Number of months Reserve	5.7

Thank you



Trust Fund Quarterly Forecast

*as of 11/25/21	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024 Q1	2024 Q2
(A) Beginning Fund Balance		22,500	213,673,384	401,190,037	459,376,587	491,459,682
Revenue						
(B) General Fund Loan to PFML Insurance fund						
(C) Contributions (begin 1/1/23)		276,763,812	265,693,259	265,257,132	255,665,229	308,195,848
(D) Fees (Employer Equivalent Plans)	22,500				22,500	
(E) Interest and Penalties (Employer)			682,832	681,711	1,314,119	1,584,127
(F) Interest on Fund		169	1,602,550	3,008,925	3,445,324	3,685,948
(G) Subtotal (B+C+D+E+F)	22,500	276,763,981	267,978,642	268,947,768	260,447,173	313,465,922
Expenditures						
(H) General Fund Loan Repayment		53,162,258				
(I) Benefit Payments (begin 9/3/2023)			66,582,943	199,748,830	210,448,304	210,448,304
(J) Grant Payments				241,297	244,102	244,102
(K) Administrative Costs		9,950,839	13,879,045	10,771,092	17,671,672	13,022,232
(L) Subtotal (H+I+J+K)		63,113,097	80,461,988	210,761,219	228,364,078	223,714,638
(M) Ending Fund Balance (A+G-L)	22,500	213,673,384	401,190,037	459,376,587	491,459,682	581,210,966



Forecast Data

- UI Tax wage files
 - Annual data for 2005 – 2020; Information on wages, work-hours, employer type
- PFMLI claims data from other states
 - California, New Jersey, Rhode Island, Washington state, Washington D.C, Massachusetts
- Family and Medical Leave Act 2012 & 2018 Survey
- American Community Survey (ACS) 2015-2019 microdata
- OEA employment and wage & salary forecast (as of 2021 Q4)
- Quarterly Workforce Indicators
 - Annual data for 2005 – 2020; Employment and wage by gender and age
- Consumer Price Index-Urban Consumers (West Region)
- OHA Center for Health Statistics for Oregon residents birth rates by age of mother, 2010-2019



Forecast Assumptions

- Trust fund balance estimate is based on repaying GF loan by June 30, 2023
- Contribution rate = 1%
- Quarterly contributions are collected with a one month lag into the following quarter (similar to UI)
- 3.7% of quarterly contributions unpaid each quarter (based on UI average from 2011 to 2020). However, to err on the conservative side, for the first two quarters of 2023, the percentage was doubled to 7.4% to account for employers currently not subject to UI but will be subject to PFMLI



Forecast Assumptions

- Contributions are evenly distributed across the quarters (unlike UI) due to a much higher PFMLI maximum taxable wage of \$132,900 (UI maximum taxable wage is \$43,800) i.e. the PFMLI contributions will begin with first quarter 2023 payroll, but the contributions won't decrease significantly in each of the following quarters like in the UI program
 - Based on the UI wage file data (2019), only four percent of employees earned more than the PFMLI maximum wage amount of \$132,900, whereas about 35 percent of employees earned more than the UI maximum wage amount of \$43,800
- Self-employed elect = 0.46% (based on Washington State's experience); self-employed will only pay the employee portion of 60% of the contribution rate



Forecast Assumptions

- Percentage of eligible employees claiming benefits = 6.5% (based on Washington State's experience)
- Small employer opt-in = 5% beginning September 2023 (when benefits begin) and in 2024 and 2025
 - Small employers that opt-in to pay the employer portion of PFMLI contributions will also be eligible to receive grants to hire temporary workers or to pay for other costs of covering work when employees take PFMLI leave.
- Interest earned on the PFMLI Trust Fund = 0.75% (as PFMLI will most likely be invested in the Oregon Short Term Fund)



Forecast Assumptions

- Expect approximately 90 equivalent plan applications based on Washington State's experience, which had 176 applications (69% were small employers) and approximately double the number of employers as Oregon
- Equivalent plan fee is \$250 for each employer submitting an initial equivalent plan application and \$150 for subsequent year's re-approval applications with no substantial changes.
- All pregnant women will take the two additional weeks for pregnancy disability



Forecast Assumptions

- Per statute
 - For late reports, there is a 0.02% penalty rounded to the nearest \$100. For late payments, there is a 10% penalty, which increases to 50% if there was fraud.
 - For delinquent accounts, there is an annual penalty of 1% of wages for the year. With no current program data, the estimates are based on 1/4th of the UI interest and penalties as a percentage of UI collections for the first two quarters of 2023 and half of the UI interest and penalties after that (given the UI program has a similar penalty and interest structure but a more established and older program)
- Compared to UI, PFMLI is a new program so employers may not receive as many penalties the first year or two of the program as there is a strong focus on employer education about reporting and contribution payment requirements. However, policy still needs to be determined to figure out how soon program wants to begin imposing penalties and interest



PFMLI Advisory Committee Docket

Docket Item: 3.0 – Legislative Concepts

Docket Summary:

Even though the 2022 Legislative Session hasn't ended, the 2023 legislative concept proposal deadline for the PFMLI Division is rapidly approaching; all agency legislative concepts must be to the Department of Administrative (DAS) Service no later than April 15, 2022.

State agencies can only submit requests for legislative concepts every other year. In addition to submitting the concepts with DAS, state agencies must seek approval from the Governor's Office prior to submitting any legislative concept requests. The department has already received preliminary approval from the Governor's Office for three PFMLI related concepts; 1) non-controversial topics; 2) controversial topics; and 3) information sharing.

At this time, the PFMLI Division has 13 different legislative concepts that are proposing to the Advisory Committee for discussion and approval. The concepts range from statutory corrections, to minor wording changes, to information sharing, and to policy discussions.

Attached are 13 individual one pagers that summarize the legislative concept proposal, provides the reason the legislative concept is needed, and draft statutory language. Please review the attached 13 legislative concept one-pagers and respond to the doodle poll with the top five legislative concept topics you would like to discuss in greater detail during the March Advisory Committee meeting. The PFMLI Division welcomes additional feedback via email to Shannon.L.Ball@employ.oregon.gov

13a in the docket material below is a compilation of all the statutory change proposals in the 13 one pager legislative concepts in one place so you can see how all the changes combined work together.

PFMLI Division recognizes there are additional topics that need further discussion that are not included in the 13 one-pagers but will be brought forward in the near future:

- Collections
- Alignment of PFMLI & OFLA

Docket Materials:

PDF – LC One-Pagers

- Eligible Employee One Pager LC
- Defining Employment One Pager LC
- Maximum Wages per Employer One Pager LC
- Use of OAH for Disputes One Pager LC
- Final Orders One Pager LC

- Statutory Reference Change One Pager LC
- EP Penalty Provisions One Pager LC
- Confidentiality One Pager LC
- Minimum Benefit Payments One Pager LC
- Small Balance Adjustments One Pager LC
- Annual Filer One Pager LC
- EP New Hire Coverage One Pager LC
- EP Simultaneous Coverage Proration One Pager LC
- 13a - Compilation of All Statutory Proposals

Staff Recommendation:

PFMLI Division recommends the Advisory Committee approve the agency to move forward to the Governor's Office the 13 legislative concepts and continue further discussion on collections and alignment of PFMLI & OFLA.

POTENTIAL - 2023 PFMLI LEGISLATIVE CONCEPT (LC) ELIGIBLE EMPLOYEES

LC PROPOSAL:

The PFMLI Division is recommending a statutory change in ORS 657B.150(1) to remove the word “eligible” from eligible employees.

REASON FOR LC:

The PFMLI Division believes PFMLI contributions were intended to be paid by all employees starting at the first \$1 of wages earned and not just eligible employees (an employee who has earned at least \$1,000 in wages). If only eligible employees were to pay contributions, the definition of eligible employee would create a circular references in which employees could not become eligible employees as part of being an eligible employee you have to pay contributions. Also, other parts of the same statute state “employees” [i.e. ORS 657B.150(1)(b)] and not eligible employee; therefore, we believe a statutory change is needed to remove the word “eligible” from ORS 657B.150(1).

PROPOSED STATUTORY LANGUAGE:

657B.150 Contributions; director to set rates; reporting requirements for employers; rules for successor in interest. (1)(a) Except as otherwise provided in subsections (3) and (4) of this section, all employers and **eligible** employees shall contribute to the Paid Family and Medical Leave Insurance Fund established under ORS 657B.430.

(b) Contributions shall be paid by employers and employees as a percentage of a total rate determined by the Director of the Employment Department.

POTENTIAL - 2023 PFMLI LEGISLATIVE CONCEPT (LC) Defining Employment

LC PROPOSAL:

The PFMLI Division is recommending a statutory change in ORS 657B.010 to include a definition of the term “employment.”

REASON FOR LC:

ORS chapter 657B uses the term “employment” in six locations directly (see list below), but the statute lacks a definition of the term. Unemployment Insurance defines employment in several statutes (ORS 657.030 through 657.094) and is distinct and frequently more restrictive than is appropriate for the PFMLI program as the PFMLI program is intended to apply broadly to as many employment opportunities as possible in Oregon. ORS 657B.010(13) explicitly excludes certain employees from PFMLI coverage (independent contractors, participants in work study programs, railroad workers, and volunteers), and the PFMLI Division wants to ensure no other employees are left uncovered.

Aside from the numerous times “Employment Department” or “employment agency” are used, the term “employment” is used in the following locations within ORS chapter 657B:

- §010(13)(b)(C);
- §060(1)-(6);
- §070(1)(c);
- §130(2);
- §250(2)(c)(A); and
- §390(1)-(2)

PROPOSED STATUTORY LANGUAGE:

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

(14)(c) “Employer” does not include the federal government or a tribal government.

(15) “Employment” describes the situations when service is performed, from one party to another, for remuneration or under any contract of hire, written or oral, expressed or implied.

~~(16)~~ “Employment agency” has the meaning given that term in ORS 658.005.

POTENTIAL - 2023 PFMLI LEGISLATIVE CONCEPT (LC)
Maximum Wages per Employer

LC PROPOSAL:

The PFMLI Division is recommending a statutory change in ORS 657B.150(1)(c) to codify the maximum wage amount applies to wages earned from each employer individually.

REASON FOR LC:

In isolation, ORS 657B.150(1)(c) can be interpreted to mean the maximum wages is either \$132,900 in wages earned across all employers or it can be interpreted to mean the maximum wage is applied to each employer individually. However, the intent is clear when reading other areas of the statute and analyzing the legislative intent during the third reading of House Bill 2005 (2019) that the maximum wage is per employer. There was no mechanism in statute for how to accommodate an overpayment by employees and employers if the maximum wages were over \$132,900 collectively.

PROPOSED STATUTORY LANGUAGE:

657B.150 Contributions; director to set rates; reporting requirements for employers; rules for successor in interest.

(1)(a) Except as otherwise provided in subsections (3) and (4) of this section, all employers and eligible employees shall contribute to the Paid Family and Medical Leave Insurance Fund established under ORS 657B.430.

(b) Contributions shall be paid by employers and employees as a percentage of a total rate determined by the Director of the Employment Department.

(c) The total rate may not exceed one percent of employee wages, up to a maximum of \$132,900 in wages **paid per employer**.

POTENTIAL - 2023 PFMLI LEGISLATIVE CONCEPT (LC)
Use of Office of Administration Hearings for Equivalent Plan Disputes

LC PROPOSAL:

The PFMLI Division is recommending a statutory change to ORS 657B.420 to specify that the Office of Administrative Hearings (OAH) may be used for equivalent plan disputes between an employer and employee.

REASON FOR LC:

The statute lacks direction about the type of dispute process for an employee and their equivalent-plan employers. ORS 657B.420 states that the Director shall establish a rule for a method to resolve disputes between equivalent plan employers and employees but does not refer to the use of OAH. In contrast, ORS 657B.410 states that appeals between the department and an employer or employee will use OAH as described in the model rules in cases other than equivalent plans. However, the model rules specify that OAH can only be used for appealing decisions by the department. The use of OAH would provide an appeal process that is more like that for the state plan employers and employees for equivalent plans. Therefore, there is a need for a legislative change to make it clear in ORS 657B.420 that if an employer and employee don't agree with an initial agency determination of a dispute for equivalent plans, it can be appealed to OAH using the same model rules as that for ORS 657B.410.

PROPOSED STATUTORY LANGUAGE:

ORS 657B.420 Appeals of decisions under equivalent employer plan; rules.

The Director of the Employment Department shall establish by rule a method to resolve disputes between employers and employees concerning coverage and benefits provided under a plan approved under ORS 657B.210. **The process established by the director under this section shall comply with the appeal rights described in ORS 657B.410.**

POTENTIAL - 2023 PFMLI LEGISLATIVE CONCEPT (LC) Final Orders

LC PROPOSAL:

The PFMLI Division is recommending a statutory change in ORS 183.471 to align the PFMLI final orders with others issued by the Employment Department.

REASON FOR LC:

ORS 183.471 provides that final orders must be kept in a digital format and made available to the Oregon State Bar for publication if requested. Section (5) of the statute has a number of exemptions, including (k) and (L) which refer to Employment Department orders regarding benefits and taxes, respectively. The PFMLI Division believes that equivalent protections should be granted for the employees and employers who utilize the PFMLI program since there is confidential information in those orders that should not be published.

PROPOSED STATUTORY LANGUAGE:

183.471 Preservation of orders in electronic format; fees.

(5) This section does not apply to final orders by default issued under ORS 183.417 (3) or to final orders issued in contested cases by:

- (a) The Department of Revenue;
- (b) The State Board of Parole and Post-Prison Supervision;
- (c) The Department of Corrections;
- (d) The Employment Relations Board;
- (e) The Public Utility Commission of Oregon;
- (f) The Oregon Health Authority;
- (g) The Land Conservation and Development Commission;
- (h) The Land Use Board of Appeals;
- (i) The Division of Child Support of the Department of Justice;
- (j) The Department of Transportation, if the final order relates to the suspension, revocation or cancellation of identification cards, vehicle registrations, vehicle titles or driving privileges or to the assessment of taxes or stipulated settlements in the regulation of vehicle related businesses;
- (k) The Employment Department or the Employment Appeals Board, if the final order relates to benefits as defined in ORS 657.010 or 657B.010;
- (L) The Employment Department, if the final order relates to an assessment of unemployment tax or a Paid Family and Medical Leave Insurance contribution for which a hearing was not held; or
- (m) The Department of Human Services, if the final order was not related to licensing or certification.

[2013 c.156 §2]

POTENTIAL - 2023 PFMLI LEGISLATIVE CONCEPT (LC)
Statutory Reference Change

LC PROPOSAL:

The PFMLI Division is recommending a statutory change in ORS 657B.010(2) to update the statutory reference established by Senate Bill 172 (2021).

REASON FOR LC:

This change is necessary to align with the current version of ORS chapter 657 that was changed during the 2021 Legislative Session.

PROPOSED STATUTORY LANGUAGE:

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

- (2) "Average weekly wage" means the amount calculated by the Employment Department as the state average weekly covered wage under ORS 657.150 (4) ~~(d)~~(e) as determined not more than once per year.

POTENTIAL - 2023 PFMLI LEGISLATIVE CONCEPT (LC) EQUIVALENT PLAN PENALTY PROVISIONS

LC PROPOSAL:

The PFMLI Division is recommending adding a new statute (potentially ORS 657B.270) to establish penalties for employers with an equivalent plan found to have violated the requirements in ORS 657B.

REASON FOR LC:

The PFMLI program believes it is important for the department to have the authority to enforce penalties for non-compliance against employers offering equivalent plans. Penalties provide two primary functions; one, to provide an incentive for maintaining compliance with program requirements and provisions under the law and two, a mechanism to recover some of the economic burden placed on the fund when non-compliance occurs.

ORS 657B.220 requires the department complete review of the benefits offered under equivalent plans and authorizes termination of an approved equivalent plan when the director determines that the plan is not providing benefits in compliance with the requirements under 657B.210(2), the PFMLI program believes that employers with approved equivalent plans need to be held to the same standard for compliance not only around the benefits offered, but within all program requirements set out in statute and rule and that establishing these penalty provisions is the best way to ensure equity between the state PFMLI program and employer offered equivalent plans.

The department believes that it was oversight and not the intention of the legislature to exclude penalty provisions for employers offering approved equivalent plans; therefore, a LC is recommended to add penalties for these situations.

PROPOSED STATUTORY LANGUAGE:

New Statute: Potentially ORS 657B.270 Employer penalties.

- (1) An employer with an equivalent plan found to have violated the requirements under ORS 657B shall be assessed the following monetary penalties:
 - (a) One thousand dollars for the first violation; and
 - (b) Two thousand dollars for the second and subsequent violations.
- (2) The director shall waive collection of the penalty if the employer corrects the violation within thirty days of receiving a notice of the violation and the notice is for a first violation.
- (3) The director may waive collection of any penalties if the director determines the violation to be an inadvertent error by the employer.
- (4) Monetary penalties collected under this section shall be deposited in the paid family and medical leave insurance fund.
- (5) An employer may appeal a penalty determination made under this section as provided in ORS 657B.410.

POTENTIAL - 2023 PFMLI LEGISLATIVE CONCEPT (LC) CONFIDENTIALITY

LC PROPOSAL:

The PFMLI Divisions proposes to expand the confidentiality statute in ORS 657B.400 to allow more opportunity for information sharing but still maintaining confidentiality around information shared for PFMLI benefits.

REASON FOR LC:

Currently, ORS 657B.400 does not expand in great detail who has authority to confidential information. PFMLI recognizes that research and analysis is going to be essential not only to Oregon PFMLI, but to our state partners and stakeholders through implementation and beyond. While Unemployment Insurance (UI) is responsible for reporting out to many more agencies than PFMLI will be, PFMLI may still use UI's confidentiality statute (ORS 657.665) as a guide to expand the PFMLI confidentiality statute. PFMLI and UI share many common agencies and individuals interested in conducting research to the program's effectiveness but also have many differences.

PFMLI went through the UI statute and only incorporated changes that we felt were needed but still kept the confidentiality for information shared for PFMLI benefits. We propose language to allow information to be shared in hearings with an administrative law judge, claimant, and legal representative. Information will also need to be shared with other state agencies to assist with determination of eligibility and collections. The proposal also includes language for when an employee discloses when they should not be employed by the Employment Department or by the agency the information was given to.

PROPOSED STATUTORY LANGUAGE:

657B.400 Confidentiality of Information. (1) All information in the records of the Employment Department or a third party administrator pertaining to the administration of this chapter:

(a) Is confidential and for the exclusive use and information of the Director of the Employment Department in administering this chapter;

(b) May not be used in any court action or in any proceeding pending in the court unless the director or the State of Oregon is a party to the action or proceeding or unless the action or proceeding concerns the establishment, enforcement or modification of a support obligation and support services are being provided by the Division of Child Support of the Department of Justice or the district attorney pursuant to ORS 25.080; and

(c) Is exempt from disclosure under ORS 192.311 to 192.478.

(2) The Employment Department shall disclose information:

(a) To any claimant or legal representative, at a hearing before an administrative law judge, to the extent necessary for the proper presentation of a Paid Family and Medical Leave insurance claim;

(b) Upon request to officers and employees of the United States Department of Agriculture and to officers or employees of any state Supplemental Nutrition Assistance Program agency for the purpose of determining an individual's eligibility for or the amount of supplemental nutrition assistance. The information disclosed is confidential and may not be used for any other purpose. The cost of disclosing information under this paragraph shall be paid by requesting program;

(c) Upon request to state or local child support enforcement agencies enforcing child support obligations for the purposes of establishing child support obligations, locating individuals owing child support

obligations and collecting child support obligations from those individuals. The information disclosed is confidential and may not be used for any other purposes. The costs of disclosing information under this paragraph shall be paid by the child support enforcement agency;

(d) Upon request to agencies participating in the income and eligibility verification system for the purpose of verifying an individual's eligibility for benefits, or the amount of benefits, under unemployment insurance, temporary assistance for needy families, Medicaid, the Supplemental Nutrition Assistance Program, Supplemental Security Income, child support enforcement or Social Security Programs. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the requesting agency;

(e) Upon request to officers and employees of the United States Department of Housing and Urban Development and to state and local representative of a public housing agency for the purpose of determining an individual's eligibility for benefits, or the amount of benefits, under a housing assistance program. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the requesting agency;

(f) Upon request to the United States Attorney's Office. Under this paragraph, the Employment Department may disclose an individual's employment and wage information in response to a federal grand jury subpoena or for the purpose of collecting civil and criminal judgments, including restitution and special assessment fees. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the United States Attorney's Office.

(3) The Employment Department may disclose information secured from employer:

(a) To state agencies, federal agencies, local government agencies, public universities listed in ORS 352.002 and the Oregon Health and Science University established under ORS 353.020, to the extent necessary to properly carry out governmental planning, performance measurement, program analysis, socioeconomic analysis or policy analysis functions performed under applicable law. The information disclosed is confidential and may not be disclosed by the agencies or universities in any manner that would identify individuals, claimants, employees or employers. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the agency or university requesting the information; and

(b) As part of a geographic information system. Points on a map may be used to represent economic data, including the location, PFMLI employment size and industrial classification of businesses in Oregon. Information presented as part of a geographic information system may not give specific details regarding a business's address, actual employment or proprietary information. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the party requesting the information.

(4) The Employment Department may:

(a) Disclose information to public employees in the performance of their duties under state or federal laws relating to the payment of paid family and medical leave insurance benefits;

(b) Disclose information pursuant to an informed consent, received from an employer, employee, or claimant, to disclose the information;

(c) Disclose information to the Commissioner of the Bureau of Labor and Industries for the purpose of performing duties under ORS 279C.800 to 279C.870, 658.005 to 658.245 or 658.405 to 658.511 or ORS chapter 652, 653 or 659A. The information disclosed may include the names and addresses of employers and employees and payroll data of employers and employees. The information disclosed is confidential and may not be used for any other purpose. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the bureau;

(d) Disclose information to the Department of Revenue for the purpose of performing its duties under ORS 293.250 or under the revenue and tax laws of this state. The information disclosed may include the names and

addresses of employers and employees and payroll data of employers and employees. The information disclosed is confidential and may not be disclosed by the Department of Revenue in any manner that would identify an employer or employee except to the extent necessary to carry out the department's duties under ORS 293.250 or in auditing or reviewing any report or return required or permitted to be filed under the revenue and tax laws administered by the department. The Department of Revenue may not disclose any information received to any private collection agency or for any other purpose. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the Department of Revenue;

(e) Disclose information to the Department of Consumer and Business Services for the purpose of performing its duties under ORS chapters 654 and 656. The information disclosed may include the name, address, number of employees and industrial classification code of an employer and payroll data of employers and employees. The information disclosed is confidential and may not be disclosed by the Department of Consumer and Business Services in any manner that would identify an employing unit or employee except to the extent necessary to carry out the department's duties under ORS chapters 654 and 656, including administrative hearings and court proceedings in which the Department of Consumer and Business Services is a party. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the Department of Consumer and Business Services;

(f) Disclose information to the Construction Contractors Board for the purpose of performing its duties under ORS chapter 701. The information disclosed to the board may include the names and addresses of employers and status of their compliance with this chapter. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the board;

(g) Disclose information to the Department of Transportation to assist the Department of Transportation in carrying out the duties of the Department of Transportation relating to collection of delinquent and liquidated debts, including taxes, under ORS 184.610 to 184.665, 184.670 to 184.733 and 805.263, ORS chapter 319 and the Oregon Vehicle Code. The information disclosed may include the names and addresses of employers and employees and payroll data of employers and employees. The information disclosed is confidential and may not be disclosed by the Department of Transportation in any manner that would identify an employing unit or employee except to the extent necessary to carry out the Department of Transportation's duties relating to collection of delinquent and liquidated debts or in auditing or reviewing any report or return required or permitted to be filed under the revenue and tax laws administered by the Department of Transportation. The Department of Transportation may not disclose any information received to any private collection agency or for any other purpose. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the Department of Transportation;

(h) Disclose information to the Department of Human Services and the Oregon Health Authority to assist the Department of Human Services and the Oregon Health Authority in the collection of debts that the Department of Human Services and the Oregon Health Authority are authorized by law to collect. The information disclosed may include the names, addresses and payroll data of employers and employees. The information disclosed is confidential and may not be disclosed by the Department of Human Services or the Oregon Health Authority in a manner that would identify an employing unit or employee except to the extent necessary for the collection of debts as described in this paragraph. The Department of Human Services and the Oregon Health Authority may not disclose information received under this paragraph to a private collection agency or use the information for a purpose other than the collection of debts as described in this paragraph. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the

costs of disclosing the information shall be paid by the Department of Human Services or the Oregon Health Authority; and

(i) Disclose information to the State Treasurer useful for the purpose of performing the State Treasurer's duties under ORS 98.302 to 98.436, 98.992 and 116.253 and the role of an estate administrator under ORS 113.235. The information disclosed is confidential and may not be used by the State Treasurer for any other purpose. If the information disclosed is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the State Treasurer.

~~(2)~~ (5) At the discretion of the director and subject to an interagency agreement, the director may disclose information to a public official in the performance of the public official's official duties administering or enforcing laws within the public official's authority and to an agent or contractor of a public official. The public official shall agree to assume responsibility for misuse of the information by the public official's agent or contractor.

~~(3)~~ (6) At the discretion of the director, the director may disclose information to a contractor pursuant to a contract for actuarial services. The contractor shall agree to assume responsibility for misuse of the information by the contractor's agent.

(7) Any officer appointed by or any employee of the Director of the Employment Department who discloses confidential information, except with the authority of the director, pursuant to rules or as otherwise required by law, may be disqualified from holding any appointment or employment with the Employment Department.

(8) Any person or any officer or employee of an entity to whom information is disclosed by the Employment Department under this section who divulges or uses the information for any purpose other than that specified in the provision of law or agreement authorizing the use or disclosure may be disqualified from performing any service under contract or disqualified from holding any appointment or employment with the state agency that engaged or employed that person, officer or employee. The Employment Department may immediately cancel or modify any information sharing agreement with an entity when a person or an officer or employee of that entity discloses confidential information, other than as specified in law or agreement.

~~(4)~~ (9) At the discretion of the director, the director may disclose information to an employee or officer within any division of the department as necessary to conduct research, compile aggregate data from the information received and any other purpose deemed necessary by the director to assist the director in carrying out the duties under this chapter or other duties under ORS chapter 657.

POTENTIAL - 2023 PFMLI LEGISLATIVE CONCEPT (LC) MINIMUM BENEFIT PAYMENTS FOR WORK DAY INCREMENTS

LC PROPOSAL:

The PFMLI Division proposes to remove the requirement that leave claimed in nonconsecutive periods total the minimum weekly benefit amount (ORS 657B.090(3)).

REASON FOR LC:

ORS 657B.090(3)(b) states the PFMLI benefits may be claimed in nonconsecutive periods that, when combined, provide the minimum benefit amount established in ORS 657B.050. Using the current state average weekly wage, the minimum benefit amount is currently \$53.30. This means that a claimant could only claim non-consecutive leave if the total benefit amount would total \$53.30. This has been interpreted as meaning that the initial application cannot be approved if the total benefit amount is not equal to the minimum weekly benefit amount or that benefit payments cannot be issued until the minimum weekly benefit amount is due to the claimant.

The department believes the intention of this was to prevent small payments being issued. A work day payment for a claimant with the minimum weekly benefit amount could be as low as \$10.66 (five day work week of \$53.30/5 days) or \$7.61 (seven day work week of \$53.30/7 days). However, implementation of this requirement would cause administrative complexity. Claimants could have a credit balance with the department until a certain amount is reached, which doesn't align with a weekly payment processes, and could have a credit that is never paid because the threshold is not reached. Application and approval processes could be complicated by adding in eligibility criteria about minimum benefit amounts for nonconsecutive leave that are not otherwise established in statute.

Implementation of the statute is written would further result in inequitable payment of benefits for claimants based on the eligible employee average weekly wage. For example, a claimant with a weekly benefit amount of \$266.50 who works five days per week could claim benefits for one work day (prorated to \$53.30) but a claimant with a weekly benefit amount of \$159.90 who works five days a week could not claim benefits for one work day (prorated to \$31.98 per day, below the minimum). As a result, claimants with the lowest previous earnings would have less opportunity to take leave in work day increments than higher earners; either they would not be eligible or would not receive payment until some future date after more leave is taken. The department believes that this impact goes against the intent of the program and recommends removing the requirement on ORS 657B.090(3)(b) so that any claimant's leave in work day increments can be paid without additional restrictions.

PROPOSED STATUTORY LANGUAGE:

657B.090 Claim for benefits; leave increment requirements.

(3)(a) Benefits may be claimed for leave that is taken by a covered individual in increments that are equivalent to one work day or one work week as those terms are defined by the director by rule.

~~(b) If a covered individual takes leave in increments that are equivalent to one work day, benefits may be claimed for leave that occurs in nonconsecutive periods of leave that, when combined, provide the minimum benefit amount provided in ORS 657B.050.~~

POTENTIAL - 2023 PFMLI LEGISLATIVE CONCEPT (LC) SMALL BALANCE ADJUSTMENTS

LC PROPOSAL:

The PFMLI Division proposes to add that the director may adjust Paid Family and Medical Leave Insurance (PFMLI) contributions balances or overpayments of \$10 or less.

REASON FOR LC:

For Unemployment Insurance (UI), ORS 657.517 allows the director to make small balance adjustments for tax balances and overpayments of \$10 or less when it is in the best interest of the Employment Department. ORS chapter 657B does not have a similar provision.

PFMLI contributions and UI tax are included in a combined payroll reporting and payment system and will be administered by a combined contributions division. The department aims to streamline administration of PFMLI contributions and UI taxes, to the extent practicable, to provide a consistent experience for customers and efficiency in department processes.

It is recommended to adopt similar provisions on small balance adjustments for PFMLI to enable alignment in the treatment of small balances between UI and PFMLI.

PROPOSED STATUTORY LANGUAGE:

New Statute: Authority of director to compromise or adjust debts or overpayments

When in the judgment of the Director of the Employment Department the best interests of the Employment Department are served, the director may:

- (a) Waive, reduce or compromise any tax balance of \$10 or less;
- (b) Retain any tax overpayment of \$10 or less.

POTENTIAL - 2023 PFMLI LEGISLATIVE CONCEPT (LC) ANNUAL FILERS

LC PROPOSAL:

The PFMLI Division is recommending a statutory change in ORS 657B.150(12) to add filing requirements for annual filers to align with the current wage reporting process.

REASON FOR LC:

ORS 657B.150(12) establishes that employers shall file a combined quarterly report for the Paid Family and Medical Leave Insurance (PFMLI) program. Oregon uses a combined payroll reporting system; most employers are required to file on a quarterly basis, but domestic employers are permitted to file annually. ORS chapter 657B does not reference annual reporting; however, ORS 657B.340 instructs the director, "Whenever possible, the director shall use existing employer and public infrastructure to maintain records, conduct outreach and facilitate contributions made to the program." Pursuing a legislative concept that allows certain domestic employers to file and pay contributions annually fulfills the guidance provided by ORS 657B.340(4) as it will permit domestic employers to follow the same process they do for Unemployment Insurance (UI) and State Tax Withholding and not create a separate process. Based on tax year 2020 information, there is approximately 2,500 domestic employers who file annually.

By allowing domestic employers to file annually if they have less than 25 employees, the PFMLI program does not feel it will impact the amount of time PFMLI benefits are paid to the employee. There could potentially be a gap between the last report of wages and the date an employee files a claim for benefits; however, the department will ask the employee and employer for current wage information. This is the same process that will occur for other employers that are delinquent on their quarterly report filing.

PROPOSED STATUTORY LANGUAGE:

657B.150 Contributions; director to set rates; reporting requirements for employers; rules for successor in interest.

(12)(a) An employer shall make and file a combined quarterly report of wages earned and contributions paid under this section on a form prescribed by the Department of Revenue.

(b) The report shall be filed with the Department of Revenue on or before the last day of the month following the quarter to which the report relates and shall be deemed received on the date of mailing.

(c) The report shall be accompanied by payment of any contributions due under this section in a manner determined by the Department of Revenue by rule.

(13) The report of contributions due under this chapter may be filed and paid annually, in the time, form and manner prescribed by the Department of Revenue, if:

(a) The employment that is the subject of the report of contributions due under this chapter consists exclusively of domestic service in a private home, local college club or local chapter of a college fraternity or sorority; and

(b) In a calendar year, have on average less than 25 employees as described in ORS 657B.360.

POTENTIAL - 2023 PFMLI LEGISLATIVE CONCEPT (LC) EQUIVALENT PLAN - NEW HIRE COVERAGE AND PORTABILITY OF BENEFITS

LC PROPOSAL:

The PFMLI Division proposes changing the requirement that employers make equivalent plans available to all employees that have been employed for 30 days to require that employers make an equivalent plan available to all employees immediately [ORS 657B.210(2)(a) and (3)]. The PFMLI Division also proposes removing portability of benefits provisions because all employees are immediately covered under either equivalent plans or the state plan (ORS 657B.250).

REASON FOR LC:

The statute allows employers with an equivalent plan to wait up to 30 days to cover new employees under the plan, except if the employee was previously covered under an equivalent plan, in which case the employee must immediately be eligible for benefits under the equivalent plan.

Employers with an equivalent plan would be required to verify with the department for each new hire whether the employee was previously covered under an equivalent plan or the state plan to know whether covered must be provided immediately or within 30 days. The department would need to establish and maintain mechanisms to provide this information to employers and provide customer support for that process, adding burden for the employer and administrative costs for the department.

Employers that do not cover new hires under their equivalent plan immediately would not be exempt from paying contributions under ORS 657B.150 until plan coverage starts [ORS 657B.210(4)]. Employers would be required to remit to the department contributions for any period in which the employee remains covered under the state plan. However, the current combined payroll reporting does not support reporting wages or paying contributions separately for periods covered under the state plan or an equivalent plan. The department anticipates needing to assess contributions to equivalent plan employers after the end of the quarter and would require additional wage reporting from equivalent plan employers for assessments, adding burden for the employer and administrative costs for the department.

Employees hired by an equivalent plan employers could have different deduction amounts withheld for the first 30 days for the state plan and later for the equivalent plan - making it difficult for employees to ensure accurate withholdings and resolve any issues. In addition, employees that experience a leave event within the first 30 days would have to navigate which coverage is in effect and how to apply and receive those benefits, adding complexity while experiencing the challenges of a qualifying purpose.

The proposed LC would resolve the administrative complexity and burdens on employers and employees by establishing that all employees are immediately covered under either the state plan or equivalent plan, whichever is in effect for the employer. This change would also make the provisions on portability of benefits (ORS 657B.250) unnecessary.

PROPOSED STATUTORY LANGUAGE:

657B.210 Equivalent plans, generally; rules; fee.

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

- (a) The plan is made available to all employees ~~who have been continuously employed with an employer for 30 days.~~
- (b) The benefits afforded to employees covered under the plan are equal to or greater than the weekly benefits and the duration of leave that an eligible employee would qualify for under this chapter.

(3) An employer ~~may~~ **must** make a plan available to all employees **immediately at the state date of employment who have been employed by the employer for less than 30 days but in no event may an employer require an employee to have been employed by the employer for more than 30 days to be eligible for coverage under the plan.**

~~657B.250 Portability of benefits and retention of eligibility status between jobs. (1) An employee who is a covered individual under the program established under ORS 657B.340 retains such status until the employee qualifies for coverage under a plan approved under ORS 657B.210.~~

~~— (2)(a) An employee who has ceased to be covered by a plan approved under ORS 657B.210, is, if otherwise eligible, automatically qualified to receive family and medical leave insurance benefits under the program established under ORS 657B.340.~~

~~— (b) Notwithstanding ORS 657B.210 (3), an employee who was eligible for benefits under a plan approved under ORS 657B.210 is automatically eligible for benefits under a plan that is offered by a new employer and that has been approved under ORS 657B.210.~~

DRAFT

POTENTIAL - 2023 PFMLI LEGISLATIVE CONCEPT (LC) EQUIVALENT PLAN – SIMULTANEOUS COVERAGE

LC PROPOSAL:

The PFMLI Division proposes removing the requirement in ORS 657B.210(10)(a) that the department adopts rules that prevent an employee with simultaneous coverage receiving more than 100 percent of the eligible employee's average weekly wage (EEAWW).

REASON FOR LC:

Equivalent plans are required to provide employees weekly benefits that are equal to or *greater than* the weekly benefits under the state plan. Under the state plan, an employee may receive benefits that are equal to or less than their EEAWW (lower wage earners receive 100% of their EEAWW, higher wage earners receive a percentage of their EEAWW). This means that an employee under an equivalent plan could receive more than their EEAWW, since an equivalent plan can pay greater benefit amounts.

However, ORS 657B.210(10)(a) means that an employee with coverage under one or more equivalent plans and/or the state plan (simultaneous coverage) could have their weekly benefits reduced to be lower than would have been paid under the equivalent plan alone if the employee had single coverage. For example, an equivalent plan could not pay benefits equal to current wages or the state plan weekly benefit amount, whichever is great. This means that the employee could receive more than their EEAWW under the equivalent plan. However, if that employee had coverage under both the state plan and that equivalent plan, the department would need to ensure that the equivalent plan doesn't pay more than its prorated portion of the EEAWW, regardless of whether the equivalent plan would have paid a higher amount.

The department believes that the intention of this provision was not to reduce equivalent plan benefits for employees with simultaneous coverage, but rather to ensure that, in cases of simultaneous coverage, ensure that each plan pays only their portion of benefits. This will be ensured through administrative rule on proration [implementing ORS 657B.210(a)] that will divide minimum benefit payments across plans, while not preventing equivalent plans from paying above that minimum amount. As such, a LC is recommended to remove the requirement that the department adopt a rule to prevent payment of benefits amount the EEAWW.

PROPOSED STATUTORY LANGUAGE:

657B.210 Equivalent plans, generally; rules; fee.

(10) The director shall adopt rules:

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

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

Compilation of all Statutory Changes for PFMLI 2023 LC's

183.471 Preservation of orders in electronic format; fees. (1) When an agency issues a final order in a contested case, the agency shall maintain the final order in a digital format that:

- (a) Identifies the final order by the date it was issued;
- (b) Is suitable for indexing and searching; and
- (c) Preserves the textual attributes of the document, including the manner in which the document is paginated and any boldfaced, italicized or underlined writing in the document.

(2) The Oregon State Bar may request that an agency provide the Oregon State Bar, or its designee, with electronic copies of final orders issued by the agency in contested cases. The request must be in writing. No later than 30 days after receiving the request, the agency, subject to ORS 192.338, 192.345 and 192.355, shall provide the Oregon State Bar, or its designee, with an electronic copy of all final orders identified in the request.

(3) Notwithstanding ORS 192.324, an agency may not charge a fee for the first two requests submitted under this section in a calendar year. For any subsequent request, an agency may impose a fee in accordance with ORS 192.324 to reimburse the agency for the actual costs of complying with the request.

(4) For purposes of this section, a final order entered in a contested case by an administrative law judge under ORS 183.625 (3) is a final order issued by the agency that authorized the administrative law judge to conduct the hearing.

(5) This section does not apply to final orders by default issued under ORS 183.417 (3) or to final orders issued in contested cases by:

- (a) The Department of Revenue;
- (b) The State Board of Parole and Post-Prison Supervision;
- (c) The Department of Corrections;
- (d) The Employment Relations Board;
- (e) The Public Utility Commission of Oregon;
- (f) The Oregon Health Authority;
- (g) The Land Conservation and Development Commission;
- (h) The Land Use Board of Appeals;
- (i) The Division of Child Support of the Department of Justice;
- (j) The Department of Transportation, if the final order relates to the suspension, revocation or cancellation of identification cards, vehicle registrations, vehicle titles or driving privileges or to the assessment of taxes or stipulated settlements in the regulation of vehicle related businesses;
- (k) The Employment Department or the Employment Appeals Board, if the final order relates to benefits as defined in ORS 657.010 or 657B.010;
- (L) The Employment Department, if the final order relates to an assessment of unemployment tax or a Paid Family and Medical Leave Insurance contribution for which a hearing was not held; or
- (m) The Department of Human Services, if the final order was not related to licensing or certification.

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

(1) “Alternate base year” means the last four completed calendar quarters preceding the benefit year.

(2) “Average weekly wage” means the amount calculated by the Employment Department as the state average weekly covered wage under ORS 657.150 (4)~~(d)~~(e) as determined not more than once per year.

(3) “Base year” means the first four of the last five completed calendar quarters preceding the benefit year.

(4) “Benefits” means family and medical leave insurance benefits.

(5) “Benefit year” means the 12-month period as determined by the Director of the Employment Department by rule under ORS 657B.340.

(6) “Child” means:

(a) A biological child, adopted child, stepchild or foster child of a covered individual or of the covered individual’s spouse or domestic partner;

(b) A person who is or was a legal ward of a covered individual or of the covered individual’s spouse or domestic partner; or

(c) A person who is or was in a relationship of in loco parentis with a covered individual or with the covered individual’s spouse or domestic partner.

(7) “Contribution” or “contributions” means the money payments made by any of the following under ORS 657B.150:

(a) An employer;

(b) An eligible employee;

(c) A self-employed individual;

(d) A tribal government; or

(e) An employee of a tribal government.

(8) “Covered individual” means any one of the following who qualifies to receive family and medical leave insurance benefits:

(a) An eligible employee;

(b) A self-employed individual; or

(c) An employee of a tribal government.

(9) “Domestic partner” means an individual joined in a domestic partnership.

(10) “Domestic partnership” has the meaning given that term in ORS 106.310.

(11) “Eligible employee” means:

(a)(A) An employee who has earned at least \$1,000 in wages during the base year; or

(B) If an employee has not earned at least \$1,000 in wages during the base year, an employee who has earned at least \$1,000 in wages during the alternate base year; and

(b) Who may apply for paid family and medical leave insurance benefits under ORS 657B.015.

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

(13)(a) “Employee” means:

(A) An individual performing services for an employer for remuneration or under any contract of hire, written or oral, express or implied.

(B) A home care worker as defined in ORS 410.600.

(b) “Employee” does not include:

(A) An independent contractor as defined in ORS 670.600.

(B) A participant in a work training program administered under a state or federal assistance program.

(C) A participant in a work-study program that provides students in secondary or postsecondary educational institutions with employment opportunities for financial assistance or vocational training.

(D) A railroad worker exempted under the federal Railroad Unemployment Insurance Act.

(E) A volunteer.

(14)(a) “Employer” means any person that employs one or more employees working anywhere in this state or any agent or employee of such person to whom the duties of the person under this chapter have been delegated.

(b) “Employer” includes:

(A) A political subdivision of this state or any county, city, district, authority or public corporation, or any instrumentality of a county, city, district, authority or public corporation, organized and existing under law or charter;

(B) An individual;

(C) Any type of organization, corporation, partnership, limited liability company, association, trust, estate, joint stock company or insurance company;

(D) Any successor in interest to an entity described in subparagraph (C) of this paragraph;

(E) A trustee, trustee in bankruptcy or receiver; or

(F) A trustee or legal representative of a deceased person.

(c) “Employer” does not include the federal government or a tribal government.

(15) “Employment” describes the situations when service is performed, from one party to another, for remuneration or under any contract of hire, written or oral, expressed or implied.

~~(16)~~ “Employment agency” has the meaning given that term in ORS 658.005.

~~(17)~~ “Family and medical leave insurance benefits” means the wage replacement benefits that are available to a covered individual under ORS 657B.050 or under the terms of an employer plan approved under ORS 657B.210, for family leave, medical leave or safe leave.

~~(18)~~(a) “Family leave” means leave from work taken by a covered individual:

(A) To care for and bond 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; or

(B) To care for a family member with a serious health condition.

(b) “Family leave” does not mean:

(A) Leave described in ORS 659A.159 (1)(d);

(B) Leave described in ORS 659A.159 (1)(e); or

(C) Leave authorized under ORS 659A.093.

~~(19)~~ “Family member” means:

(a) The spouse of a covered individual;

(b) A child of a covered individual or the child’s spouse or domestic partner;

(c) A parent of a covered individual or the parent’s spouse or domestic partner;

(d) A sibling or stepsibling of a covered individual or the sibling’s or stepsibling’s spouse or domestic partner;

(e) A grandparent of a covered individual or the grandparent’s spouse or domestic partner;

(f) A grandchild of a covered individual or the grandchild’s spouse or domestic partner;

(g) The domestic partner of a covered individual; or

(h) Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.

(1920) “Medical leave” means leave from work taken by a covered individual that is made necessary by the individual’s own serious health condition.

(2021) “Parent” means:

(a) A biological parent, adoptive parent, stepparent or foster parent of a covered individual;

(b) A person who was a foster parent of a covered individual when the covered individual was a minor;

(c) A person designated as the legal guardian of a covered individual at the time the covered individual was a minor or required a legal guardian;

(d) A person with whom a covered individual was or is in a relationship of in loco parentis;

or

(e) A parent of a covered individual’s spouse or domestic partner who meets a description under paragraphs (a) to (d) of this subsection.

(2122) “Safe leave” means leave taken for any purpose described in ORS 659A.272.

(2223) “Self-employed individual” means:

(a) An individual who has self-employment income as defined in section 1402(b) of the Internal Revenue Code as amended and in effect on April 1, 2021; or

(b) An independent contractor as defined in ORS 670.600.

(2324) “Serious health condition” has the meaning given that term in ORS 659A.150.

(2425) “Third party administrator” means a third party that enters into an agreement with the Director of the Employment Department to implement and administer the paid family and medical leave program established under this chapter.

(2526) “Tribal government” has the meaning given that term in ORS 181A.940.

(2627) “Wages” has the meaning given that term in ORS 657.105.

657B.090 Claim for benefits; leave increment requirements. (1) Family and medical leave insurance benefits are not payable to a covered individual unless:

(a) The individual submits a claim to the Director of the Employment Department in the manner determined by the director by rule; and

(b) The director has made a decision to allow or deny the claim under ORS 657B.100.

(2) If the director has made a decision to allow the claim, the director shall make a reasonable effort to issue the first payment of benefits to a covered individual within two weeks after receiving the claim.

(3)(a) Benefits may be claimed for leave that is taken by a covered individual in increments that are equivalent to one work day or one work week as those terms are defined by the director by rule.

~~(b) If a covered individual takes leave in increments that are equivalent to one work day, benefits may be claimed for leave that occurs in nonconsecutive periods of leave that, when combined, provide the minimum benefit amount provided in ORS 657B.050.~~

(4) Benefit amounts, as determined under ORS 657B.050:

(a) Must be prorated to increments that are equivalent to one work day; and

(b) Must be paid in increments that are equivalent to one work week.

657B.150 Contributions; director to set rates; reporting requirements for employers; rules for successor in interest. (1)(a) Except as otherwise provided in subsections (3) and (4) of this section, all employers and **eligible** employees shall contribute to the Paid Family and Medical Leave Insurance Fund established under ORS 657B.430.

(b) Contributions shall be paid by employers and employees as a percentage of a total rate determined by the Director of the Employment Department.

(c) The total rate may not exceed one percent of employee wages, up to a maximum of \$132,900 in wages **paid per employer**.

(2)(a) Employer contributions shall be paid in an amount that is equal to 40 percent of the total rate determined by the director.

(b) An employer shall deduct employee contributions from the wages of each employee in an amount that is equal to 60 percent of the total rate determined by the director.

(3) When an employment agency is acting as an employer, the employer contributions required under this section shall be the responsibility of the employment agency.

(4)(a) Employers that employ fewer than 25 employees are not required to pay the employer contributions under subsection (1) of this section.

(b) If an employer that employs fewer than 25 employees elects to pay the employer contributions under subsection (1) of this section, the employer may apply to receive a grant under ORS 657B.200.

(5) Notwithstanding subsection (1) of this section, an employer may elect to pay the required employee contributions, in whole or in part, as an employer-offered benefit.

(6) Subject to ORS 657B.130 (2) and (3), a self-employed individual who has elected coverage under ORS 657B.130 (1) shall contribute to the fund, at a rate that may not exceed one percent of the individual's taxable income as determined by the director by rule, for a period of not less than three years from the date that the election becomes effective.

(7) A tribal government that elects coverage under ORS 657B.130 and employees of the tribal government shall contribute to the fund in contribution amounts and at a rate that may not exceed one percent of employee wages, up to a maximum of \$132,900 in wages, as determined by the director by rule, for a period of not less than three years from the date that the election becomes effective.

(8) The director shall set rates for the collection of payroll contributions consistent with subsection (1) of this section and in a manner such that:

(a) At the end of the period for which the rates are effective, the balance of moneys in the fund is an amount not less than six months' worth of projected expenditures from the fund for performance of the functions and duties of the director under this chapter; and

(b) The volatility of the contribution rates is minimized.

(9) For purposes of subsections (1)(c) and (7) of this section, the director shall annually adjust the maximum amount of employee wages by the percentage increase, if any, in the 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, since the date of the previous determination made under this subsection.

(10) The director shall determine on an annual basis the amount of payroll contributions, timing of payroll contributions and maximum employee contributions sufficient to finance the costs related to the provisions of this chapter.

(11) An employer shall hold any moneys collected under this section in trust for the State of Oregon and for the payment thereof to the Department of Revenue in the manner described in subsection (12) of this section.

(12)(a) An employer shall make and file a combined quarterly report of wages earned and contributions paid under this section on a form prescribed by the Department of Revenue.

(b) The report shall be filed with the Department of Revenue on or before the last day of the month following the quarter to which the report relates and shall be deemed received on the date of mailing.

(c) The report shall be accompanied by payment of any contributions due under this section in a manner determined by the Department of Revenue by rule.

(13) The report of contributions due under this chapter may be filed and paid annually, in the time, form and manner prescribed by the Department of Revenue, if:

(a) The employment that is the subject of the report of contributions due under this chapter consists exclusively of domestic service in a private home, local college club or local chapter of a college fraternity or sorority; and

(b) In a calendar year, have on average less than 25 employees as described in ORS 657B.360.

~~(14)~~ Moneys collected under this section shall be deposited in the Paid Family and Medical Leave Insurance Fund established under ORS 657B.430.

~~(15)~~(a) If an employer ceases or discontinues operations or business, or sells out, exchanges or otherwise disposes of the business or stock of goods, any payroll contribution payable under this section is immediately due and payable, and the employer shall, within 10 calendar days, pay the payroll contribution due. Any person who becomes a successor in interest to the business is liable for the full amount of the unpaid payroll contribution.

(b) The director shall adopt rules for compliance with this chapter with regard to contributions from an employer's successor in interest.

~~(16)~~ Benefits may not be denied to a covered individual solely because an employer failed to collect or remit the contributions required under this section.

657B.210 Equivalent plans, generally; rules; fee. (1)(a) An employer may apply to the Director of the Employment Department for approval of an employer-offered benefit plan that provides family and medical leave insurance benefits to the employer's employees.

(b) An employer that seeks approval of a plan shall submit an application to the director in the form and manner prescribed by the director by rule, accompanied by an application fee not to exceed \$250.

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

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

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

(3) An employer ~~may~~ **must** make a plan available to **all** employees **immediately at the state date of employment** ~~who have been employed by the employer for less than 30 days but in no event may an employer require an employee to have been employed by the employer for more than 30 days to be eligible for coverage under the plan.~~

(4) Neither an employer that provides benefits under an approved plan nor an employee covered under such a plan is required to make the contributions under ORS 657B.150.

(5)(a) An employer may assume all or a part of the costs related to a plan approved under this section.

(b) If an employer assumes only part of the costs, the employer may deduct employee contributions from the wages of employees to finance the costs related to the plan, except that any contribution amounts deducted may not exceed the amount that an eligible employee would otherwise be required to contribute under ORS 657B.150.

(c) Employee contributions received or retained by an employer under this subsection must be used for plan expenses and are not considered to be a part of an employer's assets for any purpose.

(6) Any paid sick leave earned under ORS 653.606 is in addition to the benefits made available under a plan that has been approved under this section.

(7) An employee who takes leave pursuant to a plan approved under this section shall provide notice to an employer of such leave in the same manner as provided in ORS 657B.040.

(8) A plan approved under this section shall remain in effect for a period of not less than one year.

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

(10) The director shall adopt rules:

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

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

(11) An employer that offers a plan approved under this section shall:

(a) Be subject to the same requirements provided in ORS 657B.060 and 657B.070;

(b) Maintain all reports, information and records relating to the plan, including payroll and account records that document employee contributions and expenses, in the manner established by the director by rule; and

(c) Provide written notice to employees that includes:

(A) Information about benefits available under the approved plan, including the duration of leave;

(B) The process for filing a claim to receive benefits under the plan;

(C) The process for employee deductions used to finance the costs of the plan, if any;

(D) An employee's right to dispute a benefit determination in the manner determined by the director under ORS 657B.420;

(E) The right to job protection and benefits continuation, if applicable; and

(F) A statement that discrimination and retaliatory personnel actions against an employee for inquiring about the family and medical leave insurance program established under ORS 657B.340, giving notification of leave under the program, taking leave under the program or claiming family and medical leave insurance benefits are prohibited.

(12) Benefits received under this section are considered wages for purposes of a wage claim under ORS chapter 652.

(13) An employer whose application for plan approval was denied by the director under this section or terminated by the director under ORS 657B.220 may request review of the decision as provided in ORS 657B.410.

~~**657B.250 Portability of benefits and retention of eligibility status between jobs.** (1) An employee who is a covered individual under the program established under ORS 657B.340 retains such status until the employee qualifies for coverage under a plan approved under ORS 657B.210;~~

~~—(2)(a) An employee who has ceased to be covered by a plan approved under ORS 657B.210, is, if otherwise eligible, automatically qualified to receive family and medical leave insurance benefits under the program established under ORS 657B.340.~~

~~—(b) Notwithstanding ORS 657B.210 (3), an employee who was eligible for benefits under a plan approved under ORS 657B.210 is automatically eligible for benefits under a plan that is offered by a new employer and that has been approved under ORS 657B.210.~~

~~—(c) For purposes of this subsection, an employee has ceased to be covered by an approved plan if:~~

~~—(A) The employee takes family leave, medical leave or safe leave after the employee has separated from employment with an employer that offered a plan approved under ORS 657B.210;~~

~~—(B) The employer has withdrawn from the plan as provided under ORS 657B.240;~~

~~—(C) The Director of the Employment Department has terminated the plan under ORS 657B.220; or~~

~~—(D) The director finds that the employer is insolvent or has discontinued doing business in this state.~~

New Statute: Potentially ORS 657B.270 Employer penalties.

(1) An employer with an equivalent plan found to have violated the requirements under ORS 657B shall be assessed the following monetary penalties:

(a) One thousand dollars for the first violation; and

(b) Two thousand dollars for the second and subsequent violations.

(2) The director shall waive collection of the penalty if the employer corrects the violation within thirty days of receiving a notice of the violation and the notice is for a first violation.

(3) The director may waive collection of any penalties if the director determines the violation to be an inadvertent error by the employer.

(4) Monetary penalties collected under this section shall be deposited in the paid family and medical leave insurance fund.

(5) An employer may appeal a penalty determination made under this section as provided in ORS 657B.410.

657B.400 Confidentiality of Information. (1) All information in the records of the Employment

Department or a third party administrator pertaining to the administration of this chapter:

(a) Is confidential and for the exclusive use and information of the Director of the Employment Department in administering this chapter;

(b) May not be used in any court action or in any proceeding pending in the court unless the director or the State of Oregon is a party to the action or proceeding or unless the action or proceeding concerns the establishment, enforcement or modification of a support obligation and support services are being provided by the Division of Child Support of the Department of Justice or the district attorney pursuant to ORS 25.080; and

(c) Is exempt from disclosure under ORS 192.311 to 192.478.

(2) The Employment Department shall disclose information:

(a) To any claimant or legal representative, at a hearing before an administrative law judge, to the extent necessary for the proper presentation of a Paid Family and Medical Leave insurance claim;

(b) Upon request to officers and employees of the United States Department of Agriculture and to officers or employees of any state Supplemental Nutrition Assistance Program agency for the purpose of determining an individual's eligibility for or the amount of supplemental nutrition assistance. The information disclosed is confidential and may not be used for any other purpose. The cost of disclosing information under this paragraph shall be paid by requesting program;

(c) Upon request to state or local child support enforcement agencies enforcing child support obligations for the purposes of establishing child support obligations, locating individuals owing child support obligations and collecting child support obligations from those individuals. The information disclosed is confidential and may not be used for any other purposes. The costs of disclosing information under this paragraph shall be paid by the child support enforcement agency;

(d) Upon request to agencies participating in the income and eligibility verification system for the purpose of verifying an individual's eligibility for benefits, or the amount of benefits, under unemployment insurance, temporary assistance for needy families, Medicaid, the Supplemental Nutrition Assistance Program, Supplemental Security Income, child support enforcement or Social Security Programs. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the requesting agency;

(e) Upon request to officers and employees of the United States Department of Housing and Urban Development and to state and local representative of a public housing agency for the purpose of determining an individual's eligibility for benefits, or the amount of benefits, under a housing assistance program. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the requesting agency;

(f) Upon request to the United States Attorney's Office. Under this paragraph, the Employment Department may disclose an individual's employment and wage information in response to a federal grand jury subpoena or for the purpose of collecting civil and criminal judgments, including restitution and special assessment fees. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the United States Attorney's Office.

(3) The Employment Department may disclose information secured from employer:

(a) To state agencies, federal agencies, local government agencies, public universities listed in ORS 352.002 and the Oregon Health and Science University established under ORS 353.020, to the extent necessary to properly carry out governmental planning, performance measurement, program analysis, socioeconomic analysis or policy analysis functions performed under applicable law. The information disclosed is confidential and may not be disclosed by the

agencies or universities in any manner that would identify individuals, claimants, employees or employers. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the agency or university requesting the information; and

(b) As part of a geographic information system. Points on a map may be used to represent economic data, including the location, PFMLI employment size and industrial classification of businesses in Oregon. Information presented as part of a geographic information system may not give specific details regarding a business's address, actual employment or proprietary information. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the party requesting the information.

(4) The Employment Department may:

(a) Disclose information to public employees in the performance of their duties under state or federal laws relating to the payment of paid family and medical leave insurance benefits;

(b) Disclose information pursuant to an informed consent, received from an employer, employee, or claimant, to disclose the information;

(c) Disclose information to the Commissioner of the Bureau of Labor and Industries for the purpose of performing duties under ORS 279C.800 to 279C.870, 658.005 to 658.245 or 658.405 to 658.511 or ORS chapter 652, 653 or 659A. The information disclosed may include the names and addresses of employers and employees and payroll data of employers and employees. The information disclosed is confidential and may not be used for any other purpose. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the bureau;

(d) Disclose information to the Department of Revenue for the purpose of performing its duties under ORS 293.250 or under the revenue and tax laws of this state. The information disclosed may include the names and addresses of employers and employees and payroll data of employers and employees. The information disclosed is confidential and may not be disclosed by the Department of Revenue in any manner that would identify an employer or employee except to the extent necessary to carry out the department's duties under ORS 293.250 or in auditing or reviewing any report or return required or permitted to be filed under the revenue and tax laws administered by the department. The Department of Revenue may not disclose any information received to any private collection agency or for any other purpose. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the Department of Revenue;

(e) Disclose information to the Department of Consumer and Business Services for the purpose of performing its duties under ORS chapters 654 and 656. The information disclosed may include the name, address, number of employees and industrial classification code of an employer and payroll data of employers and employees. The information disclosed is confidential and may not be disclosed by the Department of Consumer and Business Services in any manner that would identify an employing unit or employee except to the extent necessary to carry out the department's duties under ORS chapters 654 and 656, including administrative hearings and court proceedings in which the Department of Consumer and Business Services is a party. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the Department of Consumer and Business Services;

(f) Disclose information to the Construction Contractors Board for the purpose of performing its duties under ORS chapter 701. The information disclosed to the board may include the names and addresses of employers and status of their compliance with this chapter. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the board;

(g) Disclose information to the Department of Transportation to assist the Department of Transportation in carrying out the duties of the Department of Transportation relating to collection of delinquent and liquidated debts, including taxes, under ORS 184.610 to 184.665, 184.670 to 184.733 and 805.263, ORS chapter 319 and the Oregon Vehicle Code. The information disclosed may include the names and addresses of employers and employees and payroll data of employers and employees. The information disclosed is confidential and may not be disclosed by the Department of Transportation in any manner that would identify an employing unit or employee except to the extent necessary to carry out the Department of Transportation's duties relating to collection of delinquent and liquidated debts or in auditing or reviewing any report or return required or permitted to be filed under the revenue and tax laws administered by the Department of Transportation. The Department of Transportation may not disclose any information received to any private collection agency or for any other purpose. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the Department of Transportation;

(h) Disclose information to the Department of Human Services and the Oregon Health Authority to assist the Department of Human Services and the Oregon Health Authority in the collection of debts that the Department of Human Services and the Oregon Health Authority are authorized by law to collect. The information disclosed may include the names, addresses and payroll data of employers and employees. The information disclosed is confidential and may not be disclosed by the Department of Human Services or the Oregon Health Authority in a manner that would identify an employing unit or employee except to the extent necessary for the collection of debts as described in this paragraph. The Department of Human Services and the Oregon Health Authority may not disclose information received under this paragraph to a private collection agency or use the information for a purpose other than the collection of debts as described in this paragraph. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the Department of Human Services or the Oregon Health Authority; and

(i) Disclose information to the State Treasurer useful for the purpose of performing the State Treasurer's duties under ORS 98.302 to 98.436, 98.992 and 116.253 and the role of an estate administrator under ORS 113.235. The information disclosed is confidential and may not be used by the State Treasurer for any other purpose. If the information disclosed is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the State Treasurer.

(2) (5) At the discretion of the director and subject to an interagency agreement, the director may disclose information to a public official in the performance of the public official's official duties administering or enforcing laws within the public official's authority and to an agent or contractor of a public official. The public official shall agree to assume responsibility for misuse of the information by the public official's agent or contractor.

~~(3)~~ (6) At the discretion of the director, the director may disclose information to a contractor pursuant to a contract for actuarial services. The contractor shall agree to assume responsibility for misuse of the information by the contractor's agent.

(7) Any officer appointed by or any employee of the Director of the Employment Department who discloses confidential information, except with the authority of the director, pursuant to rules or as otherwise required by law, may be disqualified from holding any appointment or employment with the Employment Department.

(8) Any person or any officer or employee of an entity to whom information is disclosed by the Employment Department under this section who divulges or uses the information for any purpose other than that specified in the provision of law or agreement authorizing the use or disclosure may be disqualified from performing any service under contract or disqualified from holding any appointment or employment with the state agency that engaged or employed that person, officer or employee. The Employment Department may immediately cancel or modify any information sharing agreement with an entity when a person or an officer or employee of that entity discloses confidential information, other than as specified in law or agreement.

~~(4)~~ (9) At the discretion of the director, the director may disclose information to an employee or officer within any division of the department as necessary to conduct research, compile aggregate data from the information received and any other purpose deemed necessary by the director to assist the director in carrying out the duties under this chapter or other duties under ORS chapter 657.

657B.420 Appeals of decisions under equivalent employer plan; rules. The Director of the Employment Department shall establish by rule a method to resolve disputes between employers and employees concerning coverage and benefits provided under a plan approved under ORS 657B.210. ~~The process established by the director under this section shall comply with the appeal rights described in ORS 657B.410.~~ 2019 c.700 §32]

New Statute: Authority of director to compromise or adjust debts or overpayments

When in the judgment of the Director of the Employment Department the best interests of the Employment Department are served, the director may:

- (a) Waive, reduce or compromise any tax balance of \$10 or less;
- (b) Retain any tax overpayment of \$10 or less.

314.840 Disclosure of information; persons to whom information may be furnished. (1) The Department of Revenue may:

(a) Furnish any taxpayer, representative authorized to represent the taxpayer under ORS 305.239 or person designated by the taxpayer under ORS 305.193, upon request of the taxpayer, representative or designee, with a copy of the taxpayer's income tax return filed with the department for any year, or with a copy of any report filed by the taxpayer in connection with the return, or with any other information the department considers necessary.

(b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

(c) Publish statistics so classified as to prevent the identification of income or any particulars contained in any report or return.

(d) Disclose a taxpayer's name, address, telephone number, refund amount, amount due, Social Security number, employer identification number or other taxpayer identification number to the extent necessary in connection with collection activities or the processing and mailing of correspondence or of forms for any report or return required in the administration of any local tax under ORS 305.620 or any law imposing a tax upon or measured by net income.

(2) The department also may disclose and give access to information described in ORS 314.835 to:

(a) The Governor of the State of Oregon or the authorized representative of the Governor with respect to an individual who is designated as being under consideration for appointment or reappointment to an office or for employment in the office of the Governor. The information disclosed shall be confined to whether the individual:

(A) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not more than the three immediately preceding years for which the individual was required to file an Oregon individual income tax return.

(B) Has failed to pay any tax within 30 days from the date of mailing of a deficiency notice or otherwise respond to a deficiency notice within 30 days of its mailing.

(C) Has been assessed any penalty under the Oregon personal income tax laws and the nature of the penalty.

(D) Has been or is under investigation for possible criminal offenses under the Oregon personal income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose of making the appointment, reappointment or decision to employ or not to employ the individual in the office of the Governor.

(b) An officer or employee of the Oregon Department of Administrative Services duly authorized or employed to prepare revenue estimates, or a person contracting with the Oregon Department of Administrative Services to prepare revenue estimates, in the preparation of revenue estimates required for the Governor's budget under ORS 291.201 to 291.224, or required for submission to the Emergency Board or the Joint Interim Committee on Ways and Means, or if the Legislative Assembly is in session, to the Joint Committee on Ways and Means, and to the Legislative Revenue Officer or Legislative Fiscal Officer under ORS 291.342, 291.348 and 291.445. The Department of Revenue shall disclose and give access to the information described in ORS 314.835 for the purposes of this paragraph only if:

(A) The request for information is made in writing, specifies the purposes for which the request is made and is signed by an authorized representative of the Oregon Department of Administrative Services. The form for request for information shall be prescribed by the Oregon Department of Administrative Services and approved by the Director of the Department of Revenue.

(B) The officer, employee or person receiving the information does not remove from the premises of the Department of Revenue any materials that would reveal the identity of a personal or corporate taxpayer.

(c) The Commissioner of Internal Revenue or authorized representative, for tax administration and compliance purposes only.

(d) For tax administration and compliance purposes, the proper officer or authorized representative of any of the following entities that has or is governed by a provision of law that meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality:

(A) A state;

(B) A city, county or other political subdivision of a state;

(C) The District of Columbia; or

(D) An association established exclusively to provide services to federal, state or local taxing authorities.

(e) The Multistate Tax Commission or its authorized representatives, for tax administration and compliance purposes only. The Multistate Tax Commission may make the information available to the Commissioner of Internal Revenue or the proper officer or authorized representative of any governmental entity described in and meeting the qualifications of paragraph (d) of this subsection.

(f) The Attorney General, assistants and employees in the Department of Justice, or other legal representative of the State of Oregon, to the extent the department deems disclosure or access necessary for the performance of the duties of advising or representing the department pursuant to ORS 180.010 to 180.240 and the tax laws of the state.

(g) Employees of the State of Oregon, other than of the Department of Revenue or Department of Justice, to the extent the department deems disclosure or access necessary for such employees to perform their duties under contracts or agreements between the department and any other department, agency or subdivision of the State of Oregon, in the department's administration of the tax laws.

(h) Other persons, partnerships, corporations and other legal entities, and their employees, to the extent the department deems disclosure or access necessary for the performance of such others' duties under contracts or agreements between the department and such legal entities, in the department's administration of the tax laws.

(i) The Legislative Revenue Officer or authorized representatives upon compliance with ORS 173.850. Such officer or representative shall not remove from the premises of the department any materials that would reveal the identity of any taxpayer or any other person.

(j) The Department of Consumer and Business Services, to the extent the department requires such information to determine whether it is appropriate to adjust those workers' compensation benefits the amount of which is based pursuant to ORS chapter 656 on the amount of wages or earned income received by an individual.

(k) Any agency of the State of Oregon, or any person, or any officer or employee of such agency or person to whom disclosure or access is given by state law and not otherwise referred to in this section, including but not limited to the Secretary of State as Auditor of Public Accounts under Article VI, section 2, of the Oregon Constitution; the Department of Human Services pursuant to ORS 412.094; the Division of Child Support of the Department of Justice and district attorney regarding cases for which they are providing support enforcement services under ORS 25.080; the State Board of Tax Practitioners, pursuant to ORS 673.710; and the Oregon Board of Accountancy, pursuant to ORS 673.415.

(L) The Director of the Department of Consumer and Business Services to determine that a person complies with ORS chapter 656 and the Director of the Employment Department to determine that a person complies with ORS chapter 657 or ORS chapter 657B, the following employer information:

(A) Identification numbers.

(B) Names and addresses.

(C) Inception date as employer.

(D) Nature of business.

(E) Entity changes.

(F) Date of last payroll.

(m) The Director of the Oregon Health Authority to determine that a person has the ability to pay for care that includes services provided by the Oregon State Hospital, or the Oregon Health Authority to collect any unpaid cost of care as provided by ORS chapter 179.

(n) Employees of the Employment Department to the extent the Department of Revenue deems disclosure or access to information on a combined tax report filed under ORS 316.168 is necessary to performance of their duties in administering the tax imposed by ORS chapter 657 or the contributions imposed by ORS chapter 657B.

(o) The State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and powers under ORS 453.307 to 453.414, the employer or agent name, address, telephone number and standard industrial classification, if available.

(p) Employees of the Department of State Lands or State Treasurer for the purposes of returning unclaimed property and identifying, locating and publishing lists of taxpayers entitled to unclaimed refunds under ORS 98.302 to 98.436.

(q) In addition to the disclosure allowed under ORS 305.225, state or local law enforcement agencies to assist in the investigation or prosecution of the following criminal activities:

(A) Mail theft of a check, in which case the information that may be disclosed shall be limited to the stolen document, the name, address and taxpayer identification number of the payee, the amount of the check and the date printed on the check.

(B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, address and taxpayer identification number of the payee, the amount of the check, the date printed on the check and the altered name and address.

(r) The United States Postal Inspection Service or a federal law enforcement agency, including but not limited to the United States Department of Justice, to assist in the investigation of the following criminal activities:

(A) Mail theft of a check, in which case the information that may be disclosed shall be limited to the stolen document, the name, address and taxpayer identification number of the payee, the amount of the check and the date printed on the check.

(B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, address and taxpayer identification number of the payee, the amount of the check, the date printed on the check and the altered name and address.

(s) The United States Financial Management Service, for purposes of facilitating the offsets described in ORS 305.612.

(t) A municipal corporation of this state for purposes of assisting the municipal corporation in the administration of a tax of the municipal corporation that is imposed on or measured by income, wages or net earnings from self-employment. Any disclosure under this paragraph may be made only pursuant to a written agreement between the Department of Revenue and the municipal corporation that ensures the confidentiality of the information disclosed.

(u) A consumer reporting agency, to the extent necessary to carry out the purposes of ORS 314.843.

(v) The Public Employees Retirement Board, to the extent necessary to carry out the purposes of ORS 238.372 to 238.384, and to any public employer, to the extent necessary to carry out the purposes of ORS 237.635 (3) and 237.637 (2).

(w) The Secretary of State for the purpose of initiating or supporting a recommendation under ORS 60.032 (3) or 63.032 (3) to administratively dissolve a corporation or limited liability company that the Director of the Department of Revenue determines has failed to comply with applicable tax laws of the state.

(x)(A) A multijurisdictional information sharing organization formed with oversight by the Internal Revenue Service to combat identity theft and fraud, if the Department of Revenue is a member of the organization; and

(B) Tax preparation software vendors that are members of an organization described in subparagraph (A) of this paragraph, if information described in ORS 314.835 is shared for the purpose of investigating industry leads of potential identity theft or fraud.

(y) The State Treasurer, for the purpose of providing employer responses, as indicated on annual withholding reports submitted to the Department of Revenue, about whether an employer offers a qualified retirement savings plan as listed in ORS 178.215.

(z) The Oregon 529 Savings Board, for the purpose of facilitating the establishment of accounts by personal income taxpayers under ORS 178.335 within the Oregon 529 Savings Network through the use of income tax return forms.

(a)(a) The Employment Department for the purpose of verifying income for self-employed individuals who have elected coverage under ORS chapter 657B.

(3)(a) Each officer or employee of the department and each person described or referred to in subsection (2)(a), (b), (f) to (L), (n) to (q) or (w) of this section to whom disclosure or access to the tax information is given under subsection (2) of this section or any other provision of state law, prior to beginning employment or the performance of duties involving such disclosure or access, shall be advised in writing of the provisions of ORS 314.835 and 314.991, relating to penalties for the violation of ORS 314.835, and shall as a condition of employment or performance of duties execute a certificate for the department, in a form prescribed by the department, stating in substance that the person has read these provisions of law, that the person has had them explained and that the person is aware of the penalties for the violation of ORS 314.835.

(b) The disclosure authorized in subsection (2)(r) of this section shall be made only after a written agreement has been entered into between the Department of Revenue and the person described in subsection (2)(r) of this section to whom disclosure or access to the tax information is given, providing that:

(A) Any information described in ORS 314.835 that is received by the person pursuant to subsection (2)(r) of this section is confidential information that may not be disclosed, except to the extent necessary to investigate or prosecute the criminal activities described in subsection (2)(r) of this section;

(B) The information shall be protected as confidential under applicable federal and state laws; and

(C) The United States Postal Inspection Service or the federal law enforcement agency shall give notice to the Department of Revenue of any request received under the federal Freedom of Information Act, 5 U.S.C. 552, or other federal law relating to the disclosure of information.

(4) The Department of Revenue may recover the costs of furnishing the information described in subsection (2)(L), (m) and (o) to (q) of this section from the respective agencies.

316.168 Employer required to file combined quarterly tax report. (1) Except as otherwise provided by law, every employer subject to the provisions of ORS 316.162 to 316.221, 656.506, ~~and~~ ORS chapter 657, **and ORS chapter 657B** or a payroll-based tax imposed by a mass transit district and administered by the Department of Revenue under ORS 305.620, shall make and file a combined quarterly tax and assessment report upon a form prescribed by the department.

(2) The report shall be filed with the Department of Revenue on or before the last day of the month following the quarter to which the report relates and shall be deemed received on the date of mailing, as provided in ORS 305.820.

(3) The report shall be accompanied by payment of any tax or assessment due and a combined tax and assessment payment coupon prescribed by the department. The employer shall indicate on the coupon the amount of the total payment and the portions of the payment to be paid to each of the tax or assessment programs.

(4) The Department of Revenue shall credit the payment to the tax or assessment programs in the amounts indicated by the employer on the coupon and shall promptly remit the payments to the appropriate taxing or assessing body.

(5) If the employer fails to allocate the payment on the coupon, the department shall allocate the payment to the proper tax or assessment programs on the basis of the percentage the payment bears to the total amount due.

(6) The Department of Revenue shall distribute copies of the combined quarterly tax and assessment report and the necessary tax or assessment payment information to each of the agencies charged with the administration of a tax or assessment covered by the report.

(7) The Department of Revenue, the Employment Department and the Department of Consumer and Business Services shall develop a system of account numbers and assign to each employer a single account number representing all of the tax and assessment programs included in the combined quarterly tax and assessment report.