

Paid Leave Oregon

Proposed Oregon Administrative Rules - Batch 4: RAC 5-17-22

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Benefits

ORS 657B.010 through ORS 657B.120 establishes benefit claim administration for Paid Family and Medical Leave Insurance (PFMLI). The below rules provide further details on aspects of benefits, such as written notice provided by the employer to the employees, job protection, and overpayments. The definition section will be added to the existing rule. We recognize that not all the rules related to benefits are included in this compilation and additional rules related to PFMLI benefits may be needed. All administrative rules may be expanded, reorganized, or deleted before formal rulemaking.

471-070-1000 - Benefits: Definitions [Amended]

- (1) "Eligible employee's average weekly wage" means an amount calculated by the department by dividing the total wages earned by an eligible employee during the base year by 52 weeks.
- (2) "Willful" and "willfully" means a knowing and intentional act or omission.
- (3) "Willful false statement" means any occurrence where:
 - (a) A claimant or employer made a statement or submitted information that is false;
 - (b) The claimant or employer knew or should have known the statement or information was false when making or submitting it;
 - (c) The statement or submission concerned a fact that was material to the rights and responsibilities of either the claimant or the employer under ORS chapter 657B; and
 - (d) The claimant or employer made the statement or submitted the information with the intent that the department would rely on the statement or information when taking action.
- (4) "Willful failure to report a material fact" means any occurrence where:
 - (a) A claimant or employer omits or fails to disclose information;
 - (b) The claimant or employer knew or should have known that the information should have been provided;
 - (c) The information concerned a fact that was material to the rights and responsibilities of either the claimant or the employer under ORS chapter 657B; and
 - (d) The claimant or employer omitted or did not disclose the information with the intent that the department would take action adverse to action the department would take with the information.

[Stat. Auth.: ORS 657B.120, 657B.340; Stats. Implemented: ORS 657B.010, 657B.120]

471-070-1300 - Benefits: Written Notice Posting to Employees of Rights and Duties

- (1) The director shall make available to employers a Paid Family and Medical Leave Insurance (PFMLI) notice posting in the language the employer typically uses to communicate with the employee that meets the requirements of ORS 657B.440.
- (2) Each employer must display the department's notice.
 - (a) The notice must be displayed in each building or worksite in an area that is accessible to and regularly frequented by employees; and

(b) An employer with employees assigned to remote work must provide, by hand delivery or regular mail, a copy of the department's notice to be displayed at each employee's individual worksite. The notice must be delivered or sent to each employee assigned to remote work upon the employee's hire or assignment to remote work.

(3) Electronic posting of the notice is not sufficient to satisfy posting requirements under this rule, but may supplement worksite posting requirements.

(4) The notice must be displayed in the language the employer typically uses to communicate with the employee. If the employer uses more than one language to communicate with the employees assigned to a worksite, then the employer must display copies of the notice in each of the languages that the employer would typically use to communicate with the employees assigned to that worksite.

(5) An employer offering an equivalent plan approved under ORS 657B.210 must follow the employer notice requirements specified in OAR 471-070-2330.

(6) An employer's failure to display or provide notice as required under this rule is an unlawful employment practice as provided in ORS 657B.070.

[Stat. Auth.: ORS 657B.340, 657B.440; Stats. Implemented: ORS 657B.070, 657B.440]

471-070-1330 - Benefits: Job Protection

(1) An employer must restore an employee returning from Paid Family and Medical Leave Insurance (PFMLI) leave to the employee's former position, if the position still exists, regardless of whether that employee is taking consecutive or nonconsecutive leave and even if the former position has been filled by a replacement worker during the employee's PFMLI leave. The employee's former position is the position held by the employee at the time PFMLI leave commenced, regardless whether the job has been renamed or reclassified. (For example, a delivery driver must be returned to the same route, at the same or greater rate of pay and benefits, on the same shift, and working from the same location as when the driver started PFMLI leave.)

(2) Any worker hired or reassigned during an eligible employee's leave to perform the same work in the same position that the eligible employee held before the leave was taken is a replacement worker. When the eligible employee on PFMLI leave notifies the employer that the employee is ready to return to work, the employer must give that employee the opportunity to work any hours that the replacement worker would otherwise have been scheduled to work beginning as soon as the following day the employee notifies the employer.

(3) The employee is not entitled to return to the former position if the employee would have been terminated or reassigned from their current position to another position if PFMLI leave had not been taken.

(4) If the position held by the employee at the time PFMLI leave began has been eliminated, and not merely renamed or reclassified, then:

(a) If the employer is a large employer as defined in OAR 471-070-3150, the employer must restore the employee to any available, equivalent or greater position at the employee's former job site, or, if an equivalent position is not available at the employee's former job site, then within 20 miles of the former job site.

(A) An available position is a position that is vacant or not permanently filled.

(B) An equivalent position is a position that is virtually identical to the employee's former position in terms of employment benefits, pay, and working conditions, including privileges, perks, and status. It must involve substantially the same duties and responsibilities, which must entail equivalent skill, effort, responsibility, and authority.

(b) If the employer is a small employer as defined in OAR 471-070-3150, the employer may, at the employer's discretion and based on business necessity, restore the employee to a different position. The different position must offer the same employment benefits, pay, and working conditions, including privileges, perks, and status as the employee's former position and must have similar job duties and responsibilities as the employee's former position. If a position is not available at the employee's former job site, the employee may be restored to a position within 20 miles of the former job site.

(5)

(a) Unless the terms of a collective bargaining agreement, other employment agreement, or the employer's policy provides otherwise, an employee on PFMLI leave is not entitled to accrue employment benefits during a period of leave. Employment benefits include but are not limited to: accrue seniority, production bonuses, or other non-health-care-related benefits that would accrue while the employee is working;

(b) Benefits an employee was entitled to prior to starting PFMLI leave, including, but not limited to seniority or pension rights, must be restored in full upon the employee's return to work. The benefits do not have to be restored, however, if such benefits have been eliminated or changed for similarly situated employees;

(c) An employee has no greater right to a job or other employment benefits than if the employee had not taken PFMLI leave; and

(d) An employee is subject to layoff on the same terms or under the same conditions as similarly situated employees who have not taken PFMLI leave.

(6) During any PFMLI leave, an employer must maintain any health care benefits the employee had prior to taking such leave, for the duration of the leave, as if the employee had continued in employment continuously during the period of leave.

(a) An employer continuing health care insurance coverage for an employee on PFMLI leave may require that the employee pay only the same share of premium costs during the leave that the employee paid prior to the leave.

(b) If an employee cannot or will not pay their share of the premium costs, the employer may elect to discontinue health care benefit coverage, unless doing so would render the employer unable to restore the employee to full benefit coverage once the employee returns to work. If coverage lapses because an employee has not made required premium payments, upon the employee's return from PFMLI leave the employer must restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including being subject to any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage.

(c) If the employer pays (directly or indirectly, voluntarily or as required by state or federal statute) any part of the employee's share of health or other insurance premium while an employee is on PFMLI leave, the employer must receive permission from the employee to deduct from their pay until the amount is repaid. The employer may deduct up to 10 percent of the employee's gross pay each pay period after the employee returns to work until the amount is repaid.

(d) If an employee fails to return to work — unless the failure to return to work is because of a serious health condition or safe leave for which the employee would be entitled to PFMLI leave or another circumstance beyond the employee's control — the employer may recover the employee's share of benefits paid by the employer. The employer may use any legal means to collect the amount owed for the employee's share of benefits paid by the employer, including deducting the amount from the employee's final paycheck.

(7) An employer may require an employee to follow the employer's established leave policy regarding periodic reporting to the employer of the employee's current status.

(8) If an employee gives clear notice of intent in writing not to return to work from PFMLI leave, the employee is entitled to complete the approved PFMLI leave, providing that the original need for PFMLI leave still exists. The employee remains entitled to all the rights and protections provided under ORS chapter 657B and OAR chapter 839, except that:

(a) The employer's obligations under PFMLI to restore the employee's position and to restore benefits upon the completion of leave cease, except to the extent required by other state or federal law; and

(b) The employer is not required to hold a position vacant or available for the employee who gives unequivocal notice of intent not to return.

(9) The protections provided under ORS 657B.060 and this rule apply only to an eligible employee who was employed by the employer for at least 90 calendar days prior to taking PFMLI leave.

(10) An employer may not use the provisions of this rule as a subterfuge to avoid the employer's responsibilities under ORS chapter 657B.

(11) It is an unlawful employment practice to discriminate against an eligible employee who has invoked any provision of ORS 657B.060 or this rule. An employee who alleges a violation of any provision of ORS 657B.060 or this rule may bring a civil action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.060, 657B.070]

[471-070-1410 - Benefits: Initial and Amended Monetary Determinations](#)

(1)

(a) When a claimant files an application for benefits as described in OAR 471-070-1100, which establishes a new benefit year, the department shall examine the application for benefits and, on the basis of information available, shall make an initial determination of:

(A) The total amount of subject wages and taxable income from self-employment who elected under OAR 471-070-2010 paid to or earned by the claimant during the base year or alternate base year;

(B) Whether or not the amount in section (1)(a)(A) of this rule is sufficient to meet the eligibility requirement under OAR 471-070-1010(1)(b); and

(C) The claimant's weekly benefit amount under ORS 657B.050, provided the claimant is eligible for benefits under section (1)(a)(B) of this rule.

(b) The department's initial determination shall be applicable to all weeks of the benefit year respecting which the claim was filed, except that the department's determination may be amended with respect to any week or weeks of the benefit year as described under section (2) of this rule.

(c) The department shall notify the claimant of the initial determination made under this section.

(2)

(a) A claimant who receives an initial determination under section (1) of this rule may request that the determination be amended. Upon receipt of such a request, the department will investigate by examining records of wages and income submitted to the department by the claimant, employers, and state agencies in an attempt to locate or remove subject wages or taxable income from self-employment alleged by the claimant to be missing or reported incorrectly.

(b) If, as the result of an investigation, the subject wages or taxable income from self-employment either make a previously ineligible claimant eligible for benefits, or increase or decrease the weekly benefit amount of a previously approved claim, then the department will issue an amended determination.

(c) The amended determination shall replace the initial determination made under section (1) of this rule and shall be applicable to all weeks of the benefit year respecting which the claim was filed.

(d) If, as the result of an investigation, all or part of the requested wages or income are not included in the determination, the department will so notify the claimant.

(3) Unless the claimant files a request for hearing with the department regarding the initial or amended determination, the determination shall become final once the time for requesting a hearing has passed. The department shall pay or deny benefits in accordance with the determination, unless otherwise provided by law. The request for hearing must be filed not later than 60 days after the delivery of the initial or amended determination unless the department mails the determination, in which case the request for hearing must be filed not later than 60 days after the date the determination is mailed to the last-known address of the claimant.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.050, 657B.100]

[471-070-1500 - Benefits: Review of Overpaid Benefits](#)

(1) The department may review an overpayment of benefits to determine the cause of the overpayment and whether the claimant is liable for repayment of the benefits and any applicable penalties.

(2) The department's review of the overpayment shall be used to determine whether:

(a) The overpayment may be waived under ORS 657B.120(5);

(b) Interest shall be applied under OAR 471-070-1510(3) to any amount owed;

(c) Penalties shall be applied under ORS 657B.120(3)(b); and

(d) The claimant shall be disqualified from claiming benefits under ORS 657B.120(3)(a);

(3) The department shall review information provided by the claimant or other parties and from the department's records in making its determination under this rule.

(4) The claimant may be considered at fault, even though all relevant information was provided before a decision was issued, when the claimant should reasonably have known the payment was improper.

(5) The claimant will always be considered at fault when an overpayment is the result of a claimant willfully making a false statement or willfully failing to report a material fact in order to obtain Paid Family and Medical Leave Insurance benefits.

(6) In deciding if a claimant is at fault, the department may also consider factors which may affect the claimant's ability to report all relevant information to the department.

[Stat. Auth.: ORS 657B.120, 657B.340; Stats. Implemented: ORS 657B.120]

471-070-1510 - Benefits: Repayment of Overpaid Benefits; Interest

(1) The director shall issue an assessment to a claimant for an overpayment each time a claimant receives Paid Family and Medical Leave Insurance (PFMLI) benefits to which the claimant was not entitled.

(2) If the director determines that a claimant has received benefits to which the claimant was not entitled:

(a) The claimant is liable to repay the amount of benefits that the claimant was overpaid;

(b) The director may secure the repayment of the overpaid benefits through the deduction from future benefits otherwise payable to the claimant under ORS 657B.100; and

(c) The director may deduct all or any part of the claimant's future weekly benefits up to the amount of the prior overpayment.

(3)

(a) If the department determines that a claimant is at fault for an overpayment, due to the claimant's error, false statement, or failure to report a material fact, regardless of intent, then the claimant shall be liable for interest on the overpayment amount. Interest shall be paid and collected at the same time repayment of benefits is made by the individual, at the rate of one and a half percent per month or fraction of a month. Interest will accrue, beginning on the first day of the month that begins 60 days after the administrative decision establishing the overpayment becomes final.

(b) If the department determines that a claimant is not at fault for an overpayment, then the claimant shall not be liable for interest on the amount to be repaid as a result of the overpayment.

(4)

(a) Deductions from PFMLI benefits under section (2)(b) of this rule shall be applied solely to repay the overpaid benefits.

(b) Amounts collected through other means shall be applied first to administrative and court costs, then penalties, then interest, and then to the overpaid benefit amount.

(5) Deductions for the repayment of benefits paid erroneously may be deducted from benefits due to the claimant with no time limitations.

[Stat. Auth.: ORS 657B.120, 657B.340; Stats. Implemented: ORS 657B.120]

471-070-1520 - Benefits: Waiving Recovery of Overpayments

(1) In accordance with ORS 657B.120(5), the director may waive, in whole or in part, the amount of Paid Family and Medical Leave Insurance (PFMLI) benefits if:

- (a) The benefits were paid based on an error other than a willful provision of a false statement, nondisclosure of a material fact, or misrepresentation by a claimant, and
- (b) Recovery would be against equity, good conscience, or administrative efficiency.

(2) The director may determine that recovery of overpaid benefits is against equity and good conscience if the individual requesting a waiver has limited means to repay the benefits and has total allowable household expenses that equal or exceed 90% of the total household income, not including PFMLI benefits received. The department will use the current year's Internal Revenue Service (IRS) Collection Financial Standards to determine total allowable household expenses. The director may allow expenses higher than those provided for in the IRS Collection Financial Standards if the claimant requesting a waiver provides documentation showing that using those IRS Collection Financial Standards would leave the claimant unable to provide for basic living expenses.

(3) If the director grants a waiver, the department will stop collection activity of any overpaid benefits subject to the waiver. The department will give written notice of any waiver that is granted, indicating the amount of the overpaid benefits for which the waiver is granted.

(4) Waivers granted are effective the Sunday of the week in which the request for waiver was filed with the department. The date of the post mark from the United States Postal Service, a date stamp from an Employment Department office, an embedded fax date, or the electronic filing date as described in OAR 471-070-0850, whichever is earliest, will be used to determine the date of filing.

(5) If a request for waiver is denied, the department will notify the claimant of its decision. The claimant may submit another request for waiver if their situation changes significantly enough to establish that recovery of the benefits would be against equity and good conscience. No subsequent request for waiver of benefits may be granted, unless the claimant satisfactorily demonstrates in writing the significant change in financial situation and provides supporting documentation.

(6) Overpaid benefits that have been recovered from the claimant prior to the filing of a waiver request will not be waived or refunded.

(7) If a person is paid more than once for the same week(s), recovery of only the amount in excess of the final entitlement is eligible to be waived.

(8) In applying ORS 657B.120(5), a waiver will not be granted if the overpayment is a result of a willful false statement or a willful failure to report a material fact as determined under ORS 657B.120(3).

(9) Overpayments caused by the negotiation of an original and a replacement check that were issued for the same period will not be waived.

(10) The determination whether to waive overpayments under ORS 657B.120(5) and this rule shall be made by employees authorized by the director by delegation.

[Stat. Auth.: ORS 657B.120, 657B.340; Stats. Implemented: ORS 657B.120]

471-070-1550 - Benefits: Penalties for Employer Misrepresentation

(1) In accordance with ORS 657B.120(2), the director may assess a civil penalty of up to \$1,000 against an employer each time the employer makes or causes to be made a willful false statement or willful failure to report a material fact regarding the claim of an eligible employee or regarding an employee's eligibility for Paid Family and Medical Leave Insurance benefits.

(2) The director may consider the following mitigating and aggravating circumstances when determining whether to assess a civil penalty under section (1) of this rule and the amount assessed:

- (a) Whether the employer knew or should have known they were making or causing to be made a false statement or failing to report a material fact;
- (b) Prior violations, if any, of ORS chapter 657B by the employer;
- (c) Whether a violation of ORS chapter 657B by the employer resulted in harm to an employee;
- (d) Whether a violation of ORS chapter 657B by the employer resulted in erroneous or incorrect benefit or assistance grant payments;
- (e) The magnitude and seriousness of a violation of ORS 657B.120(1).

(3) It is the responsibility of the employer to provide the director any mitigating evidence concerning liability for or the amount of the civil penalty to be assessed.

(4) The director shall consider all mitigating circumstances presented by the employer for the purpose of determining the amount of the civil penalty to be assessed.

(5) Any amount in penalties due under ORS 657B.120(2) and this rule may be collected by the director in a civil action against the employer brought in the name of the director.

[Stat. Auth.: ORS 657B.120, 657B.340; Stats. Implemented: ORS 657B.120]

471-070-1560 - Benefits: Disqualification and Penalties for Claimant Misrepresentation

(1) In accordance with ORS 657B.120(3), it is unlawful for a claimant to willfully make a false statement or willfully fail to report a material fact in order to obtain Paid Family and Medical Leave Insurance (PFMLI) benefits.

(2) If the director determines that a claimant has made a willful false statement or a willful failure to report a material fact in order to obtain PFMLI benefits, then the claimant shall be:

- (a) Disqualified from claiming benefits for a period of 52 consecutive weeks beginning from the date that the claimant made the willful false statement or willful failure to report the material fact;
- (b) Assessed for any amount of benefits the claimant received to which the claimant was not entitled to; and
- (c) Liable for a penalty under ORS 657B.120(3)(b).

(3) When determining the rate of the penalty imposed under ORS 657B.120(3)(b), the department will review the number of occurrences of willful false statement or willful failures to report material facts. An occurrence shall be counted each time a claimant willfully makes a false statement or willfully fails to report a material fact in order to obtain PFMLI benefits. The department shall use the date the claimant failed to report a material fact or willfully made a false statement or representation as the date of the occurrence. The penalty shall be imposed as follows:

- (a) For the first occurrence, or the second occurrence within five years of any previous disqualification or imposition of a penalty, 15 percent of the total amount of benefits the claimant received to which the claimant was not entitled;
- (b) For the third or fourth occurrence within five years of any previous disqualification or imposition of penalty, 20 percent of the total amount of benefits the claimant received to which the claimant was not entitled;
- (c) For the fifth or sixth occurrence within five years of any previous disqualification or imposition of penalty, 25 percent of the total amount of benefits the claimant received to which the claimant was not entitled;
- (d) For the seventh or greater occurrence within five years of any previous disqualification or imposition of penalty, 30 percent of the total amount of benefits the claimant received to which the claimant was not entitled;
- (e) In cases of forgery or identity theft, 30 percent of the amount of benefits the claimant received to which the claimant was not entitled, regardless of the number of occurrences.

(4) Any amount subject to recovery and any penalty due under this rule, OAR 471-070-1510, and ORS 657B.120 may be collected by the director in a civil action against the claimant brought in the name of the director.

[Stat. Auth.: ORS 657B.120, 657B.340; Stats. Implemented: ORS 657B.120]

WAGES

ORS 657B.010(26) establishes that “wages” for Paid Family and Medical Leave Insurance (PFMLI) has the meaning given that term in ORS 657.105, which defines “wages” for Unemployment Insurance (UI). This section of rule further clarifies definitions for terms used within the Wages rules in OAR 471-070-0415 through 471-070-0465. All administrative rules may be expanded, reorganized, or deleted before formal rulemaking.

471-070-0400 Wages: Definitions

(1) Agricultural labor

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

- (A) Cultivating and tillage of the soil;
- (B) Dairying;
- (C) Raising, shearing, feeding, caring for, training, and management of livestock, bees, fur-bearing animals, wildlife, and poultry; and

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

(b) "Agricultural labor" includes all services performed in the employ of the operator or group of operators of a farm or farms (or a cooperative organization of which such operator or operators are members) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator or group of operators produced more than one-half of the commodity, as measured by volume, weight, or other customary means, with respect to which such service is performed.

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

(d) "Farms," as used in this section, includes stock, dairy, poultry, fruit, fur-bearing animal, Christmas tree and truck farms, plantations, orchards, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities.

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

(3) Domestic service

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

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

(A) A parent or spouse of the employer;

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

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

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

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

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

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

- (H) Individuals performing companionship services exempt from the provisions of the Fair Labor Standards Act of 1938 (29 U.S.C 201 et seq.);
- (I) Persons who perform house sitting duties that do not involve domestic service;
- (J) Persons who provide domestic service in exchange for an in-kind good or service; and
- (K) Services of those not of a household nature, such as services performed as a private secretary, tutor, nurse, or certified nursing assistant, even though performed in the employer's private home.
- (4) "Employing unit" has the same definition as "employer" as provided by ORS 657B.010(14).
- (5) "Employment" means any service performed by an employee for an employer for remuneration or under any contract of hire, written or oral, expressed, or implied.
- (6) "Holiday" means any of the holidays listed in ORS 187.010(1)(b)–(k) and (2), 187.020 and any holiday designated by the employer, union contract, or otherwise.
- (7) "Holiday pay" means any remuneration that an employer pays an employee for a holiday, including, but not limited to, full or partial paid time off or additional pay for work on a holiday.
- (8) "Paid time off" means compensated time away from work provided by an employer that the employee can choose to use for any reason, including, but not limited to, vacation, sickness, and personal time.
- (9) "Private home," as used in section (3) of this rule, means a fixed place of abode of an individual household. A separate and distinct dwelling unit maintained by a household in an apartment, house, hotel, or other similar establishment may constitute a private home, provided it is a place in which a person resides with the intention of residence or has so resided with the intention of returning. If a dwelling unit of an individual or family is used primarily as a boarding house for the purpose of supplying lodging to the public as a business enterprise, only that portion of the premises occupied by the individual or family may be considered a private home for the purposes of this rule.
- (10) "Sick pay" means remuneration paid by an employer to an employee for time away from work due to sickness, unless excluded as a fringe benefit under ORS 657.115.
- (11) "Stand-by pay" means remuneration paid by an employer to an employee who is required to be immediately available for work.
- (12) "Vacation pay" means remuneration paid by an employer to an employee for time away from work provided by an employer to an employee to use for any reason the employee chooses but does not include leave for sickness, compensatory time, holiday, or other special leave.

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

CONTRIBUTIONS

ORS 657B.130 allows tribal governments to elect to participate in the PFMLI program. The rules explain how tribal governments shall make an election to participate in the program and when a termination can occur.

The contribution rules also further explain when employers can take employee contributions from pay periods and when to include wages earned inside and outside of Oregon. The rules also include who is liable for the contributions when a successor in interest occurs and penalties occur for failing to file a report. All administrative rules may be expanded, reorganized, or deleted before formal rulemaking.

471-070-0010 Definitions

“Paid Leave Oregon” or “Paid Leave” means the Paid Family and Medical Leave Insurance program as described under ORS chapter 657B.

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

471-070-2100 Tribal Government: Election Requirements and Effective Date

(1) A tribal government may elect coverage at any time under the Paid Family and Medical Leave Insurance (PFMLI) program in accordance with ORS 657B.130(4). The tribal government must elect coverage separately for each business owned by the tribal government.

(2) A tribal government election of the PFMLI program coverage must be in writing and must be accomplished through an intergovernmental agreement between the State of Oregon acting by and through the Employment Department. The tribal government must agree to pay contributions for a period of not less than three years.

(3) A tribal government that has elected coverage by entering an agreement pursuant to section (2) of this rule shall be considered an “employer” and employees of the tribal government shall be considered “employees” under ORS chapter 657B and related administrative rules. The tribal government and its employees shall be subject to all rights and responsibilities therein, including, but not limited to:

(a) Payment of contributions at the same rate and amount as employers and employees as specified in ORS 657B.150 and applicable administrative rules.

(b) Filing and paying quarterly as required on the Oregon Quarterly Tax Report, including detailing the PFMLI portion of all PFMLI subject wages, the employee count, and the employee and employer PFMLI contributions due in accordance with ORS 657B.150 and OAR 471-070-3030.

(c) Receipt of PFMLI benefit amounts by eligible employees of tribal governments that have elected coverage in accordance with ORS 657B.050(1) and (2) and related administrative rules.

(d) Collection by the department of erroneous payments of benefits to employees of tribal governments in accordance with provisions for employees in ORS 657B.120 and related administrative rules.

(e) Job protection for eligible employees of tribal governments as specified in ORS 657B.060 and applicable administrative rules.

(f) Collection requirements or methods and applicable penalties on delinquent payments of contributions and recovery of improper benefit payments as described in ORS 657B.280 through 657B.330 and applicable administrative rules.

(4) The terms of a PFMLI tribal government intergovernmental agreement may amend any of the terms within this rule and OAR 471-070-2180, if both parties agree.

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

471-070-2180 Tribal Government: Termination

- (1) A tribal government may terminate elective coverage by filing a written notice with the department requesting a termination of the intergovernmental agreement.
- (2) A tribal government can terminate elective coverage any time after the coverage has been in effect for three years or longer. The termination shall take effect 30 days after the notice to terminate is received by the department, unless a later date is requested by the tribal government in the written notice.
- (3) A tribal government may terminate elective coverage that has been in effect for less than three years if a voluntary or involuntary bankruptcy petition has been filed for the covered business. The termination shall take effect on the date the date the department receives the written notice and supporting documentation of the bankruptcy petition.
- (4) All contributions payable are due immediately upon termination of coverage.

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

471-070-3040 Contributions: Withholding of Employee Contributions

- (1) An employer may not deduct from the employee's subject wages more than the maximum allowable amount of 60 percent of the total contribution rate described in OAR 471-070-3010 for a pay period.
- (2) If an employer fails to deduct the maximum allowable employee share of the contribution rate for a pay period, the employer is considered to have elected to pay that portion of the employee share under ORS 657B.150(5) or ORS 657B.210(5) for that pay period.
- (3) If an employer has elected to pay the employee portion of contributions due under ORS 657B.150(5), the employer may not deduct this amount from a future paycheck of the employee for a different pay period.
- (4) An employer that elects to pay the employee contribution, in whole or in part as an employer offered benefit, is liable for that portion of the employee contribution.
- (5) Notwithstanding section (2) of this rule, an employer that elects to pay the employee contribution, in whole or in part, must give written notice to the employee at least one pay period in advance of any reduction of the elected payment amount.
- (6) Section (1) and (2) of this rule do not apply if an employer was unable to deduct the maximum allowable employee share of the contribution rate for a pay period due to a lack of sufficient employee wages for that pay period.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.150, 657B.210]

471-070-3100 Contributions: Place of Performance

(1) For the purpose of implementing ORS 657B.175 and determining Oregon Paid Family and Medical Leave Insurance (PFMLI) subject wages, an employee's wages shall be used to make determinations under ORS chapter 657B and applicable rules if the employee's wages are earned for service:

- (a) Performed entirely within Oregon; or
- (b) Performed within and outside Oregon, but the service performed outside of Oregon is incidental to the employee's service performed within Oregon.

(2) An employee's service performed outside of Oregon shall be considered incidental to the employee's service performed in Oregon if:

- (a) The majority of the employee's service is localized within Oregon and the service outside of Oregon is temporary or transitory in nature or consists of isolated transactions;
- (b) Service is not localized in any other state or territory;
- (c) The base of operations is in Oregon, or if there is no base of operations, then the place from which the service is directed or controlled is in Oregon; or
- (d) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in Oregon.

Example 1: Robert lives in Vancouver, WA, but rides a motorcycle to work at a company in Southeast Portland. Because Robert's service is performed entirely within Oregon, all wages earned are PFMLI subject wages. The fact that Robert resides in Washington does not matter.

Example 2: A storm hits Idaho. An employer in Oregon dispatches an employee who typically lives and works in Oregon to help with repair work. The employee works temporarily in Idaho for the employer for two weeks, and then returns to work in Oregon for the employer. The employment is localized within Oregon and all wages earned in Oregon and Idaho are PFMLI subject wages.

Example 3: Ryan is a truck driver who leaves each week in their eighteen wheeler from their home base in Dillard, Oregon, picks up supplies in Northern California and delivers the supplies to Tacoma, Washington. Ryan performs some service in Oregon; driving up and down I-5, changing the oil in their eighteen wheeler and performing maintenance, as well as performing service in California and Washington. Ryan's base of operation is Dillard, Oregon, as the place they leave from and return to. All of Ryan's wages earned are PFMLI subject wages.

Example 4: Shannon works for an employer located in Oregon but works remotely on a permanent basis from a home office in California. Shannon never performs any service in Oregon. Even though the work is directed from Oregon, the service is entirely performed at Shannon's home in California. Therefore, the wages earned by Shannon are not PFMLI subject wages.

Example 5: Andrew works for a Washington employer that dispatches Andrew, who lives in Medford, Oregon, on calls to repair furnaces throughout Oregon, Idaho, and California. Andrew doesn't know where the work will be performed from day to day or each week. Andrew's work is directed from Washington, but no service is performed there. The

services performed in Idaho and California would be considered incidental to Andrew's service in Oregon, since Andrew's residence is in Oregon. All of Andrew's wages earned are PFMLI subject wages.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.175]

471-070-3130 Contributions: Successor in Interest Unpaid Contribution Liability

(1) If an employer fails to pay the Paid Family and Medical Leave Insurance (PFMLI) payroll contribution due within 10 calendar days of ending operations, as described in ORS 657B.150(14)(a), any person who becomes a successor in interest to the business is liable for the full amount of the unpaid PFMLI payroll contribution.

(2) For purposes of ORS 657B.150 and this rule, an employer is a total successor in interest when all or substantially all of the components parts of the business are transferred to or otherwise acquired by the successor in interest, including the employees necessary to carry on day-to-day operations and essential business functions in the same manner and for the same purposes as carried on prior to the acquisition or transfer.

(3) For purposes of ORS 657B.150 and this rule, an employer is a partial successor in interest when a distinct and severable portion of the business is transferred to or otherwise acquired by the successor in interest, including the employees of that portion of the business necessary to carry on day-to-day operations and essential business functions in the same manner and for the same purposes as carried on prior to the acquisition or transfer.

(4) Liability for unpaid contributions under this section shall be assessed as follows:

(a) When an employer acquires the trade or business as a total successor in interest that has an unpaid contribution balance due, the successor in interest is liable for the full amount of the unpaid PFMLI payroll contribution.

(b) When an employer acquires the trade or business as a partial successor in interest that has an unpaid contribution balance due, the predecessor is liable for the total unpaid PFMLI payroll contribution.

(5) Unpaid contributions assessed to the successor in interest shall be due immediately upon assessment.

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

471-070-3340 Contributions: Overpayment Refunds

(1) Contributions, interest, fines, or penalties received in excess of the amount legally due and payable, shall be refunded by the department without interest.

(2) The department shall not refund for sums of \$10 or less unless requested in writing by the person who made the payment, or their legal representative, within three years of the date that the money was paid to the department, as provided under ORS 293.445.

[Stat. Auth.: ORS 293.445, 657B.340; Stats. Implemented: ORS 293.445]

471-070-8540 Penalty Amount When Employer Fails to File Report

(1) If an employer fails to file all required reports or pay all required contributions within the time period described in ORS 657B.920(2), the department may assess a late filing penalty in addition to any other amounts due.

(2) The penalty shall be 0.02 percent of the employer's employees total Paid Family and Medical Leave Insurance (PFMLI) subject wages for the late report rounded to the nearest \$100. If the penalty is calculated to be less than \$100, the amount will be the minimum \$100.

Example: Athena's Yoga and Piyo Studio has 20 employees with total PFMLI subject wages for first quarter of 2024 of \$120,000. Athena does not file the 2024 Oregon Quarterly Tax Report for the first quarter. The department sends a written notice warning on May 10, 2024, to Athena's Yoga and Piyo Studio, but they do not correct the deficiency by filing the needed report. A penalty of \$24 ($0.0002 \times \$120,000$ PFMLI subject wages) is calculated by the department. But since the minimum penalty is \$100, the penalty imposed by the department is \$100.

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

EQUIVALENT PLANS

ORS 657B.210 to 657B.260 establishes that an employer may apply to offer an equivalent plan for PFMLI benefits for its employees and sets requirements for the application process, provision of benefit, simultaneous coverage and proration, and withdrawal and termination of an equivalent plan. Further details are provided in the rules in this section. All administrative rules may be expanded, reorganized, or deleted before formal rulemaking.

471-070-2200 - Equivalent Plans: Definitions [Amended]

(1) "Administrative Costs" means the costs incurred by an employer directly related to administering an equivalent plan which include, but are not limited to, cost for accounting, recordkeeping, insurance policy premiums, and labor for human resources' employee interactions related to the equivalent plan. Administrative costs do not include rent, utilities, office supplies or equipment, executive wages, legal expenses, cost of benefits, or other costs not immediately related to the administration of the equivalent plan.

(2) "Administrator" means either an insurance carrier/company or third-party administrator acting on behalf of an employer to provide administration and oversight of an approved equivalent plan.

(3) "Declaration of Intent" means a legally binding, signed agreement from an employer documenting the employer's intent and commitment to provide an approved equivalent plan with an effective date of September 3, 2023.

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

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

(1) Approved equivalent plans become effective on September 3, 2023, at the same time Paid Family and Medical Leave Insurance (PFMLI) benefits may first be paid to eligible employees.

(2) No later than May 31, 2023, an employer who wishes to provide an equivalent plan with an effective date of September 3, 2023 must submit to the department an equivalent plan application that meets the requirements of OAR 471-070-2210.

(3)

(a) To be exempt from paying required quarterly contribution payments to the Oregon PFMLI program in accordance with ORS 657B.150 and OAR 471-070-3030(6), an employer that is going to provide its employees with an equivalent plan as of September 3, 2023, must submit to the department a Declaration of Intent or an equivalent plan application by the following dates:

(A) By November 30, 2022, to be exempt from paying and remitting the contribution payments beginning with the first quarter that starts January 1, 2023.

(B) By February 28, 2023, to be exempt from paying and remitting contribution payments beginning with the second quarter that starts April 1, 2023.

(C) By May 31, 2023, to be exempt from paying and remitting contribution payments beginning with the third quarter that starts July 1, 2023.

(b) No Declaration of Intent may be submitted after May 31, 2023.

(4) If an equivalent plan application is denied or is not approved by June 30, 2023, the Declaration of Intent is cancelled and no longer effective. If the employer has been denied or has not received approval for an equivalent plan by Jun 30, 2023 the employer is responsible for paying and remitting all unpaid employer and employee contribution payments due for periods beginning on or after January 1, 2023, and is subject to penalties and interest as described in section (7) of this rule.

(5) An employer that submitted an equivalent plan application or a Declaration of Intent prior to May 31, 2023, may cancel the request for approval or the Declaration of Intent by contacting the department. The employer is responsible for paying and remitting all unpaid employer and employee contribution payments due for periods beginning on or after January 1, 2023 and is subject to penalties and interest as described in section (7) of this rule.

(6) The department may cancel the approval of an equivalent plan or Declaration of Intent prior to September 3, 2023 for reasons that include, but are not limited to:

(a) Misuse of employee contributions withheld or retained by the employer;

(b) Failure to adhere to applicable PFMLI program requirements, including but not limited to OAR 471-070-2220;

(c) Withheld employee contributions that were greater than the employee contributions that would have been charged to the employees under ORS 657B.150; or

(d) Failure to respond timely to the department's reasonable inquires for information about the equivalent plan or Declaration of Intent.

(7)

(a) As of the date the equivalent plan approval or the Declaration of Intent is canceled or denied, the employer must pay and remit to the department all unpaid contributions due for periods beginning on or after January 1, 2023, and is subject to penalties and interest in accordance with ORS 657B.320, 657B.920, and related administrative rules.

(b) An employer that is required to pay or remit contributions, penalties, and interests, in accordance with this section or sections (4), (5), or (6), of this rule may use employee contributions previously withheld, that were held in trust for the payment of employee contributions due, but the employer is prohibited from withholding additional contributions from employees retroactively to pay any other amounts due. Employee contributions may not be used to pay penalties and interest imposed on the employer.

(8)

(a) An employer that has submitted an equivalent plan application by one of the deadlines in section (3) of this rule may withhold employee contributions in accordance with ORS 657B.210 beginning January 1, 2023, but the employer will not be required to pay employer contributions or remit employee contributions in accordance with ORS 657B.150 during the period the equivalent plan application is pending, unless and until the equivalent plan application is subsequently denied or canceled as described in sections (4) to (6) of this rule.

(b) An employer that has submitted a Declaration of Intent by one of the deadlines in section (3) of this rule may withhold employee contributions in accordance with ORS 657B.210 beginning January 1, 2023 or the date the Declaration of Intent is approved, but the employer will not be required to pay employer contributions or remit employee contributions under ORS 657B.150, unless and until the Declaration of Intent is subsequently withdrawn or canceled as described in sections (4) to (6) of this rule.

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

471-070-2220 - Equivalent Plans: Plan Requirements [Amended]

(14) Provide that the equivalent plan **employer or** administrator must make all reasonable efforts to make a decision on whether to allow the claim and issue the first payment of any benefits to an employee within two weeks after receiving the claim or the start of leave, whichever is later. **Subsequent benefit payments must be provided weekly by the administrator, unless the benefit payment is paid by the employer then the benefit payments may be paid according to the existing paycheck schedule for employees;** and

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

471-070-2230 - Equivalent Plans: Reporting Requirements

(1) Employers with an approved equivalent plan are required to file the Oregon Quarterly Tax Report detailing all Paid Family and Medical Leave Insurance (PFMLI) subject wages and the employee count as defined in OAR 471-070-3150 and the Oregon Employee Detail report detailing PFMLI subject wages for each employee in accordance with OAR 471-070-3030.

(2) Employers with an approved equivalent plan must also file quarterly aggregate financial and benefit usage reports with the department online or in another format approved by the department. The report is due on or before the last day of the month that follows the close of the calendar quarter. The report shall include, but is not limited to, the following:

- (a) Total amount of employee contributions withheld during the quarter;
- (b) Total plan expenses paid during the quarter, including total benefit amounts paid, and total administrative costs, as applicable;
- (c) Balance of employee contributions held in trust at end of the quarter;
- (d) Balance of benefits approved but not yet paid, if plan is an employer-administered plan;
- (e) Administrative costs due for the quarter but not yet paid;
- (f) Number of benefit applications received during the quarter and the qualifying leave purpose;
- (g) Number of benefit applications approved during the quarter, the qualifying leave purpose, and total amount of leave; and

(h) Number of benefit applications denied during the quarter and the qualifying purpose and the number of appeals made on denials and the outcome of the appeals.

(3) Employers with an approved equivalent plan must report to the department any changes to the employees covered under the plan within 14 days of the change, online or in another format approved by the department. The report shall include:

(a) For new employee(s) added to the equivalent plan coverage:

- (A) Employee name;
- (B) Employee Social Security Number or Individual Tax Identification Number;
- (C) Employee start date with the employer;
- (D) Date employee coverage under the equivalent plan began.

(b) For employee(s) removed from the equivalent plan coverage:

- (A) Employee name;
- (B) Employee Social Security Number or Individual Tax Identification Number;
- (C) Employee end date with the employer;
- (D) Date employee coverage under the equivalent plan ended;
- (E) Start date the benefit year began under the equivalent plan within the 52 weeks preceding the date the employee's coverage ended, if applicable; and
- (F) Amount of leave taken during that benefit year and the qualifying leave purpose, if applicable.

(4) Employers must provide the reports required under sections (2) and (3)(b) of this rule to report end of coverage for all employees following withdrawal or termination of an approved equivalent plan.

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

[471-070-2250 - Equivalent Plans: Employee Coverage Requirements](#)

(1) An employer with an approved equivalent plan is required to cover all employees under the plan as follows:

- (a) All employees previously covered under the Oregon Paid Family and Medical Leave Insurance (PFMLI) program established under ORS 657B.340, must be covered by the employer's equivalent plan within 30 days of their start date.
- (b) All employees that are coming from an employer that previously had an equivalent plan approved under ORS 657B.210, must be covered by the new employer's equivalent plan immediately as of their start date.
- (c) All employees that were not previously covered as described under subsections (a) or (b) of this section, such as employees new to the workforce or relocating from another state, must be covered by the employer's equivalent plan within 30 days of their start date.

(2) An employer must specify in their equivalent plan when employees are covered under the plan, which must be in accordance with section (1) of this rule.

(3) An employee described in subsection (1)(a) of this rule, who is not covered under an equivalent plan for any portion of time within the employee's first 30 days, maintains coverage under the Oregon PFMLI program established under ORS chapter 657B for that period.

(4) An employer with an equivalent plan that does not cover all employees immediately, must obtain from the department information about each new employee's previous PFMLI coverage. The request must be submitted online or in another format approved by the department and include the employee's name and tax identification number. The department will confirm whether the employee must be covered immediately or within 30 days.

(5) An employer with an equivalent plan is required to pay employer contributions, when applicable, and withhold and remit employee contributions in accordance with OAR 471-070-3030 to the department for any period in which the employee is covered under the Oregon PFMLI program established under ORS chapter 657B.

(6) Contributions due under section (5) of this rule that are not paid or remitted timely to the department along with the Oregon Quarterly Tax Report will be assessed by the department. The department will calculate the assessment by:

(a) Dividing the total wages reported for a new employee for the quarter by the number of calendar days that the employee was employed in the quarter to determine a pro-rated daily wage amount. The daily pro-rated amount is rounded to the nearest cent.

(b) Multiplying the daily pro-rated wage amount by the number of calendar days that the employee was covered under the Oregon PFMLI program established under ORS 657B.340, which is the number of calendar days between the employee's start date and the start of coverage under the equivalent plan approved under ORS 657B.210.

Example: Stella starts working for an equivalent plan employer on April 1, 2024. The equivalent plan covers all employees 30 days after their start date, unless otherwise required. Stella's previous employer did not have an equivalent plan, so the coverage under the new employer's equivalent plan begins 30 days after the start date, on May 1, 2024.

Between April 1 and May 1, 2024, Stella's employer must withhold employee contributions in accordance with the contribution rate for the Oregon PFMLI program established under ORS chapter 657B.

For the second quarter of 2024, which covers April to June, Stella's employer reports on the Oregon Quarterly Tax Report PFMLI subject wages of \$6,000. The equivalent plan employer submits the Oregon Quarterly Tax Report reporting PFMLI subject wages but does not pay any PFMLI contributions for Stella.

After the report is submitted, the department assesses PFMLI contributions for the period that Stella was covered under the Oregon PFMLI program. The department's assessment is based on the pro-rated daily amount of \$65.93 (\$6,000 PFMLI subject wages divided by 91 days in the quarter) and then multiplied by 30 days that Stella was covered under the Oregon PFMLI program for a total PFMLI subject wages of \$1,977.90. Assuming a total contribution rate of one percent, the equivalent plan employer will be assessed an employer contribution amount of \$7.91 (\$1,977.90 PFMLI subject wages for 30 days x 0.01 total contribution rate x 0.4 employer contribution percentage) and an employee contribution amount of \$11.87 (\$1,977.90 PFMLI subject wages for 30 days x 0.01 total contribution rate x 0.6 employee contribution percentage) for a total of \$19.78 (\$7.91 employer contribution amount plus \$11.87 employee contribution amount).

(7) An employer may request the department for a recalculation of the assessment described in section (6) of this rule. The calculation reassessment request must include documentation establishing the employee's actual wages paid for the period in which the employee was covered under the Oregon PFMLI program established under ORS chapter 657B. The department will recalculate the assessment using the actual PFMLI subject wages for the period.

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

471-070-2260 - Equivalent Plans: Benefit Amounts

(1) Employers with an approved equivalent plan are required to provide covered employees with benefits that are equal to or greater than benefits provided under the Oregon Paid Family and Medical Leave Insurance (PFMLI) program, including, but not limited to:

(a) The duration of leave for qualifying purposes as established in ORS 657B.020 and related administrative rules;

(b) The amount of benefits established in ORS 657B.050 and related administrative rules.

(2) Benefits under an approved equivalent plan shall be administered using the benefit year defined in OR Laws 2022, Chapter 24, Section 1 and related administrative rules. The establishment of a benefit year and the benefit amounts remaining are specified to a particular employee and do not start over under each employer's plan.

(3) When an employee applies for benefits under an equivalent plan, the employer or plan administrator shall request consent from the employee to obtain benefit information from the department necessary to ensure benefits are provided in accordance with sections (1) and (2) of this rule.

(a) If consent is given by the employee, the employer or plan administrator may request from the department the benefit information online or by another method approved by the department. The request shall include:

(A) The employee's name;

(B) The employee's Social Security Number or Individual Taxpayer Identification Number;

(C) The employee's contact information;

(D) The start date of the leave event as indicated on the application;

(E) If the employee has additional PFMLI coverage, if indicated on the application.

(b) If consent is not given by the employee, the employer shall provide the employee with information on how the employee may request the benefit information from the department directly. The employee may request the benefit information from the department online or by another method approved by the department. The employer or administrator must notify the employee that their claim for benefits cannot progress until they have obtained the information required from the department and provided it to the employer or administrator.

(4) When the department receives a request for benefit information in accordance with section (3) of this rule, the department shall:

(a) Identify whether a benefit year was established for the employee within the 52 weeks prior to the start of the current leave event under the Oregon PFMLI program established under ORS chapter 657B or under an equivalent plan established under ORS 657B.210.

(b) If a benefit year was established, the department will provide:

- (A) The start and end date of the established benefit year;
 - (B) The duration of leave remaining in the benefit year;
 - (C) The eligible employee's average weekly wage (EEAWW) for the benefit year as described in ORS 657B.010(12) and applicable administrative rules; and
 - (D) The proration of benefit amounts for simultaneous coverage in accordance with OAR 471-070-2270, if applicable.
- (c) If a benefit year was not established, the department will:
- (A) Establish the start date for the benefit year based on the start of the current leave event provided by the employer;
 - (B) Determine the employee's eligibility for benefits based on subject wages in the base year or alternate base year, as applicable under OAR 471-070-1020;
 - (C) Calculate the EEAWW for the benefit year as described in ORS 657B.010(12) and applicable administrative rules; and
 - (D) Provide to the employer the information listed in subsection (4)(b) of this rule.
- (d) If the department is not able to provide information or make a determination on the benefit year for any reason, the department shall contact the employee directly to seek the necessary information. This includes, but is not limited to:
- (A) Requesting missing subject wage information;
 - (B) Correcting subject wage information; or
 - (C) Correcting taxpayer identification number information.

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

[471-070-2270 - Equivalent Plans: Proration of Benefit Amounts for Simultaneous Coverage](#)

(1) An employee is considered to have simultaneous coverage when the employee is covered by more than one employer's equivalent plan at the same time or is covered by the Oregon Paid Family and Medical Leave Insurance (PFMLI) program established under ORS chapter 657B and at least one employer with an equivalent plan, at the same time. An employee does not have simultaneous coverage if they work for multiple employers covered by the Oregon PFMLI program.

(2) An employee with simultaneous coverage at the start of a leave event shall apply separately under all plans they are covered under and from which they are taking leave by following the respective application guidelines for each plan. An equivalent plan employer may ask an employee whether the employee has additional PFMLI coverage but may not require that the employee provide details on the other employers or the plans. The employer may request information from the department.

(3) Each plan is required to pay prorated benefit amounts that total at least the benefit amounts established under ORS 657B.050 and applicable administrative rules. As provided in section (4) of this rule, the department will provide information to employers regarding prorated benefits. Benefit amounts shall be prorated by dividing the weekly benefit amount by the number of PFMLI plans for which the employee is covered by at the start of the leave event so that each

plan is responsible for equal benefit payments. The Oregon PFMLI program shall pay benefits based on the prorated amount and equivalent plans shall pay benefits equal to or greater than the prorated amount.

Example 1: Xavier works for Main Street Bookstore, an Oregon PFMLI program employer, and Rapid Transport, an equivalent plan employer, at the time they start leave for a serious health condition. The weekly benefit amount is \$800, which is divided by two plans. The prorated amount for each plan is \$400 (\$800 weekly benefit amount / 2 employers). The Oregon PFMLI program shall pay benefits of \$400 per work week of leave and the equivalent plan shall pay benefits equal to or greater than \$400 per work week of leave.

Example 2: Anja works for Riverside Foods and Top-Notch Caterers, both equivalent plan employers, and Central Boutique, an Oregon PFMLI program employer, at the time safe leave begins. The weekly benefit amount is \$990, which is divided by three plans. The prorated amount for each plan is \$330 (\$990 weekly benefit amount / 3 employers). The Oregon PFMLI program shall pay benefits of \$330 per work week of leave and each equivalent plan shall pay benefits equal to or greater than \$330 per work week of leave.

(4) The department shall calculate prorated benefit amounts when:

(a) The department receives an application for an employee that provides current employment information from an Oregon PFMLI program employer(s) and one or more equivalent plan employer(s). The department shall verify coverage under the equivalent plan using employer reporting, notify the employer of the application in accordance with OAR 471-070-1320, and provide prorated benefit amounts along with the information provided in accordance with (Equivalent Plans: Benefit Amounts rule).

(b) The department receives a request from an equivalent plan employer for an employee's benefit information in accordance with OAR 471-070-2260. The department shall verify, based on employer reporting, whether the employee has coverage under more than one equivalent plan and, if covered, include the prorated benefit amounts to the employer. The department will provide prorated benefit amounts to any other equivalent plan employer that covers the employee also.

(5) Should the department receive information about changes in simultaneous coverage after information is provided to an equivalent plan employer in accordance with OAR 471-070-2260 and under this rule, the department shall calculate or re-calculate the proration, as applicable, and notify all employers of the changes. Any overpayments made by the Oregon PFMLI program shall be recovered in accordance with OAR 471-070-1510.

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

[471-070-2330 - Equivalent Plans: Written Notice Posting to Employees of Rights and Duties](#)

(1) The director shall make available to all employers offering an approved equivalent plan, a Paid Family and Medical Leave Insurance (PFMLI) notice posting template in the language the employer typically uses to communicate with the employee for the posting required under this rule.

(2) An employer that offers a plan approved under ORS 657B.210 shall 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, including any employee notice requirements and penalties established by the employer in accordance with ORS 657B.040, if applicable;

- (c) The process for an employee to appeal to the employer or administrator based on a decision made by their employer or administrator as described in OAR 471-070-2220(13);
 - (d) The process for employee deductions used to finance the cost of the plan, if any;
 - (e) An employee's right to dispute a benefit determination after the appeal with the employer or administrator in the manner determined by the director under ORS 657B.420 and OAR 471-070-2400;
 - (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;
 - (g) The right to job protection and benefits continuation under ORS 657B.060;
 - (h) The right of an employee to bring a civil action or to file a complaint for violation of ORS 657B.060 or 657B.070; and
 - (i) A statement that any health information related to family leave, medical leave or safe leave provided to an employer or plan administrator by an employee is confidential and may not be released without the permission of the employee unless state or federal law or a court order permits or requires disclosure.
- (3) Each employer must display their written notice.
- (a) The notice must be displayed in each building or worksite in an area that is accessible to and regularly frequented by employees; and
 - (b) An employer with employees assigned to remote work must provide, by hand delivery or regular mail, a copy of the written notice to be displayed at each employee's individual worksite. The notice must be delivered or sent to each employee assigned to remote work upon the employee's hire or assignment to remote work.
- (4) Electronic posting of the notice is not sufficient to satisfy posting requirements under this rule, but may supplement worksite posting requirements.
- (5) The notice must be displayed in the language the employer typically uses to communicate with the employee. If the employer uses more than one language to communicate with the employees assigned to a worksite, then the employer must display copies of the notice in each of the languages that the employer would typically use to communicate with the employees assigned to that worksite.
- (6) An employer with an equivalent plan that does not provide coverage on the employee's first day of employment must additionally provide written notice to newly hired employees as described in OAR 471-070-1300.
- (7) An employer's failure to display or provide notice as required under this rule is an unlawful employment practice as provided in ORS 657B.070.

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