

Paid Leave Oregon Advisory Committee

February 7, 2024

1:00pm – 3:00pm

ZoomGov - <https://www.zoomgov.com/j/1601999817>

Agenda

Members
 Karen Humelbaugh
 Amanda Dalton
 Jenny Dresler
 Eric Hunter
 Catie Theisen
 JaJetta Dumdi
 Courtney Veronneau
 Anna Richards Roberts
 Odalis Aguilar-Aguilar

Docket #	Topic	Purpose	Presenter
1.0	Welcome	Inform	Karen Madden Humelbaugh &
1.1	Member Roundtable		David Gerstenfeld
1.2	Agency Updates		
1.3	Approval of January notes		
2.0	Customer Care, Outreach & Communication Updates	Inform	Michele Schwartz & Angela Yeager
3.0	Benefit Updates	Inform	Danielle Willey
4.0	Policy Updates	Inform	Kelley Ofoni
5.0	2025 Legislative Concepts	Inform	Karen Madden Humelbaugh & Shannon Ball

Paid Leave Oregon Advisory Committee Docket

Docket Item:

1.3 – Approval of January Meeting Notes

Docket Summary:

Karen Madden Humelbaugh asks committee members if they have any edits to the notes from the previous meeting. After feedback is addressed, the committee will vote on whether to approve the notes.

Docket Materials:

PDF – Paid Leave Oregon Advisory Committee Notes 01-2024

Staff Recommendation:

Approve notes.

Meeting:	Paid Leave Oregon Advisory Committee				
Date/time:	January 3, 2024				
Location:	Microsoft Teams				
Attendees:	P (Present) A (Absent) S (sent sub)				
	Facilitator: Karen Madden Humelbaugh Scribe: Mackenzie Jones				
Members		Staff		Guest	
P	Karen Madden Humelbaugh	P	Mackenzie Jones		
P	David Gerstenfeld	P	Shannon Ball		
P	Jeannine Beatrice	P	Juan Serratos		
P	Amanda Dalton (employers)	P	Danielle Willey		
P	Jenny Dresler (employers)	P	Michele Schwartz		
A	Eric Hunter (employers)	P	Angela Yeager		
P	JaJetta Dumdi (employers)	P	Kelley Ofoni		
P	Catie Theisen (employees)				
P	Courtney Veronneau (employees)				
P	Anna Richards Roberts (employees)				
P	Odalis Aguilar-Aguilar (employees)				

Agenda

Docket #	Topic	Purpose	Presenter
1.0	Welcome	Inform	Karen Madden Humelbaugh &
1.1	Member Roundtable		David Gerstenfeld
1.2	Agency Updates		
1.3	Approval of December notes		

David Gerstenfeld shared agency updates. The Employment Department attempted to bolster funding for the Unemployment Insurance program last legislative session, to supplement for the lack of federal funds. Because of procedural issues towards the end of last session, the request did not pass. The identical request is being made this session. The agency is also nearing the go-live of the Unemployment Insurance benefits in the modernized system called Frances.

No notes from committee members, December meeting notes approved.

2.0	Customer Care, Outreach & Communication Updates	Inform	Michele Schwartz & Angela Yeager
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Angela Yeager shared updates from the Communications team. The team is working hard on making several changes to the website, including updating information for new law and rule that went into effect January 1, 2024. They are continuing to work on messaging and responding to folks who are contacting them on social media. Communications team is also planning on a creating a series of short videos to explain different parts of the application process.

Anna Roberts asked if the communications team is working with providers on filling out verification forms. Right now, the communications team is not actively working on them because they will need to go through a policy review process.

3.0 **Benefits Updates** Inform Danielle Willey

Benefit updates were provided during agenda item 5.0.

4.0 **Policy Updates** Inform Kelley Ofoni

Kelley Ofoni shared updates from the Policy Team.

The Employer Programs team is reviewing Equivalent Plan applications and amendments, working on self-employed elections, reviewing annual verifications of income, and processing assistance grants. They are also looking ahead to August 2024 when all approved equivalent plans will go through a re-approval process.

The Appeals team is working to resolve any claim issues related to an appeal when possible to avoid the need to move forward to a hearing.

The Compliance team is currently recruiting for a Compliance Manager. Their work is mostly focused on claim reviews, primarily looking at claims that have been approved and have a large payout due.

The Policy team is in the end stages of Batch 9 administrative rules which should be filed tomorrow and effective January 12. The next batch of rules is being drafted and they are hoping to host a Rulemaking Advisory Committee meeting at the end of January 2024 and file with the Secretary of State March 1, 2024.

Courtney Veronneau asked when the team is expecting to have the first reporting of equivalent plan data available. The team expects to start receiving the reporting information in August.

5.0 **Quarterly Data Updates** Inform Karen Madden Humelbaugh

Karen Humelbaugh shared program data as described in the attached presentation.

Courtney Veronneau asked if there was any insight on why reasons for the difference between the 2023 and 2024 anticipated lost contributions and benefits saved. David Gerstenfeld stated that initially the fund had to collect enough money to pay all of the ongoing costs. We've been collecting contributions for a full year but only being paying out benefits for about 4 months.

The committee members provided some suggestions for additional data points to include in future reports:

- Breakdown in income
- Comparative data on other demographics
- Equivalent plan data (example: different income levels)
- Job protection data from BOLI
- Time between when claim is submitted and paid.
- Request to keep rows consistent.

Anna Richards-Roberts asked what call hours are in Paid Leave. The program call center is open Monday-Friday, 8:00am - 5:00pm and are in ongoing conversations evaluating the call hours.

6.0 **Prep for 2025 Legislative Concepts & Budget** Discuss Karen Madden Humelbaugh

Legislative days begin next week, at which Karen will be providing a similar presentation as shared in today's meeting. The agency does not have legislation put forward during short sessions, however they will be tracking ongoing legislation and be ready to assist policy makers with any policy that has an effect on the program.

The agency is also starting their internal process for 2025-2027 legislative concepts. They will be developing a budget proposal over the next 6 months. For Paid Leave, there may be changes or variations in the budget for things such as staffing, now that the program has gone live.

Paid Leave Oregon Advisory Committee Docket

Docket Item:

5.0 – 2025 Legislative Concepts

Docket Summary:

Even though the 2024 Legislative Session is just starting, the 2025 legislative concept proposal deadline for the Paid Leave Oregon Division is rapidly approaching; all agency legislative concepts must be to the Department of Administrative Services (DAS) no later than April 2024.

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.

At this time, the Paid Leave Oregon Division has six different legislative concepts being proposed to the Advisory Committee for discussion and approval. The concepts range from information sharing, to minor corrections, and to policy discussions.

Attached are six individual one pagers that summarize the legislative concept proposal, provides the reason the legislative concept is needed, and draft statutory language. Please review the six attached one-pagers and provide feedback during the meeting or via email to Shannon.L.Ball@employ.oregon.gov by Friday February 16, 2024.

Docket Materials:

PDF – LC One-Pagers

- DOR-DOC Information Sharing One-Pager LC
- New Hire Reporting One-Pager LC
- Wage Replacement Benefits One-Pager LC
- Benefit Payouts if Insolvent One-Pager LC
- Death of Covered Individual One-Pager LC
- Waiver of Penalty and Interest One-Pager LC

Staff Recommendation:

Paid Leave Oregon Division recommends the Advisory Committee approve the agency to move forward to the Governor's Office the six legislative concept ideas and continue further discussion on any other potential legislative concepts.

Agency Information Sharing

LC Proposal:

The Paid Leave Oregon Division is recommending a statutory change in the Department of Revenue's (DOR) disclosure statute (ORS [314.840](#)) to allow information to be shared with the Oregon Employment Department (OED). Also, to change ORS [137.924](#) to allow information to be shared by Department of Corrections to OED. This is the same concept that was brought forward during the 2023 Legislative Session ([HB 2290](#)) that did not pass.

Reason for LC:

There are four ways the department would like to share information with DOR:

- First, the Paid Leave Oregon Division would like to have the combined quarterly tax report information shared with not only Unemployment Insurance (UI) but also with Paid Leave Oregon since the program is also included on the combined report. This will allow the two agencies that conduct joint audits to be shared or if an adjustment is filed with one program, the same adjustment can be made to all programs. This allows the combined tax report to show the same information. This change requires an amendment to ORS 314.840(2)(L).
- Second, self-employed individuals can choose to participate in Paid Leave Oregon by making an election on an application and submitting copies of their Oregon personal income tax return to OED. The Paid Leave Oregon Division cannot verify the Oregon personal income tax return with DOR unless the self-employed individuals gives OED permission on the application. The Paid Leave Oregon Division would like to automatically verify the self-employed income that is provided to OED with information filed with the DOR like the Oregon Pandemic Unemployment Assistance program did. This requires a statutory change in ORS 314.840(2)(n).
- Third, UI and Paid Leave Oregon Divisions would like to gain access to the iWire data (i.e. Form W-2 and 1099 information) reported by employers since that is



not currently covered in the disclosure statute. This data is essential to program compliance and enforcement for both UI and Paid Leave Oregon. The alternative to this data would be Federal Tax Information data but that data would only be limited to UI, which would not be useful for Paid Leave Oregon. This requires a statutory change in ORS 314.840(2)(n).

- Fourth, Paid Leave Oregon would like to require Paid Leave Oregon employee contributions to be reported on Form W-2. It is common to have amounts withheld from employees' wages to be reported on Form W-2. Box 14 of Form W-2 is where the newest program paid by employees, Statewide Transit Tax, is reported. Having Paid Leave Oregon employee contributions reported in box 14 of Form W-2 will show employees at the end of the year how much they contributed for Paid Leave Oregon assisting them with filing their personal income tax return. It will also assist the Paid Leave Oregon Division with compliance to make sure employers are not having employees contribute more than 60% of the contribution rate.

The Paid Leave Oregon Division would like to expand the definition of who can receive information from the Department of Corrections to include Paid Leave Oregon, just like UI. The Department of Corrections data provided information from individual counties that identifies when an individual is in custody and is released from custody. The information provided includes the individual's name, SSN/ITIN, and date of birth. The statute only authorizes that information for eligibility determination for UI. This information will help Paid Leave Oregon determine if an individual is eligible for benefits.

This concept is a joint concept with UI, Paid Leave Oregon, and DOR.

Stakeholder Feedback:

Employee representatives – No concerns were raised.

Employer representatives – No concerns were raised.

Proposed Statutory Language:

See [HB 2290](#) (2023 Legislation)

New Hire Reporting

LC Proposal:

The Paid Leave Oregon Division is recommending a statutory change in the Department of Justice (DOJ) disclosure statute (ORS [25.793](#)) to allow new hire information to be shared with the Oregon Employment Department (OED).

Reason for LC:

An employer must report to the Division of Child Support of DOJ the hiring or rehiring of employees or independent contractors within 20 days after they are hired/rehired. Obtaining the new hire report from DOJ will allow Paid Leave Oregon to determine if an employee has started a job with a new employer while on Paid Leave Oregon benefits as the employee cannot work on the days receiving benefits. This information will be useful to determine coverage and for assessing compliance.

Currently, the Unemployment Insurance Division receives the new hire report information from DOJ. They have authority to receive the information through the federal regulations ([42 U.S. Code 653a](#) and [42 U.S. Code 1320b-7](#)). Paid Leave Oregon does not fit under those regulations; therefore, a change to the Oregon statute is needed.

Because the information is already furnished to one Division, the programming and transferring of information will be minimal and there should not be any fees from DOJ for providing the information.

Stakeholder Feedback:

Employee representatives – No concerns were raised.

Employer representatives – No concerns were raised.

Proposed Statutory Language:

25.793 Disclosure of employer-reported information. (1) Subject to the limitations provided in subsection (2) of this section, the Division of Child Support of the Department of Justice may enter into agreements with other divisions of the Department of Justice, **Oregon Employment Department**, or with the Department of Revenue for the provision of information reported to the Division of Child Support by an



employer pursuant to ORS 25.790 regarding hiring or rehiring or the engagement or reengagement of individuals in this state. The information may be used for purposes other than paternity establishment or child support enforcement, including but not limited to debt collection.

(2) Information provided by the division under this section is limited to information reported pursuant to ORS 25.790 that has not yet been entered into either:

(a) The statewide automated data processing and information retrieval system required to be established and operated by the division under 42 U.S.C. 654a; or

(b) The automated state directory of new hires required to be established by the division under 42 U.S.C. 653a.

(3) An agreement entered into under this section must include, but is not limited to, provisions describing:

(a) How the information is to be reported or transferred from the division;

(b) Fees, reimbursements and other financial responsibilities of the recipient in exchange for receipt of the information from the division, not to exceed actual expenses;

(c) Coordination of data systems to facilitate the sharing of the information; and

(d) Such other terms and requirements as are necessary to accomplish the objectives of the agreement.

(4) An agreement entered into under this section is subject to the approval of the Department of Justice.

Wage Replacement Benefits

LC Proposal:

The Paid Leave Oregon Division is recommending a statutory change to ORS [657B.030](#)(3) to clarify that an individual does not qualify for Paid Leave Oregon benefits if receiving Unemployment Insurance (UI) or any other state or federal program that provides wage replacement.

Reason for LC:

The statute states that individuals that are eligible to receive UI benefits under ORS Chapter 657 cannot also receive Paid Leave Oregon benefits within the same week. However, there are a variety of UI type benefit programs that live within federal law rather than under ORS chapter 657. One example is the [Trade Act programs](#) as they provide benefits and services for workers who lose their job or are threatened to lose their job due to foreign trades. While some of the programs may be providing training or relocation allowances, they also may provide wage replacement.

There could also be a variety of other existing state and federal programs that provide wage replacement. Without specific guidance in statute, only individuals who are eligible for UI under ORS Chapter 657 and Workers' Compensation programs as specified in that statute cannot receive Paid Leave Oregon benefits. This treats individuals differently depending on the type of wage replacement they are receiving.

Stakeholder Feedback:

Employee representatives –

Employer representatives –

Proposed Statutory Language:

657B.030 Use of other paid leave benefits in addition to paid family and medical leave insurance benefits.

(3) In any week in which an employee is eligible to receive workers' compensation or unemployment benefits under ORS chapter 656 or 657, **or benefits from any other state or federal program that provides wage replacement**, the employee is disqualified from receiving family and medical leave insurance benefits.

Paid Leave Benefits if Trust Fund is Insolvent**LC Proposal:**

The Paid Leave Oregon Division is recommending a statutory change to ORS [657B.050](#) to clarify how payment of benefits and assistance grants and acceptance of applications will work if the Paid Leave Oregon Trust Fund became insolvent.

Reason for LC:

In the circumstance that the Paid Leave Oregon Trust Fund runs low on funds or depletes all available funds, there is no statutory guidance for how future Trust Funds will be paid out to approved claims. ORS 657B.050(4) states that benefits are only able to be paid to the extent there is money available in the Trust Fund but doesn't specify what to do if it becomes insolvent.

Additional guidance for the agency and claimants would be helpful, in the unlikely event that the Trust Fund becomes insolvent, so it is clear when applications stop, and which claimants are paid first when the Trust Fund obtains money again.

Stakeholder Feedback:

Employee representatives – No concerns were raised.

Employer representatives – No concerns were raised.

Proposed Statutory Language:

657B.050 Amount of benefits; limits on weekly benefit amount; extent to which benefits are payable.

(4) Benefits are payable only to the extent that moneys are available in the Paid Family and Medical Leave Insurance Fund for that purpose. The state, any political subdivision of the state and any state agency are not liable for any amount in excess of this limit.

(5) The Director of the Employment Department shall periodically assess the Paid Family and Medical Leave Insurance Trust Fund established under ORS 657B.430 to make determinations regarding the department's Trust Fund ability to accept applications and to pay benefits and grants. The director shall use actuarial calculations in making such determinations.

(6) The department shall stop accepting Paid Family and Medical Leave Insurance applications and grant applications if the director determines that the fund is



or may be within **XXX** percent of becoming insolvent for the current applications the department has received.

(7) Once money is available in the Paid Family and Medical Leave Insurance Fund, benefit applications and grant applications that were previously approved by the department will be paid commencing with claims with the earliest leave start date to claims with the most recent start date.

(8) The department shall begin accepting Paid Family and Medical Leave Insurance applications and grant applications once the director determines that resuming accepting applications will not cause volatility in the fund or with respect to the administration of the family and medical leave insurance program.

(9) The director shall provide at least 30 days' advance notice to the public that new applications can no longer be accepted, including the effective date. The director shall provide at least 15 days' advance notice to the public when the department can begin accepting applications again, including the effective date. The director shall give notice to the public by posting the information on the website maintained by the department.

**Death or Incapacitated Covered Individual –
Who Can File Application and Receive Benefits****LC Proposal:**

The Paid Leave Oregon Division is recommending a statutory change to ORS [657B.090](#) to clarify that if a covered individual dies before submitting an application for benefits, the application can be filed by an authorized individual. Also, clarify that if a claimant dies or becomes incapacitated while receiving benefits, another individual can be authorized to receive benefits and act on their behalf.

Reason for LC:

Currently, the statute only allows for a covered individual to file a Paid Leave Oregon application for benefits (ORS [657B.090](#)). A covered individual is an eligible employee, self-employed individual, or an employee of a tribal government [ORS [657B.010\(9\)](#)]. It does not include the spouse or other family members. There are times when a covered individual is incapacitated or deceased and is not able to file a claim for benefits, even though they would otherwise qualify. Expanding the statute to allow for an authorized individual to submit an application and receive the benefit payments will greatly assist in these unfortunate circumstances.

The proposed language below was taken from California's disability claim statute that also ties to their Unemployment code for how payment of disability benefits are handled when an individual dies. (UIC [2705](#) and UIC [1341](#))

Stakeholder Feedback:

Employee representatives – No concerns were raised.

Employer representatives – No concerns were raised.

Proposed Statutory Language:

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) Where an individual who would be eligible to submit a claim to the Director of the Employment Department dies or becomes incapacitated before submitting a claim or while the claim is open, the director may in accordance with authorized regulations allow the filing of a claim or receiving of information for such benefits by a person legally entitled under subsection (6).

(23) 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.

(34)(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.

(45) 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.

(6) Benefits due to a deceased or legally incapacitated individual will first be paid to that individual. However, the Director, as determined by rule, can allow a person or persons legally entitled thereto in accordance with authorized regulations of the Director to receive the benefit payments and to provide necessary information to the department on the claimant's behalf. Such payments and acceptance of information shall be made upon the receipt of documentation and an affidavit executed by the person or persons claiming to be entitled to the benefits and the receipt of the documentation and affidavit or affidavits shall fully discharge the Director from any further liability with reference to the benefit payments, without the necessity of inquiring into the truth of any of the facts stated in the affidavit.

Waiver of Penalties and Interest**LC Proposal:**

Oregon Employment Department (OED) is recommending a statutory change to ORS [657B.339](#) to add language that allows the department to waive contributions and grants, penalties, and interest for uncollectible Paid Leave Oregon contributions and grants. Also, allow the director to write off contributions, grants, penalties, or interest if it has been determined that the amount is uncollectible.

Reason for LC:

During the 2023 Legislative Session, [Senate Bill \(SB\) 912](#) (section 5) added language in the Paid Leave Oregon statute (ORS [657B.337](#)) that allows the director, when in the best interest of the department to help settle accounts, to waive, reduce, or compromise any part of all of the interest of penalty charged for benefit overpayments. However, it did not include the same treatment for Paid Leave Oregon contributions and grants.

Interest is imposed at a rate of 1.5% per month when in default and a penalty of 10% is imposed if no payment is made within 10 days after written demand (ORS [657B.320](#)). The statute does allow the director to offer a settlement but doesn't allow waiver of the contribution or grant, interest or penalties.

Paid Leave Oregon has additional penalties that may be imposed if the employer fails to file all reports as required (ORS [657B.910](#) and [657B.920](#)) and allows for a waiver due to good cause but that is only allowed for those penalties imposed.

Unemployment Insurance (UI) allows a settlement like Paid Leave Oregon (ORS [657.515](#)); however, they also allow a waiver of any tax interest or penalties if it is in the best interest of the department (ORS [657.517](#)). Because UI and Paid Leave Oregon contributions are reported and paid on the quarterly payroll report and collected from one section of the agency, it would be beneficial for agency administration if both programs are treated the same for collection purposes.

Stakeholder Feedback:

Employee representatives –

Employer representatives –

Proposed Statutory Language:

657B.339 Authority of director to compromise or adjust contribution debts or overpayments.

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

(4a) Waive, reduce or compromise any balance of \$10 or less from a contribution due under ORS 657B.150; or

(2b) Retain any overpayment of \$10 or less from a contribution paid under ORS 657B.150 or grant under ORS 657B.200.

(c) Waive, reduce, or compromise any part or all of the contribution, grant, interest, and penalties provided by this chapter.

(2) The director may determine that the amount of contribution, grant, interest, and penalty due and unpaid on a delinquent account is uncollectible, and write such amount off, if:

(a) The delinquent amount has been reduced to the status of a lien or judgment under the provisions of this chapter and such lien or judgment has expired; or

(b) The employer no longer has an active business in Oregon and has not had an active business within the three most recently completed calendar years, and there is little or no likelihood of receiving the amount due.

(3) In making the determination that an account is uncollectible, the director shall consider, among other factors:

(a) The administrative costs of continued collection efforts in relation to the amount due;

(b) The accessibility of the employer for effective collection actions; and

(c) The employer's financial condition and ability to pay the amount due, both current and projected.

(4) A record shall be made showing the reasons for waiving, reducing, compromising, or writing off amounts under this section. Such record shall be retained for a period of seven years from the date the account was written off.