

TEMPORARY FILING
INCLUDING STATEMENT OF NEED & JUSTIFICATION

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Oregon Employment Department, Paid Leave Oregon Division		471	
Agency and Division Name		Administrative Rules Chapter Number	
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FILING CAPTION

Amending and adopting temporary Paid Leave Oregon rules regarding benefits, assistance grants and confidentiality

Agency Approved Date: [TBD]

Effective Date: [TBD]

RULEMAKING ACTION

List each rule number separately (000-000-0000). Attach clean text for each rule at the end of the filing

ADOPT:

OAR 471-070-1250, 471-070-3790, 471-070-0900, 471-070-0910, 471-070-0920, 471-070-0930

AMEND:

OAR 471-070-1000, 471-070-1330

SUSPEND:

RULE SUMMARY:

OAR 471-070-1000 – Benefits: Definitions – Amends the administrative rule to add a definition that clarifies the meaning of ‘affinity’ that outlines what are characteristics of a family relationship to determine whether an affinity relationship exists. Adds a definition for “claimant designated representative” to an individual 18 or older who the claimant authorized to exchange information on behalf of the claimant to Paid Leave Oregon. Adds a definition to clarify the ‘first year’ after the child’s birth, foster placement, or adoption for use with family leave determinations as the day before the one-year anniversary.

OAR 471-070-1250 – Benefits: Claimant Designated Representative – The temporary administrative rule describes what is needed for a claimant to designate a representative. The rule also describes what the claimant designated representative can provide, explains that the claimant designated representative can receive from Paid Leave Oregon information submitted by the claimant, prior information the claimant received, information about decisions made by the Paid Leave Oregon program and provide information to the Paid Leave Oregon program.

OAR 471-070-1330 – Benefits: Job Protection – Amends the administrative rule to implement changes from SB 999 (2023 Legislation) regarding restoring an employee’s position within a 50 mile radius of the employee’s former job site and allowing an employer to deduct the employee’s cost of health care paid by the employer while the employee is on Paid Leave from future paychecks.

OAR 471-070-3790 – Assistance Grants: Successor in Interest Rights and Responsibilities – The temporary administrative rule clarifies assistance grant liability for full and partial successors in interest when a business with a grant history is transferred to another business.

OAR 471-070-0900 – Confidentiality: Definitions – The temporary administrative rule defines the types and uses of confidential information for the Paid Leave Oregon program.

OAR 471-070-0910 – Confidentiality: Information Collection – The temporary administrative rule clarifies that information is only collected for the purpose of administering the program, and outlines that Social Security Numbers and Individual Tax Identification Numbers are only collected for verifying wages, reporting taxes, and collecting contributions.

OAR 471-070-0920 – Confidentiality: Responsibility of Paid Family and Medical Leave Insurance Staff – The temporary administrative rule clarifies that Paid Leave Oregon staff must safeguard information the program collects. The administrative rule clarifies that the information must be accessed only on a need to know basis and provides for the program to charge a reimbursement fee for the cost of providing records.

OAR 471-070-0930 – Confidentiality: Permissible Disclosures – The temporary administrative rule clarifies the director’s discretion to disclose information, such as to the Office of Administrative hearings as needed for administrative hearings, to the claimant or claimant designated representative, in situations where a Paid Leave Oregon staff must report suspected abuse or neglect as a condition of the staff’s position outside of Paid Leave, to the employer or employer’s representative for contributions information, and benefit information will not be provided to the employer without authorization by the employee.

STATUTORY AUTHORITY: ORS 657B.090, ORS 657B.120, ORS 657B.200, ORS 657B.340, 657B.400

OTHER AUTHORITY:

STATS. IMPLEMENTED: ORS 657B.010, ORS 657B.060, ORS 657B.070, ORS 657B.090, ORS 657B.120, ORS 657B.150, ORS 657B.340, ORS 657B.400

STATEMENT OF NEED AND JUSTIFICATION

Need for the Rule(s):

These temporary administrative rules are needed prior to September 3, 2023, when Paid Leave Oregon begins paying benefits to eligible employees. Senate Bill (SB) 999, which passed in the 2023 Legislative session, includes statutory changes requiring the Oregon Employment Department to adopt rules clarifying ‘Affinity,’ when determining ‘family member’ status. SB 999 also included a statutory change that impacts job protections for employees returning from Paid Leave to include a ‘within 50 miles’ standard that employers must follow, when a returning employee’s former position is no longer available, but jobs exist at other locations. SB 913, which also passed in the 2023 Legislative session, includes statutory changes addressing the handling of confidential claimant and employer information and designation of representatives. These new laws require the development of administrative rules prior to the Paid Leave Oregon go live date and will provide further clarification and direction for employees and employers.

Justification of Temporary Filing:

As the Paid Leave Oregon program prepares to issue benefits on September 3, 2023, the current set of temporary rules comes with a sense of urgency. The temporary rules are needed as changes during the 2023 legislation with SB 999 and SB 913 require additional guidance before benefits begin on September 3, 2023. Without the temporary rules, the guidance for who is considered to have an affinity relationship would not be clear and will likely have a disproportionately negative impact on applicants of color and those from marginalized communities. Without the temporary Job Protection rule, which is intended to support employees returning from Paid Leave, the job protections may not be applied properly. The temporary rules governing confidentiality provide essential parameters for the Paid Leave Oregon program, protecting the privacy and sensitive information of employees and employers alike. Ultimately, failing to establish the temporary rules would put the Paid Leave Oregon program out of compliance with statutory mandates that were changed during the 2023 Legislation.

Documents Relied Upon, and where they are available:

- Senate Bill 913 <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB0913/Enrolled>
- Senate Bill 999 <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB0999/Enrolled>
- Paid Leave Oregon statute - ORS chapter 657B (https://www.oregonlegislature.gov/bills_laws/ors/ors657B.html);
- Oregon Family Leave Act (OFLA) (<https://www.oregon.gov/boli/workers/pages/oregon-family-leave.aspx>);
- Colorado Code of Regulations for FAMLII program ‘Affinity’
<https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=10412&fileName=7%20CCR%201107-3>

RULE LANGUAGE:

A separate document, listing all of the rules for this Statement of Need, will be attached.