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Oregon’s paid family and medical leave contributions begin in 2022

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In this article

Oregon’s Paid Family and Medical Leave Insurance (PFMLI) program will begin collecting employer and employee contributions on Jan. 1, 2022, and paying benefits in 2023. The 2019 legislation (HB 2005, OR Rev. Stat. Ch. 657B) provides up to 12 weeks of family and medical leave with partial wage replacement so eligible employees can recover from their own serious health condition, care for a family member with a serious health condition, bond with a new child, and handle issues related to domestic violence, harassment, sexual assault or stalking. An additional two weeks of PFMLI leave may be available for pregnancy- and childbirth-related complications and an additional four weeks of unpaid, job-protected leave under the state’s current family leave law. The new law supersedes any local paid family and medical leave law.

Administration

The Oregon Employment Department (OED) will administer the program and is currently drafting proposed rules, with final rules due out by Sept. 1. The OED will set contribution levels, collect payments from employers, provide model notices and oversee program administration.

Covered employers and employees

The law applies to employers — including political subdivisions of the state government — with at least one employee working in Oregon, but exempts tribal and federal governments.

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Benefit eligibility extends to employees who work in Oregon and earn at least $1,000 in the base year — the first four of the last five completed calendar quarters. Employees who don't meet this minimum may use an alternate base — the last four completed calendar quarters. Coverage generally applies to employees subject to unemployment insurance, but the self-employed, tribal governments and tribal employees may opt into the program.

The program will use an employee's wages to determine eligibility and benefits if the wages are earned for service performed (i) entirely within Oregon or (ii) primarily within Oregon, with incidental service outside the state.

Contributions

The OED will determine the contribution rate, which cannot exceed 1% of employees' wages up to the maximum wage base of $132,900. The wage base is indexed annually using the Consumer Price Index for All Urban Consumers, West Region. The 2022 rate has not been set yet. Employers with 25 or more employees must contribute 40% of the total rate; employees contribute 60%, but employers can choose to pay some or all of employees' share. Employers with fewer than 25 employees do not have to contribute, and if they do, they can apply for a grant of up to $3,000 if certain conditions apply.

Employers that contribute will file a combined quarterly report of wages earned and contributions. The state's Department of Revenue will develop the required report.

Qualifying leave and duration

The program will provide up to 12 weeks of benefits for these three types of leave:

- Family leave to care for a family member with a serious health condition or bond with a new child
- Medical leave for the employee's own serious health condition
- Safe leave to address issues related to domestic violence, harassment, sexual assault or stalking

Employees may also take an additional four weeks of unpaid, job-protected leave under the state's existing family leave law (OR Rev. Stat. § 659A.159), which also covers bonding with a new child and care for an employee's own or a family member's serious health condition. A 16-week overall leave limit will apply for the combination of paid and unpaid leave. However, employees may qualify for two more job-protected weeks of PFMI leave for a pregnancy- or childbirth-related disability or medical condition, for a total of 18 weeks of paid and unpaid leave. Employees may have additional unpaid leave protections for organ donation (OR Rev. Stat. §§ 659A–150.91D) or a military exigency (OR Rev. Stat. § 659A.093).

Family

Oregon's expansive definition of family member includes an employee's child — including a foster child or a legal ward — spouse, parent, sibling, grandparent, grandchild, domestic partner, and the family members of a spouse or domestic partner. In addition, the definition extends to a parent or child *in loco parentis* and any individual related by blood or with a family-like relationship to the employee.

Serious health condition

The law uses the same criteria to define a serious health condition as the existing Oregon Family Leave Act (OFLA). Under that law, a serious health condition includes any of the following situations:

- An illness, injury, impairment, or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility
- An illness, disease or condition that, in the medical judgment of the treating health care provider, poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care
- Any period of disability due to pregnancy or any absence for prenatal care
- Any absence for the donation of a body part, organ or tissue, including preoperative or diagnostic services, surgery, post-operative treatment, and recovery

Safe leave

Eligible employees may use safe leave for themselves or minor dependents for any of the following purposes related to an experience of domestic violence, harassment, sexual assault or stalking:

- Legal assistance, including time to participate in legal proceedings
- Medical treatment of or recovery from related injuries
- Mental health counseling
- Services from a victim services provider
- Relocation or steps needed to secure an existing home

Benefits

Benefits will be calculated based on the employee's average weekly wage (AWW) — total wages earned by an employee during the base year divided by the number of weeks in the base year — and the state average weekly wage (SAWW). For example, an individual who earns $52,000 from Jan. 1 to Dec. 31, 2022, would divide that amount by 52 weeks for an AWW of $1,000.

Employees whose AWW is at or below 65% of the SAWW will receive 100% of their AWW during a qualified leave. Individuals earning more will receive 65% of the SAWW plus 50% of their AWW above that amount. Weekly benefits will be capped at 120% of the SAWW, with a minimum benefit of 5% of the SAWW.

Using the current SAWW of $1,093 in the following examples, 65% of the SAWW is $710; 120% of the SAWW is $1,312; 5% is $55.

> *Example 1.* Susan earns $26,000 during her base year. Her AWW when she applies for benefits is $500. Since Susan’s AWW is below 65% of the SAWW ($710), Susan’s weekly benefit amount will be $500, 100% of her AWW.
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> *Example 2.* Malcolm earns $52,000 during his base year. His AWW is $1,000 when he applies for benefits. Any amount of Malcolm’s AWW that exceeds $710 is multiplied by 50% and added to $710 ($1,000 – $710 = $290; 50% x $290 = $145; $145 + $710 = $855). Malcolm‘s benefit is $855 per week.
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> *Example 3.* Aisha’s AWW is $2,000. Any amount of Aisha’s AWW that exceeds $710 is multiplied by 50% and added to $710 ($2,000 – $710 = $1,290; 50% x $1,290 = $645; $645 + $710 = $1,355. Aisha‘s benefit would be $1,355 per week, but it exceeds the weekly maximum. So Aisha’s weekly benefit is $1,312, 120% of the SAWW.

Notice obligations

Employers must provide Oregon workers a written notice that details information on PFMLI rights, including appeals, job protections and benefits. Regulators are required to publish a model notice that includes all necessary details.

Employees must provide employers 30 days’ advance notice of foreseeable leave. For unforeseeable leave, the employee or the employee’s representative should give notice within 24 hours, followed by a written notice within three days. Failure to give notice could result in reduced benefits.

Job protections

An employee who has worked for an employer for 90 days before leave begins must be reinstated to the same or equivalent position with pay and benefits. Businesses with fewer than 25 employees may, at the employer’s discretion, restore an eligible employee whose position no longer exists to a different position with similar job duties but the same benefits and pay. The employer must maintain health benefits at pre-leave levels.

An employee retains the same seniority, rights and benefits accrued before the leave. However, no benefits or leave accrue while the employees on leave. An employer can’t deny or interfere with qualified leave or retaliate or discriminate against an employee who uses leave consistent with the law’s requirements.

Private ‘equivalent’ plans

Employers must participate in the state program, unless they obtain an exemption by offering an approved equivalent plan. Employers and employees covered by an OED-approved equivalent plan don’t have to contribute to the state plan, and employees won’t qualify for state plan benefits. The following requirements apply to receive an exemption:

- The plan is available to all employees continuously employed with an employer for 30 days or longer.
- Benefits covered under the plan equal or exceed the weekly benefits and leave duration under the state plan.
- If employers deduct contributions from employees’ pay to fund their equivalent program, those contributions cannot exceed what employees would pay into the state’s program and must be used only for plan expenses.

Employers must apply for reapproval annually for three years after initial approval, or if the plan changes. If an employer does not provide family and medical leave plan benefits at least equal to those under the state’s plan, the state may terminate approval of the employer’s plan.

Coordination with other leave

PFMLI benefits run concurrently with unpaid, job-protected leave covered by the state’s family leave law and the federal Family and Medical Leave Act (FMLA). An employer may permit an eligible employee to use paid sick time, vacation or any other paid leave earned by the employee in addition to receiving PFML benefits to receive up to 100% of the employee’s AWW during the period of leave.

The OED will develop rules to coordinate PFMLI benefits when an employee is covered under more than one employer-offered plan or entitled to other paid family and medical leave benefits. Employers don’t have to reopen a collective bargaining agreement entered into before the law’s Sept. 29, 2019, effective date.

Looking ahead

Employers will need to begin collecting employee contributions as of Jan. 1, 2022, and remitting those amounts with quarterly reports by the last day of the month after the end of each calendar quarter. Many employers work with payroll vendors or departments to undertake this task in other states with similar laws. Until the contribution level is announced, employers may want to make a reasonable estimate of the reporting and contribution costs for the coming year, assuming the contribution rate won't exceed the 1% maximum.

Employers looking to apply for an exemption should watch for rules and guidance providing more information. Employers may want to begin reviewing the statutory requirements for exemptions now to decide if their plan could qualify or would need to be amended. For example, a plan that excludes part-time employees won't qualify as an equivalent plan.

Strategies for coordinating PFMLI with an employer's existing plans and — for multistate employers — with programs and mandates in other states should undergo review before benefits begin in 2023. Any approach also will need to address expanded job protections for employees ineligible under the federal FMLA. Upcoming regulations may provide more guidance.

Related resources

Non-Mercer resources

- OR Rev. Stat. Ch. 657B, PFMLI law
- OR Rev. Stat. § 659A.272, Safe leave law
- OR Rev. Stat. § 659A.150, Family Leave Act
- PFMLI website (OED)
- PFMLI FAQs (OED)
- PFMLI fact sheet (OED)

Mercer Law & Policy resources

- 2021 state paid family and medical leave contributions and benefits (Jan. 20, 2021)
- Roundup of selected state health developments — second-quarter 2019 (July 29, 2019)

Other Mercer resources

- Life, absence and disability
- State paid leaves: Three things employers should do in 2020 besides comply (Jan. 30, 2020)

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