

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 471
EMPLOYMENT DEPARTMENT

FILED

10/31/2024 11:44 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amending and adopting Paid Leave benefits, confidentiality, and self-employed rules.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/30/2024 11:59 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Perla Brambila Arechiga
503-947-1471
perla.a.brambila-arechiga@employ.oregon.gov

875 Union ST NE
Salem, OR 97311

Filed By:
Perla Brambila Arechiga
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/18/2024

TIME: 10:00 AM - 11:00 AM

OFFICER: Jacob Parpart

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-669-254-5252

CONFERENCE ID: 1607093315

DATE: 11/21/2024

TIME: 1:00 PM - 2:00 PM

OFFICER: Jacob Parpart

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-669-254-5252

CONFERENCE ID: 1617489414

NEED FOR THE RULE(S)

To implement and administer Paid Leave Oregon benefits and self-employed coverage, the Oregon Employment Department is promulgating permanent administrative rules in accordance with ORS chapter 657B. These amended or adopted rules add a benefits definition for foster care, and further clarify verification requirements for family leave to care for and bond with a child after birth and for verification of a serious health condition.

The rules also include required changes based on Senate Bill (SB) 1515 (2024); such as adding a definition for pre-

placement leave for adoption and foster care placements, amending the benefits application requirements and verification requirements to address foster care and adoption related leave, and clarifying that Paid Leave Oregon may share an employee's benefit amount with the employer, when the employee authorizes the program to do so.

Finally, these rules add the requirement for self-employed individuals who have previously elected coverage to report any tax return amendments or adjustments to Paid Leave Oregon.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

SB 1515 (2024)

2022 Oregon Child Welfare databook

Indian Child Welfare Act

Paid Leave Oregon statutes – ORS chapter 657B

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

These rules are created or revised to comply with SB 1515 (2024) which amended ORS 657B.010(18) by introducing a pre-placement family leave option for claimants who are preparing to foster or adopt a child:

- OAR 471-070-1000 (Benefits: Definitions)
- OAR 471-070-1100 (Benefits: Application for Benefits)
- OAR 471-070-1110 (Benefits: Verification of Family Leave to Care for and Bond with a Child After the Child's Birth)
- OAR 471-070-1115 (Benefits: Verification of Family Leave for Foster Care or Adoption of a Child)
- OAR 471-070-1420 (Benefits: Leave Periods and Increments)

According to information provided in the 2022 Oregon Child Welfare databook¹, 575 children had an adoption finalized through an Oregon court and 7727 children spent at least one day in Oregon foster care during the reporting year. For adoptions – 21.6% were Hispanic, 5.6% were Black, and 1.9% were Native American.

In the foster care system, 19% of children are Hispanic, 7.4% are Black, and 4.7% are Native American. These statistics highlight the ongoing issue of racial disparities affecting children of color in foster care. For example, Black children represent only 3.8% of Oregon's child population, while Native American children account for just 1.5%. This discrepancy indicates that children of color are overrepresented in the foster care system compared to their numbers in the general population.

Based on national policy efforts such as the Indian Child Welfare Act (ICWA)² and Relative and Kinship Care³ reforms, regarding placement for foster and adoptive children, Paid Leave can expect that a higher-than-average number of people applying for foster care and adoption family leave will be people of color. These related Paid Leave rule changes should have a positive impact for all claimants – and possibly a greater impact for claimants of color – because these changes provide a new paid leave option that may not otherwise be covered by the employer. In so doing, Paid Leave increases access to critical support for families of color, reflecting the intent of policy reforms like ICWA and helping maintain connections with relatives and kin for a stronger sense of belonging and acceptance. Paid Leave can significantly benefit children in foster care by providing their caregivers the necessary time to build stable, supportive environments during these crucial transitional periods. It offers their caregivers the ability to focus on emotional and developmental needs, which is particularly important for children of color who may already be dealing with systemic challenges. Access to paid leave ensures caregivers can be more financially secure with the ability to improve children's overall well-being outcomes.

OAR 471-070-1120 (Benefits: Verification of a Serious Health Condition) is being amended to add the requirements to include the claimant's date of birth on the documents, to ensure proper identification, and further clarify the information needed to support the serious health condition. Adding the birth date requirement should not have a specific equity impact, since the outcome for all claimants should be more accurate matching of documents and reduced processing delays. Similarly, there are no identified equity impacts associated with the second rule change, which clarifies that claimants may provide a description of symptoms and treatment as an alternative to a diagnosis, on their documents supporting a serious health condition. Taken together, these changes are intended as improvements for all claimants.

OAR 471-070-2030 (Self-Employed: Income, Contribution Payments, and Reporting Requirements) is being amended to require self-employed individuals who have elected coverage to report any tax return amendments or adjustments to Paid Leave, with the intent to ensure that claimant contributions and benefits are accurate and based upon valid and up to date tax records. The rule applies to all self-employed individuals who elect Paid Leave coverage, and the current proposed rule change would affect those who need to file amendments or receive Oregon Department of Revenue or Internal Revenue Service adjustments to their taxes. Such individuals may be impacted by incurring an overpayment if they fail to report the tax amendment to Paid Leave as prescribed and are paid benefits based on inaccurate self-employed income information. This rule change may have negative impacts for self-employed individuals for whom English is not their primary language, because the rules may create challenges with understanding the requirements or intent of the change.

OAR 471-070-1320 (Benefits: Communication to Employers and Employee Application for Benefits) is being amended to note that Paid Leave will begin reporting employee weekly benefit amounts to employers. This is an amendment that was requested by employers, who have stated that the additional information is necessary for them to comply with new statutory language from SB 1515. This rule change may have negative impacts on employees who hold more than one job and may be reluctant to disclose this fact to each employer. Such employees may have a higher weekly benefit amount than they would if they only had one job (and may have a higher amount than the employer is expecting).

FISCAL AND ECONOMIC IMPACT:

Any fiscal or economic impact from the current rule adoptions or amendments for Paid Leave appeals, benefits, contributions and self-employed elections, are the result of the statute being implemented. There is no fiscal or economic impact associated with these new administrative rules because the impact is a result of a previous statutory change.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

These administrative rules on Paid Leave Oregon benefits (OAR 471-070-1000, 471-070-1100, 471-070-1115, and 471-070-1120) will likely have an impact on state agencies, local governments, and other public bodies because their employees (claimants) may be eligible for Paid Leave benefits. The state agencies, units of local government, and the public may need to provide additional information requested by the department to verify claimant information and accept leave notices from their employees.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number and type of small businesses subject to the rule:

In the fourth quarter of 2023, Oregon had approximately 119,500 small businesses with fewer than 50 employees that employ 33 percent of the state's workforce. Oregon has approximately 113,500 small businesses with fewer than 25 employees that employ 24 percent of the state's workforce.* All of these small businesses are subject to the rules.

* Source: Oregon Unemployment Insurance Wage Records

b. Projected reporting, recordkeeping, and other administrative activities required for compliance, including costs of professional services:

Though there may be added administrative costs for the Oregon Employment Department, but none are anticipated for small businesses, associated with OAR 471-070-1320 – which will document that Paid Leave Oregon will disclose weekly benefit amounts and dates of leave taken with employers for the purpose of topping off – this rule change is being made to comply with SB 1515.

c. Equipment, supplies, labor and increased administration required for compliance:

The department believes there are no equipment, supplies, labor, or increased administration costs required for compliance with these Paid Leave administrative rules that would not otherwise exist for small businesses.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Paid Leave Oregon Advisory Committee, which serves as the Rulemaking Advisory Committee (RAC), is statutorily required to have four members representing employers, at least one of whom represents employers with fewer than 25 employees. A RAC meeting took place on October 2, 2024, and the members were consulted on the development of these rules.

The department is also holding public hearings, currently scheduled for October 18th and October 21st, 2024, for which there will be prior notice to the public and to interested parties who wish to attend. Attendees are invited to provide feedback on the proposed rules, either during the public hearing or afterward until the public comments period ends.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

471-070-0930, 471-070-1000, 471-070-1100, 471-070-1115, 471-070-1120, 471-070-1320, 471-070-1420, 471-070-2030

AMEND: 471-070-0930

RULE SUMMARY: This administrative rule is being amended to clarify the department's ability share the claimant's weekly benefit amount with the employer in order to comply with ORS 657B.030 (as amended by SB 1515 (2024)).

CHANGES TO RULE:

471-070-0930

Confidentiality: Permissible Disclosures

In addition to the disclosure ~~disc~~ authorized in ORS 657B.400(2)-(5)(7), the director may, at the director's discretion, disclose otherwise confidential information:¶

(1) Regarding details specific to the claimant's benefits claim:¶

(a) To a claimant;¶

(b) To an authorized claimant designated representative, as described in and subject to the requirements described in OAR 471-070-1250;¶

(c) To the claimant's current or prior employer or the employer's representative. The department will share with the employer only claim information necessary to properly administer the ~~elap~~program (including, but not limited to, the claimant's leave dates, frequency and duration of leave, and potential weekly benefit amount) unless the department has the express consent of the claimant or the claimant's designated representative, or unless otherwise required by law; and¶

(d) To a third party for whom the claimant provides verbal consent for a one-time authorization.¶

(2) Regarding details specific to the business entity's information:¶

(a) To the business entity; and¶

(b) To a third party for whom the business entity provides verbal consent for a one-time authorization.¶

(3) To the Administrative Law Judges of the Office of Administrative Hearings, as necessary, once a request for hearing has been filed and to prepare for a contested case proceeding under ORS 183.482.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.400, ~~Chapter 292, Oregon Laws 2023~~

AMEND: 471-070-1000

RULE SUMMARY: This administrative rule is being amended to add or update the definitions for 'Care,' 'Child,' 'Foster Care,' and 'Pre-placement Leave,' to align with changes made by SB 1515 (2024).

CHANGES TO RULE:

471-070-1000

Benefits: Definitions

- (1) "Affinity," as the term is used in ORS 657B.010, means a relationship that meets the following requirements:
 - (a) There is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship; and
 - (b) The bond under subsection (a) of this rule may be section is demonstrated by, but is not limited to, the following factors, with no single factor being determinative:
 - (A) Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills, or beneficiary designations;
 - (B) Emergency contact designation of the claimant by the other individual in the relationship, or vice versa;
 - (C) The expectation to provide care because of the relationship or the prior provision of care;
 - (D) Cohabitation and its duration and purpose;
 - (E) Geographical proximity; and
 - (F) Other factors that demonstrates the existence of a family-like relationship.
- (2) "Application" means the process in which an individual submits the required information and documentation described in OAR 471-070-1100 to request benefits for a period of leave. Approval of an application establishes a claim.
- (3) "Average weekly wage" means the amount calculated by the department as the state average weekly covered wage under ORS 657.150 (4)(e), as determined not more than once per year. The average weekly wage is:
 - (a) Set for each fiscal year beginning July 1 and ending June 30 of the following year;
 - (b) Applied for the calculation of weekly benefit amounts starting the first full week following July 1; and
 - (c) Applied for the entire benefit year after a new benefit year is established, even if the average weekly wage amount changes when the new fiscal year begins.
- (4) "Benefit year" means a period of 52 consecutive weeks beginning on the Sunday immediately preceding the day that family, medical, or safe leave commences for the claimant, except that the benefit year shall be 53 weeks if a 52-week benefit year would result in an overlap of any quarter of the base year of a previously filed valid claim. A claimant may only have one valid benefit year at a time.
- (5) "Bias," as the term is used for a safe leave purpose described in ORS 659A.272, means a bias crime as defined in ORS 147.380.
- (6) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.
- (7) "Care," as the term is used in ORS 657B.010(178)(a)(~~B~~), (~~C~~) means physical or psychological assistance as used for leave taken to care for a family member with a serious health condition.
 - (a) "Physical assistance" means assistance attending to a family member's basic medical, activities of daily living, safety, or nutritional needs when that family member is unable to attend to those needs themselves, or transporting the family member to a health care provider when the family member is unable to transport themselves.
 - (b) "Psychological assistance" means providing comfort, reassurance, companionship to a family member, or completing administrative tasks for the family member, or arranging for changes in the family member's care, such as, but not limited to, transfer to a nursing home.
- (8) "Child," as the term is used for family leave ~~to care for and bond with a child during the first year after the child's birth, foster placement, or adoption, and as the term is use~~ under ORS 657B.010(18)(a)(A) and (B) and for a safe leave purpose described in ORS 659A.272, means an individual described in ORS 657B.010(6) and who is:
 - (a) Under the age of 18; or
 - (b) Age 18 or older as an adult dependent substantially limited by a physical or mental impairment as defined by ORS 659A.104.
- (9) "Claim" means a period of Paid Family and Medical Leave Insurance (PFMLI) benefits that starts with an approved application for benefits and continues through the duration of the approved leave until the approved leave or benefit amount has been exhausted or the approved timeframe for the leave has been reached. A claimant may have multiple claims in a benefit year but may not be approved for more than the allowable benefit or leave amount as described in OAR 471-070-1030.
- (10) "Claimant" means an individual who has submitted an application or established a claim for benefits.
- (11) "Claimant Designated Representative" means an individual described in OAR 471-070-1250.

- (12) "Consecutive" leave means leave taken for a continuous period of time, without interruption, based upon a claimant's regular work schedule from all employment for a single qualifying purpose. A claimant who is taking consecutive leave may not perform work for any employer or perform self-employed work during the leave period. ¶
- (13) "Domestic violence," as the term is used for a safe leave purpose described in ORS 659A.272, means abuse or the threat of abuse, as abuse is defined in ORS 107.705.¶
- (14) "Pre-placement leave" means family leave taken under ORS 657B.010(18)(a)(B) before the actual adoption or foster placement of a child, if leave from work is required for the placement or adoption to proceed. Pre-placement leave may be taken by the prospective foster or adoptive parent in order to: ¶
- (a) Attend counseling sessions; ¶
- (b) Appear in court; ¶
- (c) Consult with an attorney; ¶
- (d) Submit to a physical examination or home study; ¶
- (e) Travel to another state or country to complete an adoption; or ¶
- (f) Perform other actions that the department has determined are necessary for completing the legal process of an adoption or foster placement.¶
- (15) "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.¶
- (156) "First year" after the child's birth, foster placement, or adoption means the timeframe beginning the day of the child's birth, foster placement, or adoption and ending the day before the child's first birthday or first anniversary of the foster placement or adoption. ¶
- (167) "Foster care" means 24-hour care for children in substitution for, and away from, their parents or guardian. Foster care placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, state action must be involved in the removal of the child from parental custody.¶
- (18) "Harassment," as the term is used for a safe leave purpose described in ORS 659A.272, means the crime of harassment described in ORS 166.065.¶
- (179) "Health care provider" means a person, other than a claimant or a person for whom a claimant is providing care, who is one of the following:¶
- (a) A person who is primarily responsible for providing health care to the claimant or the family member of the claimant before or during a period of PFMLI leave, who is licensed or certified to practice in accordance with the laws of the state or country in which they practice, who is performing within the scope of the person's professional license or certificate, and who is:¶
- (A) A chiropractic physician, but only to the extent the chiropractic physician provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays;¶
- (B) A dentist;¶
- (C) A direct entry midwife;¶
- (D) A naturopathic physician;¶
- (E) A nurse practitioner;¶
- (F) A nurse practitioner specializing in nurse-midwifery;¶
- (G) An optometrist;¶
- (H) A physician;¶
- (I) A physician associate;¶
- (J) A psychologist;¶
- (K) A registered nurse; or¶
- (L) A regulated social worker.¶
- (b) A person who is primarily responsible for the treatment of the claimant or the family member of the claimant solely through spiritual means before or during a period of PFMLI leave, including but not limited to a Christian Science practitioner.¶
- (1820) "Intermittent" leave means leave taken periodically in separate blocks of time or when leave is taken for two or more leave types simultaneously for an entire work day or work week from all employment. A claimant who is taking intermittent leave can perform work for any employer or perform self-employed work on work days they are not taking leave. ¶
- (219) "Offset" means the withholding of an amount from a benefit payment which would otherwise be payable to a claimant. ¶
- (202) "Self-employed individual's average weekly income" means the amount calculated by the department by adding the total of an individual's taxable income from self-employment, on which contributions have been paid

under OAR 471-070-2030, and subject wages, if any, earned during the base year, and dividing by 52 weeks. ¶
(213) "Serious health condition" means an illness, injury, impairment, or physical or mental condition of a claimant or their family member that:¶

(a) Requires inpatient care in a medical care facility such as, but not limited to, a hospital, hospice, or residential facility such as, but not limited to, a nursing home or inpatient substance abuse treatment center;¶

(b) In the medical judgment of the treating health care provider poses an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;¶

(c) Requires constant or continuing care, including home care administered by a health care professional;¶

(d) Involves a period of incapacity. "Incapacity" is the inability to perform at least one essential job function, or to attend school or perform regular daily activities for more than three consecutive calendar days. A period of incapacity includes any subsequent required treatment or recovery period relating to the same condition. The incapacity must involve one of the following:¶

(A) Two or more treatments by a health care provider; or¶

(B) One treatment plus a regimen of continuing care.¶

(e) Results in a period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity, such as, but not limited to, asthma, diabetes, or epilepsy;¶

(f) Involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as, but not limited to, Alzheimer's Disease, a severe stroke, or terminal stages of a disease. The employee or family member must be under the continuing care of a health care provider, but need not be receiving active treatment;¶

(g) Involves multiple treatments for restorative surgery or for a condition such as, but not limited to, chemotherapy for cancer, physical therapy for arthritis, or dialysis for kidney disease that if not treated would likely result in incapacity of more than three calendar days;¶

(h) Involves any period of disability due to pregnancy, childbirth, miscarriage or stillbirth, or period of absence for prenatal care; or¶

(i) Involves any period of absence from work for the donation of a body part, organ, or tissue, including preoperative or diagnostic services, surgery, post-operative treatment, and recovery.¶

(224) "Sexual Assault," as the term is used for a safe leave purpose described in ORS 659A.272, means any sexual offense or the threat of a sexual offense as described in ORS 163.305 to 163.467, 163.472 or 163.525.¶

(235) "Stalking," as the term is used for a safe leave purpose described in ORS 659A.272, means:¶

(a) The crime of stalking or the threat of the crime of stalking as described in ORS 163.732; or¶

(b) A situation that results in a victim obtaining a court's stalking protective order or a temporary court's stalking protective order under ORS 30.866.¶

(246) "Subject Wages" means PFMLI wages that are paid and reported for an employee, as defined in ORS 657B.010(13), or an employee of a tribal government who has elected coverage under ORS 657B.130.¶

(257) "Willful" and "willfully" means a knowing and intentional act or omission.¶

(268) "Willful false statement" means any occurrence where:¶

(a) A claimant or employer makes a statement or submits 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 concerns a fact that is 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.¶

(279) "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 concerns a fact that is 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 based on other information or a lack of information.¶

(2830) "Work day" means any day on which an employee performs any work for an employer and is an increment of a work week. ¶

(2931) "Work week" means a seven day period beginning on a Sunday at 12:01 a.m. and ending on the following Saturday at midnight.

Statutory/Other Authority: ORS 657B.090, 657B.340, 657B.023

Statutes/Other Implemented: ORS 657B.010, ORS 657B.090, 657B.023, 657B.332, Chapter 73 Oregon Laws 2024

AMEND: 471-070-1100

RULE SUMMARY: This administrative rule is being amended to align with changes made by SB 1515 (2024), clarifying the options and verification requirements for family leave.

CHANGES TO RULE:

471-070-1100

Benefits: Application for Benefits

- (1) To request Paid Family and Medical Leave Insurance (PFMLI) benefits provided under the state plan established in ORS 657B.340, a claimant must submit an application for benefits. An application must be submitted online or by another method approved by the department. For the application to be approved by the department, the application must be complete and must include, but is not limited to, the following:¶
- (a) Claimant information, including:¶
 - (A) First and last name;¶
 - (B) Date of birth;¶
 - (C) Social Security Number or Individual Taxpayer Identification Number; and¶
 - (D) Contact information, including mailing address and telephone number.¶
 - (b) Documentation sufficient to establish the claimant's identity;¶
 - (c) Information about the claimant's current employment or self-employment for which they are requesting leave from work:¶
 - (A) Business name(s) and dates of employment or self-employment;¶
 - (B) Business address and contact information for all employers or self-employed businesses;¶
 - (C) Average number of work days worked per work week; and¶
 - (D) Any current breaks from work or anticipated future breaks from work that are unrelated to PFMLI leave.¶
 - (d) Information about the notice given to any employers under ORS 657B.040 and OAR 471-070-1310, if applicable, and the date(s) any notice was given;¶
 - (e) Information about the claimant's leave schedule, including:¶
 - (A) Employer(s) from which leave is being taken;¶
 - (B) Anticipated leave dates; and¶
 - (C) Whether the leave is to be taken in consecutive or intermittent periods.¶
 - (f) The type of leave taken by the claimant, which must be one of the following:¶
 - (A) Family leave;¶
 - (B) Medical leave; or¶
 - (C) Safe leave.¶
 - (g) Verification of the reason for the leave, including:¶
 - (A) For family leave to care for or bond with a child, verification consistent with OAR 471-070-1110;¶
 - (B) For family leave for pre-placement leave, verification consistent with OAR 471-070-1115;¶
 - (C) For family leave to care for a family member with a serious health condition, verification consistent with OAR 471-070-1120 and an attestation that the claimant has a relationship equal to "family member" under ORS 657B.010 and is caring for a family member with a serious health condition;¶
 - (~~D~~) For medical leave, verification consistent with OAR 471-070-1120; or¶
 - (~~E~~) For safe leave, verification consistent with OAR 471-070-1130.¶
 - (h) If the claimant is requesting up to two additional weeks of leave for limitations related to pregnancy, childbirth or a related medical condition, documentation that the claimant is currently pregnant or was pregnant within the year prior to the start of the additional two weeks of leave;¶
 - (i) Information about the claimant's eligibility to receive workers' compensation time loss benefits under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657; and¶
 - (j) A written or electronically signed statement declaring under oath that the information provided in support of the application for PFMLI benefits is true and correct to the best of the individual's knowledge.¶
- (2) An employee who has PFMLI coverage solely through an employer with an equivalent plan approved under ORS 657B.210 must apply for PFMLI benefits by following the employer's equivalent plan application guidelines.¶
- (3) An employee who is simultaneously covered by more than one employer's equivalent plan approved under ORS 657B.210, or that is simultaneously covered by the state plan and at least one employer with an equivalent plan, must 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.¶
- (4) A complete application for PFMLI may be submitted to the department up to 30 calendar days prior to the start of family, medical, or safe leave and up to 30 calendar days after the start of leave. Applications submitted outside of this timeframe, either early or late, will be denied, except in cases where a claimant can demonstrate an application was submitted late for reasons that constitute good cause under section (5) of this rule.¶

- (5) Good cause exists when a claimant establishes by satisfactory evidence submitted to the department that factors or circumstances beyond the claimant's control prevented the claimant from submitting a completed application within the required timeframe under section (4) of this rule. Good cause for the late submission of an application is determined at the discretion of the department and includes, but is not limited to, the following:¶
- (a) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents an individual from timely filing an application; or¶
 - (b) A demonstrated inability to reasonably access a means to file an application in a timely manner, such as an inability to file an application due to a natural disaster or a significant and prolonged department system outage.-¶
 - (6) If the department determines the claimant demonstrated good cause for late submission of an application, the department may accept the application up to one year after the start of leave.-¶

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

Statutory/Other Authority: ORS 657B.090, 657B.100, 657B.340

Statutes/Other Implemented: ORS 657B.090, 657B.100, Chapter 20 Oregon Laws 2024

ADOPT: 471-070-1115

RULE SUMMARY: This administrative rule is being adopted to describe the family leave verification requirements before a child's placement through foster care or adoption.

CHANGES TO RULE:

471-070-1115

Benefits: Verification of Pre-placement Leave

(1) A claimant applying for Paid Family and Medical Leave Insurance (PFMLI) benefits for pre-placement leave, must provide one of the following forms of verification that confirms the intended adoption or foster care placement: ¶

(a) A copy of a court order; ¶

(b) A letter signed by the attorney representing the foster or adoptive parent; ¶

(c) A document from the foster care or adoption agency, or from a social worker involved in the placement; ¶

(d) A document for the child issued by the United States Citizenship and Immigration Services; or ¶

(e) Another document approved by the department. ¶

(2) The verification required in this rule must be dated no earlier than 180 days prior to the start date of the requested leave period and contain: ¶

(a) The first and last name of the claimant documented as the intended foster or adoptive parent; ¶

(b) The claimant's date of birth; ¶

(c) Information that identifies the child, including but not limited to the child's first and last name or the child's date of birth; and ¶

(d) Unless issued by a government entity: ¶

(A) The issuer's first and last name; ¶

(B) The issuer's title or specialization; ¶

(C) The issuer's contact information, such as mailing address, email or telephone number; ¶

(D) The issuer's handwritten or electronic signature; and ¶

(E) The date the document was signed or issued.

Statutory/Other Authority: 657B.090, 657B.340

Statutes/Other Implemented: 657B.010, 657B.090

AMEND: 471-070-1120

RULE SUMMARY: This administrative rule is being amended to add the requirement to include claimant's date of birth, and to clarify that a serious health condition must be verified either through a diagnosis or description of symptoms and treatment.

CHANGES TO RULE:

471-070-1120

Benefits: Verification of a Serious Health Condition

(1) A claimant applying for Paid Family and Medical Leave Insurance (PFMLI) benefits for their own serious health condition or to care for a family member with a serious health condition must provide one of the following forms of verification:¶

(a) The Paid Leave Oregon Verification of a Serious Health Condition Form;¶

(b) The Oregon and Federal Family and Medical Leave Health Care Provider Certification issued by the Oregon Bureau of Labor and Industries (BOLI);¶

(c) The Family and Medical Leave Act (FMLA) certification of health care provider for a serious health condition form issued by the U.S. Department of Labor;¶

(d) A FMLA certification for a serious health condition form issued by an employer;¶

(e) A document issued by a health care provider; or¶

(f) Another document approved by the department for this purpose.¶

(2) The forms of verification listed in section (1) of this rule must include:¶

(a) The health care provider's:¶

(A) First and last name;¶

(B) Type of medical practice/specialization;¶

(C) Contact information, such as mailing address and telephone number; and¶

(D) Handwritten or electronic signature. If issued before the start of leave, the verification document must be signed by the health care provider within 60 calendar days before the claimant's leave start date;¶

(b) The ~~patient~~claimant's first and last name;¶

(c) The claimant's date of birth; ¶

(d) The patient's first and last name, when if different from the patientclaimant identified in section (2)(b) of this rule;¶

~~(de)~~ The approximate date on which the serious health condition commenced or when the serious health condition created the need for leave;¶

~~(ef)~~ A reasonable estimate of the duration of the condition or recovery period for the patient;¶

~~(fg)~~ A reasonable estimate of the frequency and duration of intermittent leave and estimated treatment schedule, if applicable; and¶

~~(gh)~~ Other information as requested by the department to determine eligibility for the PFMLI benefits; including:¶

(A) For medical leave, information sufficient to establish that the claimant has a serious health condition, including but not limited to a diagnosis or a description, including symptoms or required treatment of the serious health condition; or¶

(B) For family leave, information sufficient to establish that the claimant's family member has a serious health condition, including but not limited to a diagnosis or a description, including symptoms or required treatment of the serious health condition.¶

(3) If any of the documents listed in section (1) of this rule do not include the full name of the patient or the claimant, ~~when if~~ different from the patient identified in section (2)(b) of this rule, or do not show the family relationship of the claimant and the patient, the claimant must submit at least one of the following documents to meet the verification requirements described in this rule:¶

(a) A legal marriage certificate;¶

(b) A certified Declaration of Domestic Partnership;¶

(c) A legal birth certificate; or¶

(d) One or more documents issued by an independent and verifiable third party that establishes marriage, domestic partnership, or a significant family relationship between claimant and patient. The document must be issued within six months before the claimant's start of leave.¶

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

Statutory/Other Authority: ORS 657B.340, ORS 657B.090

Statutes/Other Implemented: ORS 657B.090

AMEND: 471-070-1320

RULE SUMMARY: This administrative rule is being amended to clarify that Paid Leave Oregon will provide approved employee weekly benefit amounts and leave taken by the employee to the employer.

CHANGES TO RULE:

471-070-1320

Benefits: Communication to Employers and Employee Application for Benefits

(1) After a claimant has filed an application or updated their claim for Paid Family and Medical Leave Insurance (PFMLI) benefits, the department shall notify any employers ~~that from whom~~ the claimant is requesting paid leave from and provide information about the employee's claim, including but not limited to the potential weekly benefit amount and actual benefit payment amounts.¶

(2) Employers or administrators may respond to the notice from the department within ~~105~~ calendar days of the date on the department's notice to report any additional information ~~about~~ before the employee's PFMLI claim is processed. Employers or administrators shall respond to the department's notice online or through another method approved by the department. If the employer or administrator fails to provide information within ~~105~~ calendar days, the claimant's application for benefits shall be processed using the information available in the department's records. If the employer or administrator later provides additional information, the department may reprocess the claim, taking into account the additional information.¶

(3) The department may ~~need to~~ determine whether a claimant has coverage under an equivalent plan approved under ORS 657B.210 and the effective dates of ~~any that coverage the claimant has, or, along with gathering~~ information about any claim for benefits that the claimant has filed under an equivalent plan. The department may request ~~additional~~ information from the claimant's equivalent plan employer and administrator, if applicable, after the claimant files an application with the department. When this information is requested, equivalent plan employers or administrators must respond to the department's request within 10 calendar days from the date on the request for ~~additional~~ information.¶

(4) After a claimant's application for benefits has been processed by the department and a decision is issued to the claimant, the department shall notify the claimant's employers and administrators, if applicable, whether the claimant's application for benefits was approved or denied by the department, and, if approved, the dates and period of leave that the claimant is approved for.

Statutory/Other Authority: ORS 657B.340, ORS 657B.040

Statutes/Other Implemented: ORS 657B.040

AMEND: 471-070-1420

RULE SUMMARY: This administrative rule is being amended to specify that pre-placement leave can only be taken on an intermittent basis.

CHANGES TO RULE:

471-070-1420

Benefits: Leave Periods and Increments

(1) A claimant may request family, medical, or safe leave provided under ORS chapter 657B in either consecutive or intermittent periods of leave.¶

(2) Notwithstanding section (1) of this rule, a claimant may take pre-placement leave only on an intermittent basis.¶

(3) Leave may be taken, and benefits may be claimed in increments that are equivalent to one work day or one work week, as defined in OAR 471-070-1000. When claiming an increment of less than a full work week, the number of work days that can be reported during a week is established by the average number of work days worked per week by the claimant as defined in OAR 471-070-1040.¶

(~~3~~4) When benefits are claimed in an increment that is equivalent to one work day or one work week, leave must be taken from all employers and from all self-employed work for the entirety of that period to receive benefits.¶

Example 1: Kelsey is taking family leave and is currently an employee at a university and an architecture firm. Kelsey works for the university in the morning of their work day and the architecture firm in the evenings on the same work day. Kelsey must take leave from both places of employment for the work day in order to claim benefits for the work day. If Kelsey only missed work from the university due to the family leave for that one work day, it would not qualify for benefits.¶

Example 2: Chloe is taking medical leave and is currently an employee at a department store and a self-employed delivery driver. Chloe works four work days total per work week: Monday and Tuesday at the department store and Wednesday and Saturday as a self-employed delivery driver. Chloe must take leave for all four work days from both jobs in order to claim a full work week of benefits. If Chloe only missed work on Monday and Saturday due to medical leave, Chloe would qualify for benefits for two work days instead of a work week.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 657B.090, 657B.020

RULE SUMMARY: This administrative rule is being amended to add the requirement for self-employed individuals to report any changes or adjustments to their tax returns to Paid Leave Oregon.

CHANGES TO RULE:

471-070-2030

Self-employed: Income, Contribution Payments, and Reporting Requirements

(1) A self-employed individual who elects coverage under ORS 657B.130 must contribute to the Paid Family Medical Leave Insurance (PFMLI) Trust Fund in an amount that is equal to 60 percent of the total contribution rate described in OAR 471-070-3010 up to an annual taxable income from self-employment that is equal to the calendar year maximum wage amount described in OAR 471-070-3010.¶

(2) Total contribution payments will be based on the individual's total taxable income from self-employment from the tax return required to be filed for a prior tax year, per OAR 471-070-2010, and generally shall be divided into four quarterly contribution payments. If a contribution is due for only part of a quarter, the contribution amount and the taxable income from self-employment used to calculate the weekly benefit amount, shall be prorated based on the number of calendar days that the elective coverage is in effect.¶

Example: Sally, a self-employed individual, elects PFMLI coverage on May 1, 2024. Sally earned \$80,000 in taxable income from self-employment in 2023. Assuming a total contribution rate of one percent, Sally's four quarterly contribution amounts due, and taxable income from self-employment, are calculated as follows:¶

First quarterly payment, period of May 1 through June 30 (second quarter calendar year 2024), will be \$80.44 [(\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters) x 61/91 calendar days in the quarter]. Her taxable income from self-employment for this quarter will be \$13,406.59 [(\$80,000 taxable income from self-employment/four quarters) x 61/91 calendar days in the quarter].¶

Second quarterly payment, period of July 1 through September 30 (third quarter calendar year 2024), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters). Her taxable income from self-employment for this quarter will be \$20,000 (\$80,000 taxable income from self-employment / four quarters).¶

Third quarterly payment, period of October 1 through December 31 (fourth quarter calendar year 2024), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters). Her taxable income from self-employment for this quarter will be \$20,000 (\$80,000 taxable income from self-employment / four quarters).¶

Fourth quarterly payment, period of January 1 through March 31 (first quarter calendar year 2025), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters). Her taxable income from self-employment for this quarter will be \$20,000 (\$80,000 taxable income from self-employment / four quarters).¶

(3) Quarterly contributions shall be due and payable in accordance with OAR 471-070-3030.¶

(4) A self-employed individual who fails to timely pay contributions as required by sections (1) through (3) of this rule is delinquent. Any individual found to be delinquent in the payment of contributions is subject to the penalties as specified in ORS 657B.320 and also may be assessed an additional penalty as provided in ORS 657B.910.¶

(5) The date of receipt of contributions transmitted through the mail or private express carrier shall be determined as provided in ORS 293.660. The date of receipt shall be used in the calculation of interest charges, delinquencies, penalties, or other sanctions provided by law.¶

(6) The self-employed individual must annually report information and submit documentation as provided in subsections (a), (b), and (c) of this section that the department deems necessary for the administration of elective coverage.¶

(a) Except as specified in subsection (b) and (c) of this section, a self-employed individual must annually report to the department the prior year's taxable income from self-employment required to be filed and must provide their Oregon personal income tax return to the department on or before April 30 of each year.¶

(b) If a self-employed individual files their Oregon personal income tax return on extension, the department will use the information on the individual's last tax return filed and provided to calculate quarterly contribution payments. The department will adjust the quarterly contribution payments due when the prior year's tax return on extension is filed and provided to the department. The self-employed individual must report to the department the prior year's taxable income from self-employment filed on extension and provide their Oregon personal income tax return on or before October 31 of each year.¶

(c) If a self-employed individual amends or receives an adjustment for their Oregon personal income tax return within a three-year period following the original due date, notwithstanding extensions, of their Oregon personal income tax return, the self-employed individual must report to the department the amended or adjusted taxable

income from self-employment. The self-employed individual must provide their amended or adjusted Oregon personal income tax return to the department within 30 days of the date an amended or adjusted Oregon personal income tax return is final. Once received, the department will adjust the quarterly contribution payments due, benefit amounts due, and previous benefit amounts paid, as appropriate.

Statutory/Other Authority: ORS 657B.340

Statutes/Other Implemented: ORS 293.660, 657B.130, 657B.150