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CHAPTER 471

EMPLOYMENT DEPARTMENT

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FILING CAPTION: Amending Paid Leave Oregon administrative rules relating to equivalent plans.

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RULES:

471-070-2200, 471-070-2210, 471-070-2220, 471-070-2270, 471-070-2400, 471-070-2450, 471-070-2455, 471-070-2460

AMEND: 471-070-2200

RULE TITLE: Equivalent Plans: Definitions

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Amends the administrative rule to align the definition of "successor in interest" with the definition used in OAR 471-070-3130.

RULE TEXT:

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

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

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

(4) "Employer administered equivalent plan" means an equivalent plan in which the employer offers a private plan where the employer assumes all financial risk associated with the benefits and administration of the equivalent plan, whether it is administered by the employer or a third-party administrator.

(5) "Equivalent plan" means a Paid Family and Medical Leave Insurance (PFMLI) plan approved by the department that provides benefits that are equal to or greater than the benefits provided by the Oregon PFMLI program established under ORS 657B.340.

(6) "Fully insured equivalent plan" means an equivalent plan in which the employer purchases an insurance policy from an insurance company approved to sell PFMLI products by the Oregon Department of Consumer and Business Services

(DCBS) Division of Financial Regulation and the benefits related to the plan are administered through the insurance policy.

(7) "Successor in interest" means an employer who is transferred or otherwise acquires all or substantially all of the component's parts of a business, including the employees necessary to carry on day to day operations and essential business functions in the same manner and for the same purposes as carried on prior to the acquisition or transfer.

(8) "Substantial reduction in personnel," as used in ORS 657B.260 and applicable administrative rules, means a situation in which the number of employees employed by the predecessor of the organization, trade, or business is reduced by at least 33 percent by the successor in interest.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.340, ORS 657B.210, 657B.260

AMEND: 471-070-2210

RULE TITLE: Equivalent Plans: Application Requirements and Effective Date

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Amends the administrative rule to clarify the timeframe the equivalent plan employer has to respond to the department's request for further information. The timeframe is 14 calendar days for request sent by mail and 10 calendar days if request is sent by telephone, email, or other electronic means.

RULE TEXT:

- (1) An employer must submit a separate application and receive department approval for an employer administered equivalent plan or a fully insured equivalent plan for each Business Identification Number. The application must be submitted to the department online or by another method prescribed by the department. An incomplete application will not be reviewed by the department.
- (2) For an equivalent plan to be reviewed by the department, the equivalent plan application must include the following:
 - (a) Information about the employer applying for the equivalent plan, including:
 - (A) Business Identification Number and Federal Employer Identification Number;
 - (B) Business name;
 - (C) Business address; and
 - (D) Business contact's name and contact information;
 - (b) A copy of the employer administered equivalent plan or in the case of a fully insured equivalent plan, a copy of the insurance policy or the insurance product and the selected variables the employer is choosing;
 - (c) A completed questionnaire attesting that the plan meets all requirements for equivalent plans; and
 - (d) Other information as required on the department's equivalent plan application form.
- (3) Employers must pay a nonrefundable \$250 application fee with every:
 - (a) Application for approval of a new equivalent plan; or
 - (b) Application for reapproval or amendment of an equivalent plan that has substantive amendments to the equivalent plan that was originally approved by the department.
- (4) Employers must pay a nonrefundable \$150 application fee with every application for reapproval of an equivalent plan that has no changes or only non-substantive amendments to the equivalent plan that was originally approved by the department.
- (5) There is no fee for either of the following:
 - (a) Application for amendment of an equivalent plan that has substantive or non-substantive amendments to the equivalent plan that were required by Oregon, local, or federal law changes or changes to the contribution rate and maximum wage amount as described in OAR 471-070-3010;
 - (b) Application for amendment of an equivalent plan that has non-substantive amendments to the equivalent plan that was originally approved by the department.
- (6) "Substantive amendments" to an equivalent plan that was originally approved by the department as used in sections (3), (5), and (11) of this rule include, but are not limited to, any of the following:
 - (a) Changing from a fully insured equivalent plan to an employer administered equivalent plan;
 - (b) Changing from an employer administered equivalent plan to a fully insured equivalent plan;
 - (c) Changing the fully insured equivalent plan insurance policy to reduce benefits or leave types, regardless of whether the new plan is from the same insurance provider or another insurance provider;
 - (d) Changing the questionnaire answers for the equivalent plan; or
 - (e) Changing the employer administered equivalent plan to reduce benefits or leave types.
- (7) "Non-substantive amendments" as used in section (4), (5), and (11) of this rule include, but are not limited to, any of the following:
 - (a) Updating solvency documents for employer administered plans;
 - (b) Updating the application for an equivalent plan that does not amend the equivalent plan, includes, but is not limited

to, the following:

(A) Changing business or contact information, or

(B) Correcting typographical error

(c) Increasing benefits or leave types, regardless of whether the new plan is from the same insurance provider or another insurance provider.

(8) Approved equivalent plans become effective:

(a) For new equivalent plans, on the first day of the calendar quarter immediately following the date of approval by the department; and

(b) For amendments to a previously approved equivalent plan, on the first day of the calendar quarter immediately following the date of approval of the amendment by the department. If approval of the amendment is denied, the employer must continue to follow the originally approved equivalent plan.

(9) An application for reapproval must be submitted by an employer annually for a three-year period following the original effective date of the plan. The application for reapproval is due 30 days prior to the anniversary of the original effective date of the approved equivalent plan.

Example: ABC Corporation submitted an equivalent plan application to the department on February 4, 2023. The department sent an approval letter for the equivalent plan that was dated March 5, 2023 and the equivalent plan becomes effective on April 1, 2023. The application for reapproval is due on March 1 of 2024, 2025, and 2026; 30 days prior from the original anniversary of the effective date of April 1st.

(10) For the purposes of determining the reapproval requirement, the equivalent plan approval date and effective date are the first day of the calendar quarter immediately following the date of the original approval letter from the department.

(11) After the three-year period following the original effective date of the plan, an application for reapproval must be submitted anytime a substantive amendment occurs as described in section (9) of this rule. For a non-substantive amendment, a copy of the revised equivalent plan must be submitted to the department at the time the change becomes effective.

(12) The department may request any information necessary to establish facts relating to eligibility for an equivalent plan. Unless a timeframe is otherwise specified under statute or administrative rule or is specified by an authorized department representative, the employer must respond to all requests for information within the following time frames:

(a) 14 calendar days from the date of the request for information, if the request was sent by mail to the employer's last known address as shown in the department's records.

(b) 10 calendar days from the date of the request for information, if the request was sent by telephone, email, or other electronic means.

(13) When the response to the request for information is sent to the department by mail, the date of the response shall be the date of the postmark affixed by the United States Postal Service. In the absence of a postmarked date, the date of the response shall be the most probable date of mailing as determined by the department.

[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: 657B.340, ORS 657B.210

STATUTES/OTHER IMPLEMENTED: ORS 657B.210, 657B.230

AMEND: 471-070-2220

RULE TITLE: Equivalent Plans: Plan Requirements

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: PURPOSE: Amends the administrative rule to increase the timeframe an employee can appeal an equivalent plan employer denial from 20 calendar days to 60 calendar days. This will align with the appeal timeframe in OAR 471-070-8005.

RULE TEXT:

In order for an equivalent plan to be approved by the department, the plan must at a minimum:

- (1) Cover all Oregon employees who have been continuously employed with the employer for at least 30 calendar days, regardless of hours worked, including full-time, part-time, temporary workers hired by the employer, and replacement employees hired to temporarily replace eligible employees during PFMLI leave. Any employees who were eligible for benefits under their previous Oregon employer's equivalent plan, who begin working for a new employer with an approved equivalent plan, must be automatically covered for benefits under the equivalent plan offered by the new employer as described in ORS 657B.250;
- (2) Provide family leave as described in ORS 657B.010(17) and applicable administrative rules;
- (3) Provide medical leave as described in ORS 657B.010(19) and applicable administrative rules;
- (4) Provide safe leave as described in ORS 657B.010(21) and applicable administrative rules;
- (5) Allow eligible employees to take family leave, medical leave, or safe leave in a benefit year for periods of time equal to or longer than the duration of leave provided under ORS 657B.020;
- (6) Provide eligible employees weekly benefit amounts equal to or greater than benefits provided under ORS 657B.050;
- (7) Allow family leave, medical leave, or safe leave to be taken in increments or nonconsecutive periods as provided under ORS 657B.090;
- (8) Impose no additional conditions or restrictions on the use of family leave, medical leave, or safe leave beyond those explicitly authorized by ORS chapter 657B and applicable administrative rules;
- (9) Provide that the employee contributions withheld by an equivalent plan shall not be greater than the employee contributions that would be charged to employees under ORS 657B.150 and determined annually under OAR 471-070-3010;
- (10) Ensure employee contributions that are received or retained under an equivalent plan are used solely for equivalent plan expenses, are not considered part of an employer's assets for any purpose, and are held separately from all other employer funds;
- (11) Meet all equivalent plan requirements provided in ORS 657B.210 and applicable administrative rules;
- (12) Provide for decisions on benefit claims, to be in writing, either in hard copy or electronically if the employee has opted for electronic notification. Decisions on benefit claim approvals must include the amount of leave approved, the weekly benefit amount, and a statement indicating how the employee may contact the department to request the eligible employee's average weekly wage amount if the employee believes the benefit amount may be incorrect. Denial decisions must include the reason(s) for denial of benefits along with an explanation of an employee's right to appeal the decision and instructions on how to submit an appeal.
- (13) Provide an appeal process to review benefit decisions when requested by an employee that also requires the employer or administrator to issue a written decision. The employee must have at least 60 calendar days from the date of the written denial to request an appeal with the employer or administrator, if applicable, or as soon as practicable if there is good cause for the delay beyond the 60 calendar days as described in OAR 471-070-2400(7). The employee, and the employer, or administrator have 20 calendar days from the date the appeal is received, or as soon as practicable if there is good cause as described in OAR 471-070-2400(7), to resolve the appeal and for the employer or administrator to issue a written appeal determination letter along with an explanation of the department's dispute resolution process as described in OAR 471-070-2400 if an appeal is denied;
- (14) Provide that the equivalent plan employer or administrator must make all reasonable efforts to make a decision on

whether to allow the claim and issue the first payment of any benefits to an employee within two weeks after receiving the claim or the start of leave, whichever is later. Subsequent benefit payments must be provided weekly by a fully insured equivalent plan and benefit payments may be paid according to the existing paycheck schedule for employees under an employer administered equivalent plan; and

(15) Ensure a written notice poster for the equivalent plan as described in OAR 471-070-2330, will be given to all eligible employees, at the time of hire and each time the policy or procedure changes, in the language that the employer typically uses to communicate with the employee.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.210

AMEND: 471-070-2270

RULE TITLE: Equivalent Plans: Proration of Benefit Amounts for Simultaneous Coverage

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Amends the administrative rule to clarify per work week.

RULE TEXT:

(1) An employee is considered to have simultaneous coverage when the employee is covered by more than one employer's equivalent plan at the same time or is covered by the state plan established in ORS 657B.340 and at least one employer with an equivalent plan, at the same time. An employee does not have simultaneous coverage if they work for multiple employers covered by the state plan.

(2) An employee with simultaneous coverage at the start of a leave event shall apply separately under all plans they are covered under and from which they are taking leave by following the respective application guidelines for each plan. An equivalent plan employer may ask an employee whether the employee has additional Paid Family and Medical Leave Insurance (PFMLI) coverage but may not require that the employee provide details on the other employers or the plans. The employer, employee, or administrator may request information from the department as described in OAR 471-070-2260.

(3) Each equivalent plan is required to pay benefit amounts that are equal to or greater than the benefits offered under the state plan as described in OAR 471-070-2260 and ORS 657B.050 and applicable administrative rules. Upon request, the department may provide information to equivalent plan employers or administrators regarding prorated benefit amounts, if the department is aware of simultaneous coverage. Each respective plan benefit amount shall be prorated by the average number of work days worked per work week by the claimant for each respective plan rounded to the nearest whole cent. When rounding, any number with the last figure five or greater is rounded up, while numbers less than five are rounded down.

(a) The state plan shall pay benefits based on the prorated weekly benefit amount and shall further prorate the weekly benefit amount as described in OAR 471-070-1440 for leave taken in work day increments.

(b) The equivalent plan shall pay benefits equal to or greater than the prorated weekly benefit amount and may further prorate the weekly benefit amount when leave is taken in work day increments based on the number of work days of leave taken in the work week.

Example 1: Alondra is employed by two employers. One employer is a state plan employer and the other is an equivalent plan employer. Alondra works five days per work week for the state plan employer and three days per work week for the equivalent plan employer. Alondra is unable to work for both employers due to the need to provide care for a seriously ill parent for the next five weeks. Alondra must apply for benefits separately for the state plan and the equivalent plan. Alondra's weekly benefit amount is \$1,040. Alondra will receive two separate benefit payments each week. The state plan will pay the prorated weekly benefit in the amount of \$650 [(\$1,040 weekly benefit amount divided by 8 total days worked at both jobs) x 5 days worked for the state plan employer]. The equivalent plan employer will pay at least the prorated weekly benefit in the amount of \$390 [(\$1,040 weekly benefit amount divided by 8 total days worked at both jobs) x 3 days worked for the equivalent plan employer].

Example 2: Same typical work schedule and weekly benefit amount as in example 1; however, Alondra is unable to work for the state plan employer one day per work week and is unable to work for the equivalent plan employer one day per work week (for a total of two days of leave each week) to provide care for a seriously ill parent for the next five weeks. Alondra must apply for benefits separately for the state plan and the equivalent plan. Alondra's weekly benefit amount is still the same at \$1,040 (the state plan prorated weekly benefit amount is \$650 and the equivalent plan prorated weekly benefit amount is at least \$390). Because the leave is taken in work day increments and not an entire work week, once the prorated weekly benefit amount is determined, the state plan will further prorate the state's weekly benefit amount by the number of work days on leave. The state plan will pay weekly benefits in the amount of \$130

[((\$650 state plan portion of the weekly benefit amount divided by 5 work days) x 1 day on leave in the work week)]. The equivalent plan employer may choose to further prorate the weekly benefit amount by the number of work days on leave [(\$390 equivalent plan portion of the weekly benefit amount divided by 3 work days) x 1 day on leave in the work week) for a minimum weekly benefit amount of \$130].

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

(a) The department receives an application for an employee that provides current employment information from a state plan employer(s) and one or more equivalent plan employer(s). The department shall verify coverage under the equivalent plan as described in OAR 471-070-2230 to determine a prorated benefit amount for benefits offered under the state plan.

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

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

STATUTORY/OTHER AUTHORITY: ORS 657B.340, ORS 657B.210

STATUTES/OTHER IMPLEMENTED: ORS 657B.210

AMEND: 471-070-2400

RULE TITLE: Equivalent Plans: Disputes between an Equivalent Plan Employer and Employee, Request for Hearing

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Amends the administrative rule to increase the appeal timeframe to appeal the employer and employee dispute to the department from 20 calendar days to 60 calendar days. This will align with the appeal timeframe in OAR 471-070-8005.

RULE TEXT:

- (1) As required by ORS 657B.420, the department will provide a dispute resolution process to assist in resolving disputes between employers or equivalent plan administrators, as applicable, and employees regarding coverage and benefits provided under an employer's approved equivalent plan if the appeal with the employer or administrator is not otherwise resolved.
- (2) Prior to the department providing a dispute resolution process, the employee and employer or administrator must follow the equivalent plan appeal process described in OAR 471-070-2220(13).
- (3) In the event that the employee and employer or administrator are unable to resolve an appeal on a coverage or benefit decision through the equivalent plan's appeal process, the employee may request dispute resolution assistance through the department. The dispute resolution request must:
 - (a) Be in writing, by phone, online, or in another format approved by the department.
 - (b) Include a copy of the employer or administrator's appeal decision and any documents related to the dispute, including documents supporting or referencing the employer's or administrator's decision.
 - (c) Be received within 60 calendar days of the issuance of the appeal decision, or as soon as practicable if there is good cause as described under section (7) of this rule, for the delay beyond 60 calendar days.
- (4) The department shall review the dispute resolution request and issue an advisory decision based on the equivalent plan benefit requirements within 20 calendar days of the receipt of the dispute resolution request.
- (5) If the employer or administrator does not comply with the department's administrative dispute decision, the employee may still submit a wage claim with the Oregon Bureau of Labor and Industries under ORS chapter 652.
- (6) The payment of any benefits not placed in issue by the request for the administrative hearing shall continue during the appeal process.
- (7) Good cause for late appeal or dispute resolution request includes, but is not limited to, the following:
 - (a) Difficulty obtaining verification;
 - (b) Factors or circumstances beyond the employee's, employer's, administrator's, or department's reasonable control that prevented them from providing information;
 - (c) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents the employee or employer from timely providing information; or
 - (d) A demonstrable inability to reasonably access a means to respond in a timely manner, such as an inability to file a leave report due to a natural disaster or a significant and prolonged outage.

STATUTORY/OTHER AUTHORITY: ORS 657B.420

STATUTES/OTHER IMPLEMENTED: ORS 657B.420, ORS 183.635

AMEND: 471-070-2450

RULE TITLE: Equivalent Plans: Termination by the Department

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Amends the administrative rule to expand the reason the department may terminate an equivalent plan if a business closure occurs. Specifies the appeal timeframe for the employer to appeal the notice of termination is 20 calendar days. Clarifies when contributions collected from employees that are still in the employer's trust must be paid to the department and become final once the plan is terminated and the employer receives an invoice from the department for contributions due

RULE TEXT:

(1) The department may terminate an employer's equivalent plan due to reasons that include, but are not limited to:

- (a) Misuse of employee contributions withheld or retained by the employer;
- (b) Failure to adhere to the department approved equivalent plan or to report substantive equivalent plan changes to the department;
- (c) Failure to adhere to applicable Paid Family and Medical Leave Insurance (PFMLI) program requirements, including but not limited to OAR 471-070-2220 and equivalent plan reporting requirements;
- (d) Failure to file for reapproval as required in OAR 471-070-2210;
- (e) Employer insolvency;
- (f) Termination of the insurance policy by the plan administrator;
- (g) Closure of a business; or
- (h) Failure to respond timely to the department's reasonable inquiries for information about the equivalent plan.

(2) If the plan administrator plans to terminate an employer's insurance policy, the administrator must provide notice to the department at least 30 calendar days prior to the termination date. The termination date must be effective on the last day of a calendar quarter. The administrator's notice to the department should include:

- (a) The original effective date of the fully insured equivalent plan policy; and
- (b) The effective date of the termination requested by the administrator.

(3) If the department seeks to terminate an equivalent plan, the department will send the employer and administrator, if applicable, a notice of termination to the employer's last known address, or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records. The notice must provide:

- (a) The reason(s) for the termination;
- (b) Instructions on how to resolve the reason(s) for termination; and
- (c) The effective date of termination, which must be the last day of a calendar quarter, absent further specified action by or on behalf of the employer.

(4) An employer may appeal the notice of termination in accordance with ORS 657B.410 and applicable administrative rules within 20 calendar days of the notice of termination.

(5) The employer or administrator must notify all employees of any equivalent plan termination within 10 business days after the date the termination becomes effective.

(6) All applicable equivalent plan requirements, including but not limited to those outlined within OAR 471-070-2220 and equivalent plan reporting requirements as outlined in OAR 471-070-2230, remain in effect until the effective date of any termination.

(7) The employer or administrator must pay or continue to pay benefits under the terms of the equivalent plan to eligible employees who were approved for or receiving benefits under the equivalent plan on the effective date of termination until the total amount of the benefit claim is paid, the duration of leave ends, or the benefit year ends, whichever occurs first. If the employer or administrator does not pay the benefits, the employee may file an appeal with the employer as described in OAR 471-070-2220(13) and then a dispute resolution request with the department as described in OAR 471-070-2400.

(8) Within 30 calendar days after the effective date of the termination of an equivalent plan, the employer must send to

the department all reporting requirement information on benefit claims paid, amounts of contributions collected or owing, and administrative expenses incurred as specified in OAR 471-070-2230 from the date of the last report provided to the department under the equivalent plan reporting requirements to the date of termination.

Example: Donald Mouse Partnership's equivalent plan became effective April 1, 2023. On January 31, 2024, Donald Mouse Partnership provided the aggregate equivalent plan information from April 1, 2023, to December 31, 2023. The equivalent plan is terminated effective March 1, 2024. By April 1, 2024, Donald Mouse Partnership must send the aggregate equivalent plan information from January 1, 2024, to February 29, 2024.

(9) Once the department receives the report specified in section (8) of this rule, the department will provide an invoice of the contribution amounts due, if any. The contribution amount due is calculated based on any contributions withheld from employee's wages that remain in the possession of the employer upon the effective date of the equivalent plan termination, minus an amount equal to the amount of any benefits due to be paid as required under section (7) of this rule and any anticipated administrative expenses. Once all required benefits are paid under section (7) of this rule, the employer must immediately send to the department the final report on any additional benefit claims paid or administrative expenses incurred after the date of the last report provided under section (8) of this rule. Once the department receives the report, the department will provide an invoice of any additional contribution amounts due. Any remaining contribution amounts due are deposited into the PFMLI Trust Fund.

(a) Any contributions become due and payable to the department on the effective date of termination unless the employer timely requests an appeal in accordance with section (4) of this rule.

(b) Interest on the contribution amount due from the employer shall accrue from the date of invoice(s) until paid to the department, in accordance with ORS 657B.320(3).

(10) Upon the effective date of an equivalent plan termination, the employer must begin paying employee and employer contributions, if required, in accordance with ORS 657B.150 and other applicable statutes and rules.

(11) After the department terminates an equivalent plan, the employer may not reapply for an equivalent plan approval within three years following the date of termination.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.210, 657B.220, 657B.240

AMEND: 471-070-2455

RULE TITLE: Equivalent Plans: Termination and Withdrawal by Successor in Interest

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Amends the administrative rule to remove the authority to allow the successor in interest to terminate an equivalent plan anytime there is a substantial reduction of personnel as it goes beyond the statute.

RULE TEXT:

(1) A successor in interest may request to terminate an equivalent plan that was in effect on the date of acquisition within 90 days after becoming a successor in interest resulting from the acquisition in accordance with ORS 657B.260. The request to terminate may be submitted online, by phone, or in another method prescribed by the department. The successor in interest must provide written documentation of the acquisition, and any other relevant information regarding the acquisition required by the department.

(2) A successor in interest may request to withdraw from the equivalent plan in accordance with OAR 471-070-2460.

(3) If a request to terminate or withdraw is approved, the department will notify the successor in interest of the effective date of the termination or withdrawal. A successor in interest whose request to terminate is approved is subject to sections (5) through (10) of OAR 471-070-2450. A successor in interest whose request for withdrawal is approved is subject to sections (3) through (8) of OAR 471-070-2460.

(4) If a request to terminate or withdraw is denied, the department will notify the successor in interest of the reason for the denial. The successor in interest may appeal the decision to deny a request to terminate or withdraw an equivalent plan, in accordance with ORS 657B.410 and applicable administrative rules.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.260

AMEND: 471-070-2460

RULE TITLE: Equivalent Plans: Employer Withdrawal

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Amends the administrative rule to clarify when contributions collected from employees that are still in the employer's trust must be paid to the department and become final once the plan is withdrawn and the employer receives an invoice from the department for contributions due.

RULE TEXT:

- (1) An employer may withdraw from an approved equivalent plan that has been in effect for at least one year by submitting a withdrawal form online, by phone, or in another method prescribed by the department.
- (2) The employer must provide notice to the department by submitting a withdrawal form at least 30 calendar days prior to the effective date of withdrawal. The effective date of the withdrawal is the later of one of the following dates:
 - (a) A date that is at least 30 calendar days after the date the withdrawal form is sent to the department and that is the last day of the immediately following calendar quarter; or
 - (b) The date that the equivalent plan has been in effect for one year.
- (3) The employer or administrator must provide notice of the withdrawal from an equivalent plan to its employees at least 30 calendar days prior to the effective date of withdrawal. The notice, at a minimum, must include the effective date of the equivalent plan withdrawal and information about the state plan in accordance with ORS 657B.440.
- (4) All equivalent plan requirements, including but not limited to those included in OAR 471-070-2220 and the equivalent plan reporting requirements, remain in effect until the effective date of the withdrawal, except as specified in section (5) of this rule.
- (5) The employer or administrator must pay or continue to pay benefits under the terms of the equivalent plan to eligible employees who were approved or receiving benefits under the equivalent plan on the effective date of the withdrawal until the total amount of the benefit claim is paid, the duration of leave ends, or the benefit year ends, whichever occurs first. If the employer or administrator does not pay the benefits, the employee may file an appeal with the employer as described in OAR 471-070-2220(13) and then a dispute resolution request with the department as described in OAR 471-070-2400.
- (6) Within 30 calendar days after the effective date of the withdrawal of an equivalent plan, the employer must send to the department all reporting requirement information on benefit claims paid, amounts of contributions collected or owing, and administrative expenses incurred as specified in OAR 471-070-2230 between the last report provided to the department under the equivalent plan reporting requirements and the date of the withdrawal.

Example: XYZ Partnership's equivalent plan became effective July 1, 2023. On January 31, 2024, XYZ Partnership provided the aggregate equivalent plan information from July 1, 2023, to December 31, 2023. XYZ Partnership requested a withdrawal from the equivalent plan with an effective date of November 1, 2024, as the partnership is no longer in business. By December 1, 2024, XYZ Partnership must send the aggregate equivalent plan information from January 1, 2024, to October 31, 2024.

(7) Once the department receives the report specified in section (6) of this rule, the department will provide an invoice of the contribution amounts due, if any. The contribution amount due is calculated based on any contributions withheld from employee's wages that remain in the possession of the employer upon the effective date of the withdrawal, minus an amount equal to the amount of any benefits due to be paid as required under section (5) of this rule and any anticipated administrative expenses. Once all required benefits are paid under section (5) of this rule, the employer must immediately send to the department the final report on any additional benefit claims paid or administrative expenses incurred after the date of the last report provided under section (6) of this rule. Once the department receives the report, the department will provide an invoice for any additional contribution amounts due. Any remaining contribution amounts due are deposited into the PFMLI Trust Fund.

(a) Any contributions become due and payable on the effective date of the withdrawal.

(b) Interest on the amount due from the employer shall accrue from the date of the invoice(s) until paid to the department, in accordance with ORS 657B.320(3).

(8) Upon the effective date of the withdrawal of an equivalent plan, the employer must begin paying employee and employer contributions, if required, in accordance with ORS 657B.150 and other applicable statutes and rules.

[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.240

STATUTES/OTHER IMPLEMENTED: ORS 657B.240