

Oregon Paid Family & Medical Leave Program



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A T T O R N E Y S

Oregon Sick Leave



- Employers must provide employees at least 40 hours of sick time
- Covered employers:
 - Portland employers with six or more employees
 - All other employers with 10 or more employees



Qualifying Employees



- Most all employees qualify UNLESS:
 - Federal employees
 - Independent contractors
 - Participant in work study or work training programs administered under a state or federal assistance program
 - Certain railroad workers
 - People employed by their parent, spouse, or child

Oregon Sick Leave



- Minimum accrual rate of 1 hour for 30 hours worked
 - Exempt employees presumed to work 40 hours per week
- Year = Any consecutive 12-month period
 - Calendar year
 - Tax year
 - Fiscal year
 - Contract year
 - Year beginning on employee's anniversary date



Accrual of Sick Time



- Maximum Accrual = 40 hours in a year
 - Employer may permit more
- Frontloading in lieu of accrual
 - Available to the employee as soon as the employee is eligible to use sick time and on first day of subsequent year
 - For employees employed less than a full year, may be pro-rated

Qualifying Absences



- Diagnosis, care or treatment of mental or physical illness, injury or health condition, including preventive medical care of employee or family member
- Bereavement
- Reasons related to domestic violence, harassment, sexual assault, or stalking
- Any OFLA qualifying reason as defined by ORS 659A.159
- Public health emergency:
 - Closure of business, school, or place of care of your child due to public health emergency
 - Care for self or family member if presence in community jeopardizes health of others
 - Any law that requires employer to exclude the employee from the workplace for health reasons

Carryover of Sick Time



- Must permit carryover of up to 40 hours of unused sick time
 - But can cap max accrual at 80 and not allow an employee to use more than 40 in a year
- Except:
 - If employer frontloads sick time or
 - By mutual consent, the employer and the employee agree that:
 - The employee is paid for all unused paid sick time at the end of the year AND employer credits the employee with paid sick time on the first day of the next year

Waiting Period



- Employees may use sick time beginning on the 91st calendar day of employment and then may use sick time as it is accrued
 - Employer may authorize use prior to 91st day of employment
- No hourly minimum before an employee may use sick time

Employee Documentation



- Documentation
 - Verification from Health Care Provider
 - Documentation for victims of domestic violence, harassment, sexual assault or stalking per ORS 659A.280(4)
- May be requested for:
 - Absences of more than three consecutive scheduled workdays
 - Foreseeable sick time lasting more than three scheduled workdays
 - With *evidence* employee is abusing sick time
- May not: in advance of absences less than 3 consecutive schedule workdays
- Timing
 - When sick time is foreseeable, may require documentation before sick time commences or as soon as otherwise practicable
 - When notice not provided, may require documentation be provided within **15 calendar days** of employer's request for verification

Notice and PTO



- Notice
 - Usual method
 - Not more than 10 days
 - If last minute, as soon as practicable
- PTO policy may satisfy the rule if it meets all the requirements

No Discrimination



- Unlawful employment practice to:
 - Deny, interfere with, restrain, or fail to pay for sick time
 - Retaliate or discriminate against an employee because the employee attempted to or exercised sick time rights
 - Apply an attendance policy that includes sick time absences as an absence that may lead to or result in an adverse employment action

Paid Leave Oregon



Paid Leave
Oregon

Paid Leave Oregon: An Overview



- Timeline
- Covered Employers
- Eligibility
- Qualifying Leave
- Coordination of Leave
- Contribution Requirements
- Small Employers
- Equivalent Plans
- Notice Requirements
- Employee Protections

Implementation Timeline



**September
29, 2019**

- CBAs negotiated before this date do not need to be reopened before their expiration date

**September 1,
2022**

- OED will complete final regulations

**January 1,
2023**

- Employers and employees begin making financial contributions
- Employers need to provide employees notice of rights
- Protections against discrimination and retaliation begin
- Employers must begin maintaining payroll records of contributions

**August 3,
2023**

- Employee notice requirements begin

**September 3,
2023**

- Eligible employees can begin applying for and receiving benefits

Covered Employers & Eligible Employees



Covered Employer



- **Covered Employer**
 - All employers except federal and tribal governments
- **Optional**
 - Tribal governments
 - Self-employed business owners
 - Independent Contractors

Eligible Employee



- **Eligible Employee (very different from paid sick)**
 - Earned at least \$1,000 in wages in the previous base year or alternate base year, and
 - Contributed to the paid leave trust fund through payroll deductions in the previous base year or alternate base year
 - Experienced a qualifying event
 - Submitted an application for benefits
 - Has not received workers' compensation or unemployment insurance benefits during the same time period

Eligible Employee



- **Not Covered**

- Federal employees
- Tribal government employees (unless their employer chooses to participate)
- People who are self-employed or independent contractors (unless they choose to participate)
- Employees that only work outside of Oregon
- Volunteers
- Participant in covered work training program
- Participant in covered work-study program
- Railroad workers exempt under RUIA

Qualifying Reasons for Leave



Covered Leave



- **Family Leave**

- To care for and bond with a child during the first year after the child's birth or during the first year after placement through foster care or adoption, OR
- To care for a family member with a serious health condition

- **Medical Leave**

- For the employee's own serious health condition

- **Safe Leave**

- For any purpose described in 659A.272: to seek medical, legal, or law enforcement assistance due to domestic violence, sexual assault, stalking, or harassment

Expanded Definition of “Family Member”



- Parents, spouses, domestic partners and children (and those in loco parentis) and the spouses or domestic partners of parents and children;
- Grandparents and grandchildren and their spouses or domestic partners;
- Siblings and step-siblings and their spouses or domestic partners; and
- Any individual related by blood or affinity whose close association is the equivalent of a family relationship.

NOT Covered



- **OFLA Bereavement Leave**
- **OFLA Sick Child Leave**
 - non-serious health conditions
 - daycare or school closures during public health emergency
- **Oregon Military Family Leave**

Duration & Increments of Leave



Duration of Benefits



1. Generally, 12 weeks per benefit year
2. Up to 14 weeks for pregnancy related needs

Increments of Leave



- One work week
- One workday
 - May be nonconsecutive periods of leave
 - Must be paid in increments equivalent to one work week

Coordination with Other Benefits



- Paid Leave Oregon benefits are in addition to:
 - Any Oregon paid sick time
 - Vacation
 - Other paid leave earned by an employee
- Employer may permit an employee to use other paid leave to bring the employee up to 100% of the employee's average weekly wage
- Employee is disqualified from receiving Paid Leave Oregon benefits in any week in which they are eligible to receive workers' compensation or unemployment benefits

Contributions & Benefits



Contributions



- 2023
 - Contribution Rate: 1%
 - Maximum Wage Amount: up to \$132,900
- Wages
 - Include bonuses, prizes, tips, gratuities, remuneration other than cash (ex. Lodging)
 - Excludes reimbursements, pensions, gifts
- Subsequent Years
 - Rate set in September for following calendar year

Employer Responsibilities



- Pay amount equal to 40% of total rate
 - No employer contribution required for employers:
 - With fewer than 25 employees
 - With a substantially equivalent plan approved by OED
- Deduct employees' paid leave contributions from paychecks
- Report wages and pay contributions via combined payroll reporting process

Employee Contributions



- Employees pay amount equal to 60% of total rate regardless of employer's size
- Required for employees who primarily work in Oregon, even if they live in another state or occasionally work in another state
- Oregon residents who work entirely in another state do not pay contributions

Amount of Benefits



- Benefits are based on employee's weekly wage versus state average weekly wage
- Lower paid employees receive 100% pay
 - Average weekly wage in prior year less than or equal to 65% of the state average weekly wage
- Higher paid employees receive sum of:
 - 65% of the average state average PLUS
 - 50% of their salary that is above 65% of the state average state wage

Small Employers



Small Employers



- **Definition:** fewer than 25 employees
 - Determined by payroll reports
 - OED will notify in June 2023 of size based on number of employees in Q1 2023
 - OED will notify in November of size for following year based on average number of employees each quarter
 - Includes full-time, part-time, seasonal, and temporary employees and out-of-state workers
 - Excludes workers hired to replace employees on leave

Small Employers



- Small employers are not required to pay employer contributions
- Grants for participating small employers:
 - \$3,000 to hire a replacement worker
 - \$1,000 for wage-related costs, such as overtime or training costs
 - Maximum of 10 grants up to \$30,000 per year
 - Must commit to pay employer-portion of contributions for two years
 - Must repay grants only if their employer size changes

Equivalent Plans



State Program or Equivalent Plan



- Employers can either enroll in the state's program or submit an application for approval of an Equivalent Plan
- Equivalent plans must apply to all employees and provide:
 - Equal or greater benefits
 - No additional conditions or restrictions for employees to use paid leave
 - Allow employees to take paid leave one day at a time or consecutively
 - Benefit decisions to be made in writing
 - Appeal process to review benefit decisions
 - Ensure employee contributions are:
 - Not greater than what would be charged under the state plan
 - Used solely for Equivalent Plan expenses

Equivalent Plan



- Two types:
 - Employer-administered: employer assumes all financial risk
 - Fully insured: benefits administered by the insurance company
- Apply by May 31, 2023, to be in effect September 3, 2023
- Application fee: \$250
- Approved plans:
 - Effective first day of calendar quarter following OED approval
 - Must be in effect for at least one year
 - Must reapply for approval annually for first three years

Employee Notice Requirements



Employee Notice Requirements



- Foreseeable Leave:
 - Employer may require written notice at least 30 days before beginning leave and explanation of need for leave
- Unforeseeable Leave:
 - May begin leave without 30 days' advance notice for:
 - Unexpected serious health condition
 - Premature birth, unexpected adoption or foster placement
 - Safe leave
 - Must give verbal notice within 24 hours of starting leave and provide written notice within 3 days of starting leave
 - This notice may be provided by others

Penalties for Failure to Give Notice



- Failure to give notice:
 - Employer shall notify OED of employee's failure to provide notice
 - OED may reduce the first weekly benefit amount by up to 25%

Job Protections



Job Protections



- Triggered after 90 days of employment
- Right to reinstatement to same position
 - Unless position no longer exists, then:
 - 25 or more employees: reinstatement to any available equivalent position
 - Small employer (<25 employees): employer may, at its discretion based on business necessity, reinstate to a different position with similar job duties with the same employment benefits and pay
- Continue health care benefits during period of leave
- No loss of employment benefits such as seniority or pension
- No discrimination against eligible employees who invoke the law

Temporary Workers



- An employer who hires a temporary worker to replace an eligible employee taking leave is not required to retain that temporary worker after the eligible employee returns to work
- Employers may:
 - Terminate the employment of a worker hired solely to temporarily replace an eligible employee during a period of leave
 - Remove an employee from a position to which the employee was transferred to temporarily replace an eligible employee on leave and return the employee to the position originally held prior to the transfer at the rate of pay and benefits associated with the original position
- The employer must inform the temporary worker or employee temporarily transferred of these limitations on rights

Unlawful Employment Practices



- Unlawful employment practice for an employer to:
 - Violate the employment protections of the Act
 - Deny leave or interfere with any other right under the Act
 - Retaliate or discriminate against an employee because the employee has inquired about the rights or responsibilities of the Act
- Employee may:
 - Bring a civil action, or
 - File a complaint with BOLI

Next Steps



Next Steps



1. Decide whether to apply for an equivalent plan
2. Small employers decide whether to participate in making employer contributions
3. Prepare payroll to make contributions
4. Continue to watch for regulations from OED
5. Be ready to provide notice to employees

Thank You!



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