

A-Engrossed
House Bill 2575

Ordered by the House May 3
Including House Amendments dated May 3

Sponsored by Representative ROSENBAUM; Representatives DINGFELDER, GELSER, SHIELDS, TOMEI

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Creates Family Leave Benefits Insurance program to provide benefits to employees taking family leave. Establishes Family Leave Benefits Insurance Account. Requires employers to pay premiums withheld from employee earnings into account. Continuously appropriates moneys in account to Bureau of Labor and Industries and requires bureau to administer claims for benefits. Establishes qualifications for benefits. Creates unlawful employment practice. **Authorizes bureau to assess civil penalties against employers for failure to comply with withholding requirements.**

Establishes procedures and requirements for filing reports with Department of Revenue.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to family leave benefits insurance; creating new provisions; amending ORS 316.168 and
3 316.171; appropriating money; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 1 to 5 of this 2007 Act may be cited as the Family Leave Benefits**
6 **Insurance Act.**

7 **SECTION 2. (1) The Legislative Assembly finds that:**

8 (a) **Although family leave laws have assisted employees to balance the demands of the**
9 **workplace with their family responsibilities, more needs to be done to achieve the goals of**
10 **workforce stability and economic security.**

11 (b) **Many employees do not have access to family leave, and those who do may not be in**
12 **a financial position to take leave that is unpaid.**

13 (c) **Employer-paid benefits meet only a small part of this need.**

14 (d) **The establishment of paid family leave benefits will reduce the impact on state income**
15 **support programs by increasing the ability of workers to recover from illness or provide**
16 **caregiving services for family members while maintaining employment.**

17 (2) **Sections 1 to 5 of this 2007 Act are enacted to allow an employee:**

18 (a) **To care for an infant or newly adopted child under 18 years of age, or for a newly**
19 **placed foster child under 18 years of age, or for an adopted or foster child older than 18 years**
20 **of age if the child is incapable of self-care because of a mental or physical disability.**

21 (b) **To care for a family member with a serious health condition.**

22 (c) **To recover from or seek treatment for a serious health condition that renders the**
23 **employee unable to perform at least one of the essential functions of the employee's regular**
24 **position.**

25 (d) **To care for a child of the employee who is suffering from an illness, injury or condi-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 tion that is not a serious health condition but that requires home care.

2 **SECTION 3. (1) As used in this section:**

3 (a) "Application year" means the 12-month period beginning on the first day of the cal-
4 endar week in which an employee files an application for family leave benefits and, there-
5 after, the 12-month period beginning with the first day of the calendar week in which the
6 employee files a subsequent application for family leave benefits after the expiration of the
7 employee's last preceding application year.

8 (b) "Employer" means a covered employer as defined in ORS 659A.150.

9 (c) "Family leave" means a leave of absence described in ORS 659A.159.

10 (d) "Family member" has the meaning given that term in ORS 659A.150.

11 (e) "Health care provider" has the meaning given that term in ORS 659A.150.

12 (f) "Premium" means the payments required by subsection (9) of this section to be made
13 for the Family Leave Benefits Insurance Account.

14 (g) "Qualifying year" means the first four of the last five completed calendar quarters
15 or the last four completed calendar quarters immediately preceding the first day of the em-
16 ployee's application year.

17 (h) "Serious health condition" has the meaning given that term in ORS 659A.150.

18 (2)(a) The Bureau of Labor and Industries shall administer a Family Leave Benefits In-
19 surance Account and establish procedures and forms for filing benefit claims. The bureau
20 shall notify the employer within five business days of a claim being filed.

21 (b) The bureau may require that a claim for benefits under this section be supported by
22 a certification issued by a health care provider who is providing care to the employee or the
23 employee's family member, as applicable.

24 (c) Information contained in the files and records pertaining to an employee under this
25 section is confidential and not open to public inspection, other than to public employees in
26 the performance of their official duties. However, the employee or an authorized represen-
27 tative of an employee may review the records or receive specific information from the re-
28 cords on the presentation of the signed authorization of the employee. An employer or the
29 employer's duly authorized representative may review the records of an employee in con-
30 nection with a pending claim. At the bureau's discretion, other persons may review records
31 when those persons are rendering assistance to the bureau at any stage of the proceedings
32 on any matter pertaining to the administration of this section.

33 (3) Family leave benefits are payable to an employee during a period in which the em-
34 ployee is on unpaid family leave if the employee does all of the following:

35 (a) Files a claim for benefits as required by rules adopted by the bureau.

36 (b) Establishes the employee's eligibility to take family leave under ORS 659A.156.

37 (c) Establishes an application year. An application year may not be established if the
38 qualifying year includes hours worked before establishment of a previous application year.

39 (d) Documents that the employee has notified the employer as provided in ORS 659A.165.

40 (4)(a) An employee is disqualified from family leave insurance benefits beginning with the
41 first day of the calendar week in which the employee files an application for family leave
42 benefits, and continuing for the next 52 consecutive weeks, if the employee:

43 (A) Willfully makes a false statement or misrepresentation regarding a material fact, or
44 willfully fails to report a material fact, to obtain benefits under this section; or

45 (B) Seeks benefits based on a willful and intentional self-inflicted serious health condition

1 or a serious health condition resulting from the employee's perpetration of a felony.

2 (b) Benefits are not payable for any week in which compensation is payable to the em-
3 ployee under ORS chapter 656 or other federal or state workers' compensation program.

4 (c) An employee is not disqualified for benefits for any week when there is a strike or
5 lockout at the factory, establishment or other premises at which the employee is or was last
6 employed.

7 (5)(a) In an application year, family leave benefits are payable for a maximum of six
8 weeks.

9 (b) The first payment of benefits shall be made to an employee within two weeks after
10 the claim is filed or the family leave began, whichever is later. Subsequent payments shall
11 be made twice a month thereafter.

12 (c) Family leave benefits shall be paid as follows:

13 (A) For family leave beginning before July 1, 2010, benefits shall be \$250 per week for an
14 employee who at the time family leave began was regularly working 40 hours or more per
15 week, or a prorated amount based on the weekly hours regularly worked for an employee
16 regularly working less than 40 hours per week.

17 (B) On or before June 30, 2011, and on or before each subsequent June 30, the bureau
18 shall calculate to the nearest dollar an adjusted maximum benefit to account for inflation
19 using the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) as
20 prepared by the Bureau of Labor Statistics of the United States Department of Labor or its
21 successor during the preceding 12-month period. The adjusted maximum benefit takes effect
22 for family leave that begins after June 30 of the relevant year.

23 (C) If an employee was regularly working 40 hours or more a week at the beginning of
24 family leave, and during family leave is working less than 40 hours but at least eight hours
25 a week, the employee's weekly payment shall be 0.025 times the maximum benefit times the
26 number of hours of family leave taken in the week. Benefits are not payable for less than
27 eight hours of family leave taken in a week.

28 (d) If family leave benefits are paid erroneously or as a result of fraud, or if a claim for
29 benefits is rejected after benefits are paid, the bureau shall seek repayment of benefits from
30 the recipient.

31 (e) If an employee dies before receiving payment of benefits, the payment shall be made
32 by the bureau to the surviving spouse or to the child or children if there is no surviving
33 spouse. If there is no surviving spouse and no child or children, the payment shall be made
34 and distributed consistent with the terms of the decedent's will or, if the decedent dies
35 intestate, consistent with the provisions of ORS chapter 112.

36 (6)(a) This section may not be construed to limit an employee's right to take leave from
37 employment under other laws or employer policy.

38 (b) If an employer provides paid family leave or an employee is covered by disability in-
39 surance, the employee may elect whether first to use the paid family leave or to receive
40 temporary disability benefits. An employee may not be required to use paid family leave to
41 which the employee is entitled before receiving benefits under this section.

42 (c) An employee who has received benefits under this section may not lose any other
43 employment benefits, including seniority or pension rights accrued, before the date that
44 family leave commenced. However, this section does not entitle an employee to accrue em-
45 ployment benefits during a period of family leave or to a right, benefit or position of em-

1 **ployment other than a right, benefit or position to which the employee would have been**
2 **entitled had the employee not taken family leave.**

3 **(d) This section may not be construed to diminish an employer's obligation to comply**
4 **with a collective bargaining agreement or an employment benefits program or plan that**
5 **provides greater benefits to employees than the benefits provided under this section.**

6 **(e) An agreement by an employee to waive the employee's rights under this section is**
7 **void as contrary to public policy. The benefits under this section may not be diminished by**
8 **a collective bargaining agreement or another employment benefits program or plan entered**
9 **into or renewed after the effective date of this section.**

10 **(7)(a) Every employer required to pay premiums under this section shall make and file**
11 **a report of employee hours worked and amounts due under this section upon a combined**
12 **report form prescribed by the Department of Revenue. If the employer is a temporary em-**
13 **ployment agency that provides employees on a temporary basis to its customers, the tem-**
14 **porary employment agency is considered the employer for purposes of this section. The**
15 **report shall be filed with the Department of Revenue:**

16 **(A) At the times and in the manner prescribed in ORS 316.168 and 316.171; or**

17 **(B) Annually as required or allowed pursuant to ORS 316.197 or 657.571.**

18 **(b) An employer must keep at its place of business records of employment from which**
19 **the information needed by the bureau for purposes of this section may be obtained. The re-**
20 **records shall at all times be open to the inspection of the bureau pursuant to rules adopted**
21 **by the bureau.**

22 **(c) Information obtained from employer records under this section is confidential and not**
23 **open to public inspection, other than to public employees in the performance of their official**
24 **duties. However, an interested party shall be supplied with information from employer re-**
25 **records to the extent necessary for the proper presentation of the case in question. An em-**
26 **ployer may authorize inspection of the employer's records by written consent.**

27 **(8)(a) When an employer quits business or sells out, exchanges or otherwise disposes of**
28 **the business or stock of goods, any premium payable under this section is immediately due**
29 **and payable, and the employer shall, within 10 days thereafter, pay the premium due. Any**
30 **person who becomes a successor to the business is liable for the full amount of the premium**
31 **and shall withhold from the purchase price a sum sufficient to pay any premium due from**
32 **the employer until the employer produces a receipt from the bureau showing payment in full**
33 **of any premium due or a certificate that no premium is due. If the premium is not paid by**
34 **the employer within 10 days from the date of the sale, exchange or disposal, the successor**
35 **is liable for the payment of the full amount of premium. The successor's payment of the**
36 **premium is, to the extent of the payment, a payment upon the purchase price, and if the**
37 **payment is greater in amount than the purchase price, the amount of the difference is a debt**
38 **due the successor from the employer.**

39 **(b) A successor is not liable for any premium due from the person from whom the suc-**
40 **cessor has acquired a business or stock of goods if the successor gives written notice to the**
41 **bureau of the acquisition and no assessment is issued by the bureau within one year after**
42 **receipt of the notice against the former operator of the business.**

43 **(9) Each employer shall withhold from the post-tax earnings of each employee a premium**
44 **of one cent per hour worked. The employer shall pay the withheld amounts with the report**
45 **required by subsection (7)(a) of this section. All withheld amounts paid by employers under**

1 this subsection shall be deposited in the Family Leave Benefits Insurance Account estab-
2 lished under section 4 of this 2007 Act.

3 (10) The bureau shall provide a tax form to each employee who has received family leave
4 benefits for the employee's use in paying federal income tax on the benefits and shall advise
5 an employee filing a new claim for family leave benefits, at the time of filing the claim, that:

6 (a) Benefits are subject to federal income tax; and

7 (b) Requirements exist pertaining to estimated tax payments.

8 (11) It is an unlawful employment practice for an employer, temporary employment
9 agency, employment agency, employee organization or other person to discharge, expel or
10 otherwise discriminate against a person because the person has filed or communicated to the
11 employer an intent to file a claim, a complaint or an appeal or has testified or is about to
12 testify or has assisted in any proceeding under this section.

13 (12)(a) Family leave benefits are payable under this section only to the extent that mon-
14 eys are available in the Family Leave Benefits Insurance Account for that purpose. Neither
15 the state nor the bureau is liable for any amount in excess of this limit.

16 (b) This section does not create a continuing entitlement or contractual right.

17 (13) The bureau may adopt rules as necessary to implement this section. In adopting
18 rules, the bureau shall maintain consistency with the rules adopted to implement ORS
19 659A.150 to 659A.186, to the extent those rules are not in conflict with this section.

20 (14) The bureau may assess a civil penalty not to exceed \$5,000 against an employer that:

21 (a) Fails to withhold premiums or fails to pay when due the moneys withheld under this
22 section; or

23 (b) Fails to comply with this section or rules adopted under this section relating to re-
24 ports or other requirements necessary to carry out the purposes of this section.

25 (15) All civil penalties collected under this section shall be applied first towards re-
26 imbursement of the costs incurred in investigating violations, conducting hearings and as-
27 sessing and collecting penalties. All remaining amounts shall be paid into the State Treasury
28 and credited to the Family Leave Benefits Insurance Account established under section 4 of
29 this 2007 Act.

30 **SECTION 4.** The Family Leave Benefits Insurance Account is established in the State
31 Treasury, separate and distinct from the General Fund. Interest earned by the account shall
32 be credited to the account. All moneys from premiums received by the Department of Re-
33 venue shall be credited to the account. Moneys in the account are continuously appropriated
34 to the bureau for the purposes authorized by section 3 of this 2007 Act.

35 **SECTION 5.** (1) An employer that is not subject to section 3 of this 2007 Act or a self-
36 employed person may elect to provide benefits to the employer's employees or to the self-
37 employed person under section 3 of this 2007 Act for an initial coverage period of not less
38 than three years and subsequent coverage periods of not less than one year. The employer
39 or self-employed person must file a written notice of election with the Bureau of Labor and
40 Industries. The election becomes effective on the date the notice is filed.

41 (2) An employer or self-employed person who makes an election under this section may
42 withdraw the election not more than 30 days after the end of the initial three-year coverage
43 period, or at such other times as the bureau by rule may prescribe. An election to withdraw
44 must be made by written notice to the bureau and takes effect no sooner than 30 days after
45 the filing of the notice.

1 **(3) The bureau may cancel an election under this section if the employer or self-employed**
2 **person fails to remit required premiums or reports. The bureau may collect unpaid premiums**
3 **and may levy an additional premium for the remainder of the coverage period. A cancellation**
4 **under this subsection becomes effective 30 days after the issuance of a written notice of the**
5 **cancellation to the employer or self-employed person or such earlier time as specified in the**
6 **notice.**

7 **SECTION 6. Section 5 of this 2007 Act becomes operative on July 1, 2010.**

8 **SECTION 7. Sections 1 to 5 of this 2007 Act are added to and made a part of ORS chapter**
9 **659A.**

10 **SECTION 8. Notwithstanding section 3 of this 2007 Act:**

11 **(1) Employers shall first withhold premiums from employees' earnings for hours worked**
12 **on and after January 1, 2009.**

13 **(2) Employees may first file claims for benefits under section 3 of this 2007 Act on or**
14 **after July 1, 2009, for family leave taken on or after July 1, 2009.**

15 **SECTION 9. ORS 316.168 is amended to read:**

16 316.168. (1) Except as otherwise provided by law, every employer subject to the provisions of
17 ORS 316.162 to 316.221[,] **or 656.506 or sections 1 to 5 of this 2007 Act [and] or** ORS chapter 657,
18 or a payroll-based tax imposed by a mass transit district and administered by the Department of
19 Revenue under ORS 305.620, shall make and file a combined quarterly tax and assessment report
20 upon a form prescribed by the department.

21 (2) The report shall be filed with the Department of Revenue on or before the last day of the
22 month following the quarter to which the report relates and shall be deemed received on the date
23 of mailing, as provided in ORS 305.820.

24 (a) The report shall be accompanied by payment of any tax or assessment due and a combined
25 tax and assessment payment coupon prescribed by the department. The employer shall indicate on
26 the coupon the amount of the total payment and the portions of the payment to be paid to each of
27 the tax or assessment programs.

28 (b) The Department of Revenue shall credit the payment to the tax or assessment programs in
29 the amounts indicated by the employer on the coupon and shall promptly remit the payments to the
30 appropriate taxing or assessing body.

31 (c) If the employer fails to allocate the payment on the coupon, the department shall allocate
32 the payment to the proper tax or assessment programs on the basis of the percentage the payment
33 bears to the total amount due.

34 (d) The Department of Revenue shall distribute copies of the combined quarterly tax and as-
35 sessment report and the necessary tax or assessment payment information to each of the agencies
36 charged with the administration of a tax or assessment covered by the report.

37 (e) The Department of Revenue, the Employment Department and the Department of Consumer
38 and Business Services shall develop a system of account numbers and assign to each employer a
39 single account number representing all of the tax and assessment programs included in the combined
40 quarterly tax and assessment report.

41 **SECTION 10. ORS 316.171 is amended to read:**

42 316.171. Except as provided in this section and ORS 314.840, 316.168, 316.197, 316.202 and 657.571
43 **and sections 1 to 5 of this 2007 Act,** the statutes and regulations applicable to each agency, re-
44 quiring a report and imposing a tax, shall govern the audit and examination of reports and returns,
45 determination of deficiencies, assessments, claims for refund, penalties, interest, administrative and

1 judicial appeals and the procedures relating thereto.

2 **SECTION 11. This 2007 Act being necessary for the immediate preservation of the public**
3 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**
4 **on its passage.**

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