

House Bill 2575

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 **as introduced**.

Creates Family Leave Benefits Insurance program to provide benefits to employees taking family leave. Establishes Family Leave Benefits Insurance Account. Requires employees to pay premiums withheld from 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.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1 Relating to family leave benefits insurance; appropriating money; and declaring an emergency.

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

3 **SECTION 1. Sections 1 to 4 of this 2007 Act may be cited as the Family Leave Benefits**
4 **Insurance Act.**

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

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

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

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

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

15 **(2) Sections 1 to 4 of this 2007 Act are enacted to allow an employee:**

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

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

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

23 **(d) To care for a child of the employee who is suffering from an illness, injury or condi-**
24 **tion that is not a serious health condition but that requires home care.**

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

26 **(a) "Application year" means the 12-month period beginning on the first day of the cal-**
27 **endar week in which an employee files an application for family leave benefits and, there-**
28 **after, the 12-month period beginning with the first day of the calendar week in which the**
29

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 employee files a subsequent application for family leave benefits after the expiration of the
 2 employee's last preceding application year.

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

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

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

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

7 (f) "Premium" means the payments required by subsection (10) of this section to be made
 8 to the Bureau of Labor and Industries for the Family Leave Benefits Insurance Account.

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

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

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

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

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

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

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

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

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

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

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

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

40 (B) Seeks benefits based on a willful and intentional self-inflicted serious health condition
 41 or a serious health condition resulting from the employee's perpetration of a felony.

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

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

1 employed.

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

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

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

8 (A) For family leave beginning before July 1, 2009, benefits shall be \$_____ per week for
9 an employee who at the time family leave began was regularly working 40 hours or more per
10 week, or a prorated amount based on the weekly hours regularly worked for an employee
11 regularly working less than 40 hours per week.

12 (B) On or before June 30, 2010, and on or before each subsequent June 30, the bureau
13 shall calculate to the nearest dollar an adjusted maximum benefit to account for inflation
14 using the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) as
15 prepared by the Bureau of Labor Statistics of the United States Department of Labor or its
16 successor during the preceding 12-month period. The adjusted maximum benefit takes effect
17 for family leave that begins after June 30 of the relevant year.

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

23 (D) If an employee elects to have federal income tax deducted and withheld from benefits,
24 the Bureau of Labor and Industries shall deduct and withhold the amount specified in the
25 federal Internal Revenue Code.

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

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

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

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

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

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

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

8 (7)(a) An employer of employees not covered by this section or a self-employed person
 9 may elect coverage under the Family Leave Benefits Insurance program for an initial period
 10 of not less than three years or a subsequent period of not less than one year immediately
 11 following another period of coverage. The employer or self-employed person must file a no-
 12 tice of election in writing with the bureau. The election becomes effective on the date of fil-
 13 ing the notice.

14 (b) An employer or self-employed person who has elected coverage may withdraw from
 15 coverage within 30 days after the end of the three-year period of coverage, or at such other
 16 times as the bureau may prescribe by rule, by filing written notice with the bureau. The
 17 withdrawal shall take effect no sooner than 30 days after the filing of the notice.

18 (c) The bureau may cancel elective coverage if the employer or self-employed person fails
 19 to remit required premiums or reports. The bureau may collect due and unpaid premiums
 20 and may levy an additional premium for the remainder of the period of coverage. The can-
 21 cellation shall be effective no later than 30 days from the date of issuance of the notice in
 22 writing advising the employer or self-employed person of the cancellation.

23 (8)(a) The bureau shall specify the forms and times for employers to provide reports,
 24 furnish information and remit premiums. If the employer is a temporary employment agency
 25 that provides employees on a temporary basis to its customers, the temporary employment
 26 agency is considered the employer for purposes of this section. However, if the temporary
 27 employment agency fails to remit the required premiums, the customer to whom the em-
 28 ployees were provided is liable for paying the premiums.

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

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

38 (9)(a) When an employer quits business or sells out, exchanges or otherwise disposes of
 39 the business or stock of goods, any premium payable under this section is immediately due
 40 and payable, and the employer shall, within 10 days thereafter, pay the premium due. Any
 41 person who becomes a successor to the business is liable for the full amount of the premium
 42 and shall withhold from the purchase price a sum sufficient to pay any premium due from
 43 the employer until the employer produces a receipt from the bureau showing payment in full
 44 of any premium due or a certificate that no premium is due. If the premium is not paid by
 45 the employer within 10 days from the date of the sale, exchange or disposal, the successor

1 is liable for the payment of the full amount of premium. The successor's payment of the
2 premium is, to the extent of the payment, a payment upon the purchase price, and if the
3 payment is greater in amount than the purchase price, the amount of the difference is a debt
4 due the successor from the employer.

5 (b) A successor is not liable for any premium due from the person from whom the suc-
6 cessor has acquired a business or stock of goods if the successor gives written notice to the
7 bureau of the acquisition and no assessment is issued by the bureau within 180 days of re-
8 ceipt of the notice against the former operator of the business.

9 (10)(a) Each employer shall withhold from the earnings of each employee a premium of
10 one cent per hour worked up to a maximum of 40 hours per week. The employer shall pay
11 to the bureau the moneys withheld, in the manner and at such intervals as the bureau di-
12 rects for deposit in the Family Leave Benefits Insurance Account established under section
13 4 of this 2007 Act.

14 (b) The bureau shall adjust the amount of the premium from time to time to ensure that
15 the amount is the lowest rate necessary to pay family leave benefits and administrative costs
16 and maintain actuarial solvency in accordance with recognized insurance principles.

17 (c) The bureau may adopt rules to permit an employee who has multiple employers and
18 the employee's employers to petition for refunds or credits of amounts paid to the bureau
19 for hours the employee worked that are in excess of 40 hours per week.

20 (11) The bureau shall advise an employee filing a new claim for family leave benefits, at
21 the time of filing the claim, that:

22 (a) Benefits are subject to federal income tax;

23 (b) Requirements exist pertaining to estimated tax payments;

24 (c) The employee may elect to have federal income tax deducted and withheld from the
25 employee's payment of benefits at the amount specified in the Internal Revenue Code; and

26 (d) The employee is permitted to change a previously elected withholding status.

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

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

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

36 (14) The bureau may adopt rules as necessary to implement this section. In adopting
37 rules, the bureau shall maintain consistency with the rules adopted to implement ORS
38 659A.150 to 659A.186, to the extent those rules are not in conflict with this section.

39 **SECTION 4.** The Family Leave Benefits Insurance Account is established in the State
40 Treasury, separate and distinct from the General Fund. Interest earned by the account shall
41 be credited to the account. All moneys from premiums received by the Bureau of Labor and
42 Industries shall be credited to the account. Moneys in the account are continuously appro-
43 priated to the bureau for the purposes authorized by section 3 of this 2007 Act.

44 **SECTION 5.** Sections 1 to 4 of this 2007 Act are added to and made a part of ORS chapter
45 659A.

1 **SECTION 6. Notwithstanding section 3 of this 2007 Act:**

2 (1) Employers shall first withhold premiums from employees' earnings for hours worked
3 on and after January 1, 2008.

4 (2) Employees may first file claims for benefits under section 3 of this 2007 Act on or
5 after July 1, 2008, for family leave taken on or after July 1, 2008.

6 **SECTION 7. This 2007 Act being necessary for the immediate preservation of the public
7 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
8 on its passage.**

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