

House Bill 3160

Sponsored by Representatives TOMEI, CANNON, DEMBROW, Senator ROSENBAUM; Representatives BAILEY, BOONE, BUCKLEY, CLEM, GALIZIO, GELSER, GREENLICK, HARKER, HOLVEY, KAHL, KOTEK, NOLAN, READ, SCHAUFLEER, SHIELDS, J SMITH, STIEGLER, VANORMAN, WITT, Senators BATES, BONAMICI, DINGFELDER, MONROE, PROZANSKI, WALKER

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 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 employers to file 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 11 of this 2009 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 provide caregiving services for**
16 **family members while maintaining employment.**

17 (2) **Sections 1 to 11 of this 2009 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 **SECTION 3. As used in sections 1 to 11 of this 2009 Act:**

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

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

4 (3) "Family leave" means a leave of absence described in ORS 659A.159 (1)(a) or (b).

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

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

7 (6) "Paid family leave" includes family leave with pay from the employer and family leave
8 during which the employee uses any other type of paid leave, such as paid vacation leave or
9 paid sick leave.

10 (7) "Premium" means the payments required by section 6 of this 2009 Act to be made for
11 the Family Leave Benefits Insurance Account.

12 (8) "Qualifying year" means the 180 days immediately preceding the first day of the em-
13 ployee's application year.

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

15 **SECTION 4.** (1) The Bureau of Labor and Industries shall establish and administer a
16 Family Leave Benefits Insurance Program.

17 (2) The bureau may adopt rules as necessary to implement sections 1 to 11 of this 2009
18 Act. In adopting rules, the bureau shall maintain consistency with the rules adopted to im-
19 plement ORS 659A.150 to 659A.186, to the extent those rules are not in conflict with sections
20 1 to 11 of this 2009 Act.

21 **SECTION 5.** (1) Family leave benefits are payable under the Family Leave Benefits In-
22 surance Program to an employee during a period in which the employee is on unpaid family
23 leave if the employee:

24 (a) Takes family leave to care for:

25 (A) An infant or newly adopted child under 18 years of age, or for a newly placed foster
26 child under 18 years of age, or for an adopted or foster child older than 18 years of age if the
27 child is incapable of self-care because of a mental or physical disability; or

28 (B) A family member with a serious health condition.

29 (b) Files a claim for benefits as required by rules adopted by the Bureau of Labor and
30 Industries.

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

32 (d) Establishes that the employee has had premiums withheld throughout the employee's
33 qualifying year via payroll withholdings as provided under section 6 of this 2009 Act.

34 (e) Establishes an application year. An application year may not be established if the
35 qualifying year includes assessments withheld for quarters before establishment of a previ-
36 ous application year.

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

38 (2) The bureau may require that a claim for benefits under this section be supported by
39 a certification issued by a health care provider who is providing care to the employee's family
40 member if applicable.

41 (3) An employee is not eligible for benefits under this section for any week for which the
42 employee receives paid family leave. If an employer provides paid family leave, the employee
43 may elect whether first to use the paid family leave or to receive benefits under this section.
44 An employee may not be required to use paid family leave to which the employee is entitled
45 before receiving benefits under this section.

1 (4)(a) An employee is disqualified from family leave benefits under this section if the
 2 employee:

3 (A) Willfully makes a false statement or misrepresentation regarding a material fact, or
 4 willfully fails to disclose a material fact, to obtain benefits;

5 (B) Seeks benefits based on an intentionally self-inflicted serious health condition; or

6 (C) Seeks benefits based on a serious health condition that resulted from the employee's
 7 commission of a felony.

8 (b) A disqualification for benefits under this subsection is for a period of two years, and
 9 commences on the first day of the calendar week in which the employee filed a claim for
 10 benefits under this section. Any employee who is disqualified for benefits under this sub-
 11 section is liable to the bureau for a penalty in an amount equal to 15 percent of the amount
 12 of benefits received by the employee.

13 (5)(a) This section does not limit an employee's right to take leave from employment
 14 under other laws or employer policy.

15 (b) The eligibility of an employee for benefits is not affected by a strike or lockout at the
 16 factory, establishment or other premises at which the employee is or was last employed.

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

23 (d) This section does not diminish an employer's obligation to comply with a collective
 24 bargaining agreement or an employment benefits program or plan that provides greater
 25 benefits to employees than the benefits provided under this section.

26 (e) An agreement by an employee to waive the employee's rights under this section is
 27 void as contrary to public policy. The benefits under this section may not be diminished by
 28 a collective bargaining agreement or another employment benefits program or plan entered
 29 into or renewed after the effective date of this 2009 Act.

30 (6) This section does not create a continuing entitlement or contractual right.

31 **SECTION 6.** (1) Every employer shall retain from the moneys earned by all employees a
 32 premium amount of not more than 2 cents for each hour or part of an hour the employee
 33 is employed and pay the moneys retained in the manner and at such intervals as the Com-
 34 missioner of the Bureau of Labor and Industries directs.

35 (2) Moneys collected pursuant to subsection (1) of this section, and any accrued cash
 36 balances, shall be deposited in the Family Leave Benefits Insurance Account for the expen-
 37 ditures of the Bureau of Labor and Industries in carrying out the functions and duties of the
 38 bureau under sections 1 to 11 of this 2009 Act. Factors to be considered in making the ad-
 39 justment under subsection (3) of this section in rate of premiums withheld include, but are
 40 not limited to, the cash balance as determined by the commissioner and estimated expen-
 41 ditures and revenues of the Family Leave Benefits Insurance Account.

42 (3) It is the intent of the Legislative Assembly that the commissioner may adjust rates,
 43 not to exceed the amount established in subsection (1) of this section, for the collection of
 44 premiums pursuant to subsection (1) of this section. The commissioner shall set rates for
 45 premiums in a manner that minimizes the volatility of the rates assessed and so that at the

1 end of the period for which the rates are effective, the cash balance shall be an amount ap-
2 proximating 12 months of projected expenditures from the Family Leave Benefits Insurance
3 Account, considering the functions and duties of the bureau under sections 1 to 11 of this
4 2009 Act.

5 (4) Every employer required to pay premiums under this section shall make and file a
6 report of employee hours worked and amounts due under this section upon a combined re-
7 port form prescribed by the Department of Revenue. The report shall be filed with the de-
8 partment:

9 (a) At the times and in the manner prescribed in ORS 316.168 and 316.171; or

10 (b) Annually as required or allowed pursuant to ORS 316.197 or 657.571.

11 (5) If the employer is a temporary employment agency that provides employees on a
12 temporary basis to its customers, the temporary employment agency is considered the em-
13 ployer for purposes of this section.

14 (6)(a) When an employer quits business or sells out, exchanges or otherwise disposes of
15 the business or stock of goods, any premium payable under this section is immediately due
16 and payable, and the employer shall, within 10 days thereafter, pay the premium due. Any
17 person who becomes a successor to the business is liable for the full amount of the premium
18 and shall withhold from the purchase price a sum sufficient to pay any premium due from
19 the employer until the employer produces a receipt from the bureau showing payment in full
20 of any premium due or a certificate that no premium is due. If the premium is not paid by
21 the employer within 10 days after the date of the sale, exchange or disposal, the successor
22 is liable for the payment of the full amount of premium. The successor's payment of the
23 premium is, to the extent of the payment, a payment upon the purchase price, and if the
24 payment is greater in amount than the purchase price, the amount of the difference is a debt
25 due the successor from the employer.

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

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

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

43 **SECTION 7.** (1) The Bureau of Labor and Industries shall notify the employer of an em-
44 ployee filing a claim for family leave benefits under section 5 of this 2009 Act within five
45 business days of the claim being filed.

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

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

5 (4) Family leave benefits shall be paid as follows:

6 (a) For family leave beginning before July 1, 2012, benefits shall be \$300 per week for an
7 employee who at the time family leave began was regularly working 40 hours or more per
8 week, or a prorated amount based on the weekly hours regularly worked for an employee
9 regularly working less than 40 hours per week.

10 (b) Only in weekly amounts for one or more full weeks of family leave taken by an em-
11 ployee. The minimum period of family leave for which benefits may be paid is one week. The
12 bureau may not pay a claim for benefits for a period of family leave of less than one week.

13 (c) If an employee dies before receiving payment of benefits, the payment shall be made
14 by the bureau to the surviving spouse or to the surviving child or children if there is no
15 surviving spouse. If there is no surviving spouse and no surviving child or children, the
16 payment shall be made and distributed consistent with the terms of the decedent's will or,
17 if the decedent dies intestate, consistent with the provisions of ORS chapter 112.

18 (5) Family leave benefits are payable under this section only to the extent that moneys
19 are available in the Family Leave Benefits Insurance Account for that purpose. Neither the
20 state nor the bureau is liable for any amount in excess of this limitation.

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

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

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

26 **SECTION 8.** (1) If an employee receives any family leave benefits under section 7 of this
27 2009 Act to which the employee is not entitled:

28 (a) The employee is liable to the Bureau of Labor and Industries for the amount of ben-
29 efits received; and

30 (b) The amount of benefits received may be deducted by the bureau from any future
31 benefits otherwise payable to the employee under section 7 of this 2009 Act.

32 (2) If the bureau decides that an employee has been paid benefits to which the employee
33 is not entitled because of an error, and that the employee is not subject to disqualification
34 under section 5 (4) of this 2009 Act, the amounts received in error may be recovered by the
35 bureau only by deductions from benefits otherwise payable to the employee under section 7
36 of this 2009 Act during the 52 weeks following the date on which the order establishing the
37 amount of the erroneous payment becomes final. If amounts determined to be recoverable
38 have not been paid within that time, the liability shall be canceled by the bureau and charged
39 against the Family Leave Benefits Insurance Account.

40 (3) Except as provided in subsection (4) of this section, if benefits determined to be re-
41 coverable under this section have not been paid within three years after the date that the
42 order of the bureau establishing the liability of the employee becomes final, and no payments
43 have been received on the liability for at least three months, the liability shall be canceled
44 by the bureau and charged against the Family Leave Benefits Insurance Account.

45 (4) Any amount due under this section may be collected by the bureau in a civil action

1 against the employee brought in the name of the bureau.

2 (5) Interest on any benefits recoverable under this section shall be paid and collected at
 3 the same time repayment of benefits is made by the employee. Interest on an amount re-
 4 coverable under this section accrues at the rate specified in ORS 82.010, beginning on the
 5 first day of the month following 60 days after entry of the order establishing the amount
 6 recoverable.

7 (6) Any amount collected under this section by the bureau shall be paid into the Family
 8 Leave Benefits Insurance Account.

9 **SECTION 9.** (1) It is an unlawful employment practice for an employer, temporary em-
 10 ployment agency, employment agency, employee organization or other person to discharge,
 11 expel or otherwise discriminate against a person because the person has filed or communi-
 12 cated to the employer an intent to file a claim, a complaint or an appeal or has testified or
 13 is about to testify or has assisted in any proceeding under sections 1 to 11 of this 2009 Act.

14 (2) The Bureau of Labor and Industries may assess a civil penalty not to exceed \$5,000
 15 against an employer that:

16 (a) Fails to withhold premiums or fails to pay when due the moneys withheld as provided
 17 in section 6 of this 2009 Act; or

18 (b) Fails to comply with the provisions of sections 1 to 11 of this 2009 Act or rules
 19 adopted under sections 1 to 11 of this 2009 Act relating to reports or other requirements
 20 necessary to carry out the purposes of sections 1 to 11 of this 2009 Act.

21 (3) All civil penalties collected under this section shall be applied first toward re-
 22 imbursement of the costs incurred in investigating violations, conducting hearings and as-
 23 sessing and collecting penalties. All remaining amounts shall be paid into the Family Leave
 24 Benefits Insurance Account.

25 **SECTION 10.** (1) If an employer defaults with respect to any premium payment required
 26 to be made by the employer to the Family Leave Benefits Insurance Account under section
 27 6 of this 2009 Act, a person described in subsection (2) of this section who, as an officer,
 28 member, partner or employee, is under a duty to perform the actions required by employers
 29 under sections 1 to 11 of this 2009 Act shall be personally liable for amounts due under sec-
 30 tion 6 of this 2009 Act. More than one person may be jointly and severally liable under this
 31 section.

32 (2) This section applies only to a person who is one or more of the following:

33 (a) An officer or employee of a corporation;

34 (b) A member or an employee of a limited liability corporation; or

35 (c) A partner in or an employee of a limited liability partnership.

36 (3) If the Commissioner of the Bureau of Labor and Industries determines that an
 37 amount is due under this section, the commissioner shall issue a notice of assessment to the
 38 person liable under this section mailed to the person's last-known address of record with the
 39 commissioner.

40 **SECTION 11.** The Family Leave Benefits Insurance Account is established in the State
 41 Treasury, separate and distinct from the General Fund. Interest earned by the account shall
 42 be credited to the account. All moneys from premiums received under section 6 of this 2009
 43 Act shall be credited to the account. Moneys in the account are continuously appropriated
 44 to the Bureau of Labor and Industries for the purposes authorized by sections 1 to 11 of this
 45 2009 Act.

1 **SECTION 12.** Sections 1 to 11 of this 2009 Act are added to and made a part of ORS
 2 chapter 659A.

3 **SECTION 13.** (1) Employers shall first withhold quarterly premiums from employees'
 4 earnings for quarters worked beginning on or after January 1, 2011.

5 (2) Employees may first file claims for benefits under section 7 of this 2009 Act on or
 6 after January 1, 2012, for family leave taken on or after January 1, 2012.

7 **SECTION 14.** ORS 316.168 is amended to read:

8 316.168. (1) Except as otherwise provided by law, every employer subject to the provisions of
 9 ORS 316.162 to 316.221[,] or 656.506 or sections 1 to 11 of this 2009 Act [and] or ORS chapter 657,
 10 or a payroll-based tax imposed by a mass transit district and administered by the Department of
 11 Revenue under ORS 305.620, shall make and file a combined quarterly tax and assessment report
 12 upon a form prescribed by the department.

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

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

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

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

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

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

33 **SECTION 15.** ORS 316.171 is amended to read:

34 316.171. Except as provided in [this section and] ORS 314.840, 316.168, 316.197, 316.202 and
 35 657.571 and sections 1 to 11 of this 2009 Act, the statutes and regulations applicable to each
 36 agency, requiring a report and imposing a tax, shall govern the audit and examination of reports
 37 and returns, determination of deficiencies, assessments, claims for refund, penalties, interest, ad-
 38 ministrative and judicial appeals and the procedures relating thereto.

39 **SECTION 16.** This 2009 Act being necessary for the immediate preservation of the public
 40 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
 41 on its passage.