

House Bill 2950

Sponsored by Representative KENY-GUYER, Senator BOQUIST, Representative WEIDNER; Representatives LIVELY, MATTHEWS, REARDON, THOMPSON, TOMEI, WILLIAMSON, WITT

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**.

Allows eligible employees to take family leave to deal with death of family member. Limits period of leave to two weeks. Requires that leave be counted toward total period of authorized family leave.

A BILL FOR AN ACT

1
2 Relating to family leave; amending ORS 659A.156, 659A.159, 659A.162, 659A.165, 659A.168, 659A.177
3 and 659A.186.

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

5 **SECTION 1.** ORS 659A.159 is amended to read:

6 659A.159. (1) Family leave under ORS 659A.150 to 659A.186 may be taken by an eligible em-
7 ployee for any of the following purposes:

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

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

12 (c) To recover from or seek treatment for a serious health condition of the employee that ren-
13 ders the employee unable to perform at least one of the essential functions of the employee's regular
14 position.

15 (d) To care for a child of the employee who is suffering from an illness, injury or condition that
16 is not a serious health condition but that requires home care.

17 (e) **To deal with the death of a family member by:**

18 **(A) Attending the funeral or alternative to a funeral of the family member;**

19 **(B) Making arrangements necessitated by the death of the family member;**

20 **(C) Grieving the death of the family member; or**

21 **(D) Receiving counseling or other medical treatment to cope with the death of the family**
22 **member.**

23 (2) Leave under subsection (1)(a) of this section must be completed within 12 months after birth
24 or placement of the child, and an eligible employee is not entitled to any period of family leave
25 under subsection (1)(a) of this section after the expiration of 12 months after birth or placement of
26 the child.

27 **(3) Leave under subsection (1)(e) of this section must be completed within three months**
28 **after the death of the family member or the discovery of the death of the family member.**

29 **SECTION 2.** ORS 659A.156 is amended to read:

30 659A.156. (1) All employees of a covered employer are eligible to take leave for one of the pur-

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 poses specified in ORS 659A.159 (1)(b) to [(d)] (e) except:

2 (a) An employee who was employed by the covered employer for fewer than 180 days imme-
3 diately before the date on which the family leave would commence.

4 (b) An employee who worked an average of fewer than 25 hours per week for the covered em-
5 ployer during the 180 days immediately preceding the date on which the family leave would com-
6 mence.

7 (2) All employees of a covered employer are eligible to take leave for the purpose specified in
8 ORS 659A.159 (1)(a) except an employee who was employed by the covered employer for fewer than
9 180 days immediately before the date on which the family leave would commence.

10 **SECTION 3.** ORS 659A.162 is amended to read:

11 659A.162. (1) Except as specifically provided by ORS 659A.150 to 659A.186, an eligible employee
12 is entitled to up to **a total of 12 weeks** of family leave within any one-year period.

13 **(2)(a) Except as provided by paragraph (b) of this subsection, an eligible employee is en-**
14 **titled to a total of two weeks of family leave for the purposes described in ORS 659A.159**
15 **(1)(e).**

16 **(b) An eligible employee is entitled to the period of leave described in paragraph (a) of**
17 **this subsection upon the death of each family member of the employee within any one-year**
18 **period, except that leave taken as provided by this subsection may not exceed the total pe-**
19 **riod of family leave authorized by subsection (1) of this section.**

20 **(c) A covered employer may not require an eligible employee to take multiple periods of**
21 **leave described in ORS 659A.159 (1)(e) concurrently if more than one family member of the**
22 **employee dies during the one-year period.**

23 **(d) All leave taken for the purposes described in ORS 659A.159 (1)(e) shall be counted**
24 **toward the total period of family leave authorized by subsection (1) of this section.**

25 [(2)(a)] **(3)(a)** In addition to the 12 weeks of **family** leave authorized by subsection (1) of this
26 section, [*an eligible*] **a female eligible** employee may take a total of 12 weeks of leave within any
27 one-year period for an illness, injury or condition related to pregnancy or childbirth that disables
28 the eligible employee from performing any available job duties offered by the **covered** employer.

29 (b) An eligible employee who takes 12 weeks of family leave within a one-year period for the
30 purpose specified in ORS 659A.159 (1)(a) may take up to an additional 12 weeks of leave within the
31 one-year period for the purpose specified in ORS 659A.159 (1)(d).

32 [(3)] **(4)** When two **or more** family members work for the same covered employer, the eligible
33 employees may not take concurrent family leave unless:

34 (a) One employee needs to care for [*the other*] **another** employee who is **a family member and**
35 **who is** suffering from a serious health condition; [*or*]

36 (b) One employee needs to care for a child who has a serious health condition while [*the other*]
37 **another** employee **who is a family member** is also suffering **from** a serious health condition[.];
38 **or**

39 **(c) The employees are taking leave described in ORS 659A.159 (1)(e).**

40 [(4)] **(5)** An eligible employee may take family leave for the [*purposes*] **purpose** specified in ORS
41 659A.159 (1)(a) in two or more nonconsecutive periods of leave only with the approval of the em-
42 ployer.

43 [(5)] **(6)** Leave need not be provided to an eligible employee by a covered employer for the pur-
44 pose specified in ORS 659A.159 (1)(d) if another family member is available to care for the child.

45 [(6)] **(7)** A covered employer may not reduce the amount of family leave available to an eligible

1 employee under this section by any period the employee is unable to work because of a disabling
 2 compensable injury.

3 [(7)] **(8)(a)** The Commissioner of the Bureau of Labor and Industries shall adopt rules governing
 4 when family leave for a serious health condition of an eligible employee or a family member of the
 5 eligible employee may be taken intermittently or by working a reduced workweek. Rules adopted
 6 by the commissioner under this [subsection] **paragraph** shall allow taking of family leave on an in-
 7 termittent basis or by use of a reduced workweek to the extent permitted by federal law and to the
 8 extent that taking family leave on an intermittent basis or by use of a reduced workweek [will] **does**
 9 not result in the loss of an eligible employee’s exempt status under the federal Fair Labor Standards
 10 Act.

11 **(b) The commissioner shall adopt rules governing when family leave for the purposes**
 12 **described in ORS 659A.159 (1)(e) may be taken intermittently. Rules adopted by the commis-**
 13 **sioner under this paragraph shall allow taking of family leave for the purposes described in**
 14 **ORS 659A.159 (1)(e) on an intermittent basis to the extent permitted by federal law and to**
 15 **the extent that taking family leave on an intermittent basis does not result in the loss of**
 16 **an eligible employee’s exempt status under the federal Fair Labor Standards Act.**

17 **SECTION 4.** ORS 659A.165 is amended to read:

18 659A.165. (1) Except as provided in subsection (2) of this section, a covered employer may re-
 19 quire an eligible employee to give the employer written notice at least 30 days before commencing
 20 family leave. The employer may require the employee to include an explanation of the need for the
 21 leave in the notice.

22 (2) An eligible employee may commence taking family leave without prior notice under the fol-
 23 lowing circumstances:

- 24 (a) An unexpected serious health condition of an employee or family member of an employee;
- 25 (b) An unexpected illness, injury or condition of a child of the employee that requires home care;
- 26 [or]
- 27 (c) A premature birth, unexpected adoption or unexpected foster placement[.]; **or**
- 28 **(d) The death of a family member.**

29 (3) If an employee commences leave without prior notice under subsection (2) of this section, the
 30 employee must give oral notice to the employer within 24 hours of the commencement of the leave,
 31 and must provide the written notice required by subsection (1) of this section within three days after
 32 the employee returns to work. The oral notice required by this subsection may be given by any
 33 other person on behalf of the employee taking the leave.

34 (4) **Except as provided in this subsection,** if the employee fails to give notice as required by
 35 subsections (1) and (3) of this section, the employer may reduce the **total** period of family leave
 36 [required] **authorized** by ORS 659A.162 by three weeks, and the employee may be subject to disci-
 37 plinary action under a uniformly applied policy or practice of the employer. **A reduction of family**
 38 **leave under this subsection may not limit leave described in ORS 659A.159 (1)(e)(A) to (C).**

39 **SECTION 5.** ORS 659A.168 is amended to read:

40 659A.168. (1) Except as provided in subsection (2) of this section, a covered employer may re-
 41 quire medical verification from a health care provider of the need for the leave if the leave is for
 42 a purpose described in ORS 659A.159 (1)(b) to (d) **or (e)(D).** If an employee is required to give no-
 43 tice under ORS 659A.165 (1), the employer may require that medical verification be provided by the
 44 employee before the leave period commences. If the employee commences family leave without prior
 45 notice pursuant to ORS 659A.165 (2), the medical verification must be provided by the employee

1 within 15 days after the employer requests the medical verification. The employer may require an
 2 employee to obtain the opinion of a second health care provider designated by the employer, at the
 3 employer's expense. If the opinion of the second health care provider conflicts with the medical
 4 verification provided by the employee, the employer may require the two health care providers to
 5 designate a third health care provider to provide an opinion at the employer's expense. The opinion
 6 of the third health care provider shall be final and binding on the employer and employee. In addi-
 7 tion to the medical verifications provided for in this subsection, an employer may require subsequent
 8 medical verification on a reasonable basis.

9 (2) A covered employer may require medical verification for leave taken for the purpose de-
 10 scribed in ORS 659A.159 (1)(d) only after an employee has taken more than three days of leave under
 11 ORS 659A.159 (1)(d) during any one-year period. Any medical verification required under this sub-
 12 section must be paid for by the covered employer. An employer may not require an employee to
 13 obtain the opinion of a second health care provider for the purpose of medical verification required
 14 under this subsection.

15 (3) Subject to the approval of the health care provider, the employee [*taking family leave for a*
 16 *serious health condition of the employee or a family member of the employee*] shall make a reasonable
 17 effort to schedule medical treatment or supervision at times that will minimize disruption of the
 18 employer's operations **if the employee is taking leave for a serious health condition of the**
 19 **employee or a family member of the employee or is taking leave described in ORS 659A.159**
 20 **(1)(e)(D).**

21 **SECTION 6.** ORS 659A.177 is amended to read:

22 659A.177. (1) Notwithstanding any other provision of ORS 659A.150 to 659A.186, if a teacher
 23 requests leave for one of the purposes specified in ORS 659A.159 (1)(b), [or] (c) **or (e)(D)**, the need
 24 for the leave is foreseeable, and the employee will be on leave for more than 20 percent of the total
 25 number of working days in the period during which the leave would extend, the employer of the
 26 teacher may require that the employee elect one of the two following options:

27 (a) The employee may elect to take leave for a period or periods of a particular duration, not
 28 to exceed the duration of the anticipated medical treatment **or counseling**; or

29 (b) The employee may elect to transfer temporarily to an available alternative position that
 30 better accommodates recurring periods of leave than the regular position of the employee. The
 31 teacher must be qualified for the alternative position, and the position must have pay and benefits
 32 that are equivalent to the pay and benefits of the employee's regular position.

33 (2) Notwithstanding any other provision of ORS 659A.150 to 659A.186, if a teacher commences
 34 a period of family leave for the purpose specified in ORS 659A.159 (1)(c) more than five weeks before
 35 the end of an academic term, the employer of the teacher may require that the employee continue
 36 on family leave until the end of the term if:

37 (a) The leave is of at least three weeks' duration; and

38 (b) The employee's return to employment would occur during the three-week period before the
 39 end of the term.

40 (3) Notwithstanding any other provision of ORS 659A.150 to 659A.186, if a teacher commences
 41 a period of family leave for one of the purposes specified in ORS 659A.159 (1)(a) or (b) during the
 42 five weeks before the end of an academic term, the employer of the teacher may require that the
 43 employee continue on family leave until the end of the term if:

44 (a) The leave is of at least two weeks' duration; and

45 (b) The employee's return to employment would occur during the two-week period before the end

1 of the term.

2 (4) Notwithstanding any other provision of ORS 659A.150 to 659A.186, if a teacher commences
3 a period of family leave for one of the purposes specified in ORS 659A.159 (1)(a), [or] (b) **or (e)**
4 during the three-week period before the end of the term, and the duration of the leave is greater
5 than five working days, the employer of the teacher may require that the employee continue on
6 family leave until the end of the term.

7 (5) The provisions of this section apply only to an employee who is employed principally in an
8 instructional capacity by a public kindergarten, elementary school, secondary school or education
9 service district.

10 **SECTION 7.** ORS 659A.186 is amended to read:

11 659A.186. (1) ORS 659A.150 to 659A.186 do not limit any right of an employee to [*family medical*
12 *leave*] **any leave that is similar to the leave described in ORS 659A.159 (1) and** to which the
13 employee may be entitled under any agreement between the employer and the employee, collective
14 bargaining agreement or employer policy.

15 (2) ORS 659A.150 to 659A.186 shall be construed to the extent possible in a manner that is
16 consistent with any similar provisions of the federal Family and Medical Leave Act of 1993. Family
17 leave taken under ORS 659A.150 to 659A.186 must be taken concurrently with any leave taken under
18 the federal Family and Medical Leave Act of 1993.

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