

# D R A F T

## SUMMARY

Creates Family Leave Benefits Insurance program to provide benefits to employees taking family leave. Requires employers to withhold amount from employee earnings for deposit into Family Leave Benefits Insurance 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.

## A BILL FOR AN ACT

1  
2 Relating to family leave benefits insurance; creating new provisions; amend-  
3 ing ORS 316.168 and 316.171; and providing for revenue raising that re-  
4 quires approval by a three-fifths majority.

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

6 **SECTION 1. Sections 1 to 5 of this 2017 Act may be cited as the**  
7 **Family Leave Benefits Insurance Act.**

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

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

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

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

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

5 (2) Sections 1 to 5 of this 2017 Act are enacted to allow an employee:

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

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

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

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

15 (a) "Application year" means the 12-month period beginning on the  
16 first day of the calendar week in which an employee files an applica-  
17 tion for family leave benefits and, thereafter, the 12-month period be-  
18 ginning with the first day of the calendar week in which the employee  
19 files a subsequent application for family leave benefits after the expi-  
20 ration of the employee's last preceding application year.

21 (b) "Employer" means a covered employer as defined in ORS  
22 659A.150.

23 (c) "Family leave" means a leave of absence described in ORS  
24 659A.159 (1)(a), (b) or (c).

25 (d) "Family member" has the meaning given that term in ORS  
26 659A.150.

27 (e) "Health care provider" has the meaning given that term in ORS  
28 659A.150.

29 (f) "Paid family leave" includes family leave with pay from the  
30 employer and family leave during which the employee uses any other  
31 type of paid leave, such as paid vacation leave or paid sick leave.

1 (g) "Premium" means the payments required by subsection (8) of  
2 this section to be made for the Family Leave Benefits Insurance Ac-  
3 count.

4 (h) "Qualifying year" means the first four of the last five completed  
5 calendar quarters or the last four completed calendar quarters imme-  
6 diately preceding the first day of the employee's application year.

7 (i) "Serious health condition" has the meaning given that term in  
8 ORS 659A.150.

9 (2)(a) The Bureau of Labor and Industries shall administer a Family  
10 Leave Benefits Insurance Account and establish procedures and forms  
11 for filing benefit claims. The bureau shall notify the employer within  
12 five business days of a claim being filed.

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

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

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

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

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

5 (c) Establishes an application year. An application year may not be  
6 established if the qualifying year includes hours worked before estab-  
7 lishment of a previous application year.

8 (d) Documents that the employee has notified the employer as pro-  
9 vided in ORS 659A.165.

10 (4)(a) In an application year, family leave benefits are payable for  
11 a maximum of six weeks.

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

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

17 (A) For family leave beginning before July 1, 2020, benefits shall be  
18 \$\_\_ per week for an employee who at the time family leave began was  
19 regularly working 40 hours or more per week, or a prorated amount  
20 based on the weekly hours regularly worked for an employee regularly  
21 working less than 40 hours per week.

22 (B) Family leave benefits are payable only in weekly amounts for  
23 one or more full weeks of family leave taken by an employee. The  
24 minimum period of family leave for which benefits may be paid is one  
25 week. The bureau may not pay a claim for benefits for a period of  
26 family leave of less than one week.

27 (d) If an employee dies before receiving payment of benefits, the  
28 payment shall be made by the bureau to the surviving spouse or to the  
29 child or children if there is no surviving spouse. If there is no surviv-  
30 ing spouse and no child or children, the payment shall be made and  
31 distributed consistent with the terms of the decedent's will or, if the

1 decedent dies intestate, consistent with the provisions of ORS chapter  
2 112.

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

6 (b) An employee is not eligible for benefits under this section for  
7 any week for which the employee receives paid family leave or tem-  
8 porary disability benefits, or for any week for which compensation is  
9 payable to the employee under ORS chapter 656 or under other federal  
10 or state workers' compensation programs. If an employer provides  
11 paid family leave or an employee is covered by disability insurance, the  
12 employee may elect whether first to use the paid family leave or to  
13 receive temporary disability benefits. An employee may not be re-  
14 quired to use paid family leave to which the employee is entitled before  
15 receiving benefits under this section.

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

19 (d) An employee who has received benefits under this section may  
20 not lose any other employment benefits, including seniority or pension  
21 rights, accrued before the date that family leave commenced. How-  
22 ever, this section does not entitle an employee to accrue employment  
23 benefits during a period of family leave or to a right, benefit or posi-  
24 tion of employment other than a right, benefit or position to which  
25 the employee would have been entitled had the employee not taken  
26 family leave.

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

31 (f) An agreement by an employee to waive the employee's rights

1 under this section is void as contrary to public policy. The benefits  
2 under this section may not be diminished by a collective bargaining  
3 agreement or another employment benefits program or plan entered  
4 into or renewed after the effective date of this section.

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

13 (A) At the times and in the manner prescribed in ORS 316.168 and  
14 316.171; or

15 (B) Annually as required or allowed pursuant to ORS 316.197 or  
16 657.571.

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

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

29 (7)(a) When an employer quits business or sells out, exchanges or  
30 otherwise disposes of the business or stock of goods, any premium  
31 payable under this section is immediately due and payable, and the

1 employer shall, within 10 days thereafter, pay the premium due. Any  
2 person who becomes a successor to the business is liable for the full  
3 amount of the premium and shall withhold from the purchase price a  
4 sum sufficient to pay any premium due from the employer until the  
5 employer produces a receipt from the bureau showing payment in full  
6 of any premium due or a certificate that no premium is due. If the  
7 premium is not paid by the employer within 10 days from the date of  
8 the sale, exchange or disposal, the successor is liable for the payment  
9 of the full amount of premium. The successor's payment of the pre-  
10 mium is, to the extent of the payment, a payment upon the purchase  
11 price, and if the payment is greater in amount than the purchase  
12 price, the amount of the difference is a debt due the successor from  
13 the employer.

14 (b) A successor is not liable for any premium due from the person  
15 from whom the successor has acquired a business or stock of goods if  
16 the successor gives written notice to the bureau of the acquisition and  
17 no assessment is issued by the bureau within one year after receipt  
18 of the notice against the former operator of the business.

19 (8) Each employer shall withhold from the post-tax earnings of each  
20 employee a premium of \_\_\_\_\_ per hour worked. The employer shall  
21 pay the withheld amounts with the report required by subsection (6)(a)  
22 of this section. All withheld amounts paid by employers under this  
23 subsection shall be deposited in the Family Leave Benefits Insurance  
24 Account established under section 4 of this 2017 Act.

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

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

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

31 (10) It is an unlawful employment practice for an employer, tem-

1 **porary employment agency, employment agency, employee organiza-**  
2 **tion or other person to discharge, expel or otherwise discriminate**  
3 **against a person because the person has filed or communicated to the**  
4 **employer an intent to file a claim, a complaint or an appeal or has**  
5 **testified or is about to testify or has assisted in any proceeding under**  
6 **this section.**

7 **(11)(a) Family leave benefits are payable under this section only to**  
8 **the extent that moneys are available in the Family Leave Benefits**  
9 **Insurance Account for that purpose. Neither the state nor the bureau**  
10 **is liable for any amount in excess of this limit.**

11 **(b) This section does not create a continuing entitlement or con-**  
12 **tractual right.**

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

17 **(13) The bureau may assess a civil penalty not to exceed \$5,000**  
18 **against an employer that:**

19 **(a) Fails to withhold premiums or fails to pay when due the moneys**  
20 **withheld under this section; or**

21 **(b) Fails to comply with this section or rules adopted under this**  
22 **section relating to reports or other requirements necessary to carry**  
23 **out the purposes of this section.**

24 **(14) All civil penalties collected under this section shall be applied**  
25 **first toward reimbursement of the costs incurred in investigating vio-**  
26 **lations, conducting hearings and assessing and collecting penalties.**  
27 **All remaining amounts shall be paid into the State Treasury and**  
28 **credited to the Family Leave Benefits Insurance Account established**  
29 **under section 4 of this 2017 Act.**

30 **(15) An employee is disqualified from family leave benefits under**  
31 **this section if the employee:**



1 (a) Willfully makes a false statement or misrepresentation regard-  
2 ing a material fact, or willfully fails to disclose a material fact, to  
3 obtain benefits;

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

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

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

15 (17) If an employee receives benefits under this section to which the  
16 employee is not entitled:

17 (a) The employee is liable to the bureau for the amount of benefits  
18 received; and

19 (b) The amount of benefits received may be deducted by the bureau  
20 from any future benefits otherwise payable to the employee under this  
21 section.

22 (18) If the bureau decides that an employee has been paid benefits  
23 to which the employee is not entitled because of an error, and that the  
24 employee is not subject to disqualification under subsection (15) of this  
25 section, the amounts received in error may be recovered by the bureau  
26 only by deductions from benefits otherwise payable to the employee  
27 under this section during the 52 weeks following the date on which the  
28 order establishing the amount of the erroneous payment becomes  
29 final. If amounts determined to be recoverable have not been paid  
30 within that time, the liability shall be canceled by the bureau and  
31 charged against the Family Leave Benefits Insurance Account estab-

1 lished under section 4 of this 2017 Act.

2 (19) Except as provided in subsection (18) of this section, if benefits  
3 determined to be recoverable under this section have not been paid  
4 within three years after the date that the order of the bureau estab-  
5 lishing the liability of the employee becomes final, and no payments  
6 have been received on the liability for at least three months, the li-  
7 ability shall be canceled by the bureau and charged against the Family  
8 Leave Benefits Insurance Account.

9 (20) Any amount due under this section may be collected by the  
10 bureau in a civil action against the employee brought in the name of  
11 the bureau.

12 (21) Interest on any benefits recoverable under this section shall be  
13 paid and collected at the same time repayment of benefits is made by  
14 the employee. Interest on an amount recoverable under this section  
15 accrues at the rate specified in ORS 82.010, beginning on the first day  
16 of the month following 60 days after entry of the order establishing the  
17 amount of the overpayment.

18 (22) Any amount collected under this section by the bureau shall  
19 be paid into the Family Leave Benefits Insurance Account.

20 SECTION 4. The Family Leave Benefits Insurance Account is es-  
21 tablished in the State Treasury, separate and distinct from the General  
22 Fund. Interest earned by the account shall be credited to the account.  
23 All moneys from premiums received by the Department of Revenue  
24 shall be credited to the account. Moneys in the account are contin-  
25 uously appropriated to the Bureau of Labor and Industries for the  
26 purposes authorized by section 3 of this 2017 Act.

27 SECTION 5. (1) An employer that is not subject to section 3 of this  
28 2017 Act or a self-employed person may elect to provide benefits to the  
29 employer's employees or to the self-employed person under section 3  
30 of this 2017 Act for an initial coverage period of not less than three  
31 years and subsequent coverage periods of not less than one year. The

1 **employer or self-employed person must file a written notice of election**  
2 **with the Bureau of Labor and Industries. The election becomes effec-**  
3 **tive on the date the notice is filed.**

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

10 **(3) The bureau may cancel an election under this section if the**  
11 **employer or self-employed person fails to remit required premiums or**  
12 **reports. The bureau may collect unpaid premiums and may levy an**  
13 **additional premium for the remainder of the coverage period. A can-**  
14 **cellation under this subsection becomes effective 30 days after the is-**  
15 **suance of a written notice of the cancellation to the employer or**  
16 **self-employed person or such earlier time as specified in the notice.**

17 **SECTION 6. Section 5 of this 2017 Act becomes operative on July**  
18 **1, 2020.**

19 **SECTION 7. Sections 1 to 5 of this 2017 Act are added to and made**  
20 **a part of ORS chapter 659A.**

21 **SECTION 8. Notwithstanding section 3 of this 2017 Act:**

22 **(1) Employers shall first withhold premiums from employees'**  
23 **earnings for hours worked on and after January 1, 2019.**

24 **(2) Employees may first file claims for benefits under section 3 of**  
25 **this 2017 Act on or after July 1, 2019, for family leave taken on or after**  
26 **July 1, 2019.**

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

28 **316.168. (1) Except as otherwise provided by law, every employer subject**  
29 **to the provisions of ORS 316.162 to 316.221[,] or 656.506 [and], sections 1 to**  
30 **5 of this 2017 Act or ORS chapter 657, or a payroll-based tax imposed by a**  
31 **mass transit district and administered by the Department of Revenue under**

1 ORS 305.620, shall make and file a combined quarterly tax and assessment  
2 report upon a form prescribed by the department.

3 (2) The report shall be filed with the Department of Revenue on or before  
4 the last day of the month following the quarter to which the report relates  
5 and shall be deemed received on the date of mailing, as provided in ORS  
6 305.820.

7 (3) The report shall be accompanied by payment of any tax or assessment  
8 due and a combined tax and assessment payment coupon prescribed by the  
9 department. The employer shall indicate on the coupon the amount of the  
10 total payment and the portions of the payment to be paid to each of the tax  
11 or assessment programs.

12 (4) The Department of Revenue shall credit the payment to the tax or  
13 assessment programs in the amounts indicated by the employer on the cou-  
14 pon and shall promptly remit the payments to the appropriate taxing or as-  
15 sessing body.

16 (5) If the employer fails to allocate the payment on the coupon, the de-  
17 partment shall allocate the payment to the proper tax or assessment pro-  
18 grams on the basis of the percentage the payment bears to the total amount  
19 due.

20 (6) The Department of Revenue shall distribute copies of the combined  
21 quarterly tax and assessment report and the necessary tax or assessment  
22 payment information to each of the agencies charged with the administration  
23 of a tax or assessment covered by the report.

24 (7) The Department of Revenue, the Employment Department and the  
25 Department of Consumer and Business Services shall develop a system of  
26 account numbers and assign to each employer a single account number re-  
27 presenting all of the tax and assessment programs included in the combined  
28 quarterly tax and assessment report.

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

30 316.171. Except as provided in this section and ORS 314.840, 316.168,  
31 316.197, 316.202 and 657.571 **and sections 1 to 5 of this 2017 Act**, the stat-

1 utes and regulations applicable to each agency, requiring a report and im-  
2 posing a tax, shall govern the audit and examination of reports and returns,  
3 determination of deficiencies, assessments, claims for refund, penalties, in-  
4 terest, administrative and judicial appeals and the procedures relating  
5 thereto.

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