



FAMILY FORWARD

OREGON

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Technical Overview of HB 3087-1 Amendments
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Thank you for allowing this opportunity to come before you and provide a more detailed explanation of the paid family and medical leave insurance program contained in HB 3087. You have before you -1 amendments that are primarily technical in nature and necessary to achieve the original intent of the paid family and medical leave insurance program (FAMLI). For my testimony today, I will be using the -1s as a reference point since when I refer to sections and provisions of HB 3087.

We appreciate the thoughtful comments and feedback provided by the administering agencies and their numerous reviews of bill drafts and language. There are a number of areas where the feedback of DCBS, Revenue, Employment and BOLI have been invaluable and are greatly appreciated. Many of the amendments offered in the -1s address very technical issues raised by the agencies. We do expect we will have another amendment coming and will note where we know additional changes are still necessary.

Before going through this section by section, I want to draw your attention to a general timeline in OLIS of how and when the program will come on-line and be operative.

Section 1 – Definitions

- Revises definition of “family member” to achieve the “blood and affinity” language we originally requested. This is a standard that has been used by the Office of Personnel Management for federal employees now for many years and recognizes the diverse family structures that exist today and that may include both blood relatives and chosen families.
- There is also substantial work in this amendment to differentiate between self-employed individuals and employees. This change also necessitated a change in the definitions to specifically define “covered individual,” “eligible employee,” and “self-employed individual”. This is important because there are places in the bill that refer to a “covered individual” who can be either an employee or a self-employed individual who opts into the program. At times, the bill needs to refer specifically to a covered individual, including both employees and self-employed and at other times the bill needs to reference one or the other.

Section 2 – Eligibility for benefits

- This section spells out the qualifying conditions for FAMLI benefits: parental leave, an individual’s own serious health condition, a family member’s serious medical condition, and military leave.

Section 3 – Duration of benefits

- Allows for 12 weeks of paid leave for any of the qualifying conditions and an additional 6 weeks available only for parental leave.
- Change from original bill: Allows employees to opt to end their insurance benefit before they have reached the maximum allowable amount of time (so they are not forced to take the total amount if they do not want to).

Section 4 – Amount of benefits

- Benefits will be determined based on a formula centered around the state’s “average weekly wage,” which is determined by the Employment Department each year. Our goal was to create a graduated income replacement formula so the lowest-income individuals would receive a higher percentage of their overall wages and that percentage would decrease as an individual’s income goes up. This has been shown to improve their utilization of a program they are contributing toward.
- To achieve this, we set benefits so that an individual will get 90% of their wages up to the average weekly wage and then 50% of their income above the average weekly wage up to a cap of \$1200/week.
- An example of the benefits this formula would produce, based on the 2015 average weekly wage of \$922.02, is attached to this testimony.
- Change in amendment: Adds a cap of \$1200 for the maximum weekly amount. DCBS has pointed out that when we reach 2021, average weekly wage will likely be around \$1100 and this cap will not be what we intend. We will be requesting another amendment to tie the cap to a percentage of average weekly wage (130% of average weekly wage will achieve an equivalent cap).

Section 5 – Contributions

- No change to cap of 0.5% for an each an employer and employee, for a total of 1% of payroll overall, that is shared equally by employers and employees. DCBS is given authority to adjust this contribution DOWN, but never above the 0.5% of payroll contribution cap for each of the employer and employee.
- There were several technical changes in this section to address Revenue’s authority to collect and remit payroll contributions to DCBS and keep consistent with Revenue’s procedures for collecting and dispersing other payments.
- We also added a mechanism for self-employed individuals to opt in to the program and make contributions and receive a benefit. For self-employed individuals, the payroll contribution will be equivalent to 1% of their self-employment income. This is because a self-employed individual will be responsible for both the employee-side contribution and the employer-side contribution.
- As you will hear in a moment, DCBS anticipates the payroll contribution necessary to fund the program to be less than 1% of overall payroll. DCBS will follow the same public process for setting FAMI leave payroll contributions as they do to adjust Worker’s Compensation rates.

Section 6 – Benefits for reduced leave

- This section provides FAML I benefits for intermittent leave for those with caregiving responsibilities or ongoing regular medical care. Paid leave in these instances would only be available in 8-hour increments and would be required to be scheduled and taken on a regular and predictable basis. An example could be a person with an aging parent who needs to provide regularly scheduled care 2 days a week and has siblings who provide care on the other days. However, benefits would only be paid out on a weekly basis, not every day that leave is taken.
- Amendments coming to clarify that benefits are only payable in increments of 40 hours.

Section 7 – Notice to employer

- No significant change to this section, which requires 30 days notice be given to an employer when an employee has foreseeable needs FAML I leave benefits. If the need for leave is not foreseeable, like an unexpected injury/accident, this section requires notice as soon as practicable.
- This amendment does change who can provide notice to an employer and DCBS when the need for leave is not foreseeable and if the employee is unable to give notice due to their condition. This would now include a family member, health care provider or an authorized representative.
- We will also be adding a provision in the next amendment to allow for an individual who is not able to file a claim because of their illness or injury and to backdate a claim to the date of injury as long as the claim is filed within 45 days of injury. This mirrors California's law around when an unexpected illness or injury makes an individual unable to file a claim more quickly.

Section 8 – Leave and employment protections

- No changes were made to these sections. Section 8 allows for an employee to return to their job after leave and Section 9 prohibits retaliation for an employee inquiring about or taking paid family leave.
- Both are related sections and may be combined in the next amendment for ease of reading.

Section 9 – Retaliatory personnel actions prohibited

Section 10 – Coordination of benefits

- No significant change was made to this section. Section 10 spells out how FAML I benefits will interact with other leave laws and collective bargaining agreements. It is our intent that FAML I benefits will run concurrently with other protected leave laws wherever possible. If for example, an employees covered by both OFLA and FAML I leave, these two leaves will run simultaneously.
- This section also guarantees that an employee will not lose employment benefits, like health insurance when they are out on leave, consistent with both OFLA and FMLA.

Section 11 – Notice to employees

- Again, no significant changes to this section. This section requires employers to post a notice (poster) of an employee’s rights under this law and how to file a claim. DCBS will create this required poster notice for employers to display.

Section 12 – Enforcement

- This deals with contested cases and how claim disputes will be handled. We did modify this section to require a contested case, when either contested by the employee or the employer, to be handled by the Office of Administrative Hearings. This section also allows DCBS to disclose otherwise protected information to other public officials in order to administer the program.

Section 13 – Noncompliance and Erroneous Payments

- This section deals with non-compliance and collection of erroneous payments. This applies to both employers and employees who don’t provide accurate information to DCBS for claim filing. Employees who make false statements or fail to report facts to get erroneous FAMI benefits can be made to repay overpayments and be barred from the program for 1 year.

Section 14 – Self-Employed Opt-in

- No substantive change. This section allows self-employed individuals to opt-in to FAMI benefits, but requires an opt-in period of three years to ensure solvency of the fund. It does allow a self-employed individual to opt-out sooner than 3 years in the event of bankruptcy.
- There are a number of issues that need to be further fleshed out regarding how best to assess a self-employed individual’s income and benefit amount. This is the primary reason we have a delayed the operative date for self-employed individuals to opt in beyond when the program will be operable for other employees. The next amendment will give DCBS flexibility to set self-employed contributions amounts and benefit amounts, but will also direct DCBS to study and report on an appropriate framework for incorporating self-employed individuals into the program before this section actually becomes operative.

Section 15 – Administration

- This section allows DCBS to adopt rules and enter into inter-agency agreements to administer the fund. Note that we never intended to allow contracting with “private entities,” only other agencies. The language allowing contracting with private entities will be stricken from the next amendment.
- This section also directs other agencies to assist DCBS in education, outreach efforts and training when requested.

Section 16 – FAMI Fund

- This section allows the Fund to be used for ongoing administration costs and to pay FAMI benefits. It precludes FAMI Fund monies from being used on other programs.

Section 17 – Reports

- This section requires DCBS to report to the Legislature on the implementation of the fund on Jan. 1, 2020 and every two years thereafter.
- We will be adding language to this section to direct DCBS to specifically look at and make recommendations around implementing the self-employed opt-in.

Section 18 – Sharing Technology

- This section may be revised slightly. It is intended to encourage DCBS to use existing data collection and technology as much as possible and integrate the program with existing state policies and programs.

Section 19 – Aligning with OFLA

- No change to this section, which addresses the waiting period before an individual can take Oregon Family and Medical Leave benefits from 180 days to 90 days. Our goal was to ensure that individuals could take paid family leave benefits without waiting 6 months after starting each new job, knowing they could have been paying into this fund in a previous job and otherwise be eligible when the need for leave arises. This is important because we don't want an employee who has been paying into the fund for years to have a 6 month waiting period before they can draw on benefits. It should be on-going and reliable coverage for all individuals without gaps in accessing benefits just because of a new job.

Section 20 – Enforcement of retaliation provisions

- This section gives BOLI the authority to enforce employment protections given in the law. All other program administration and enforcement will be done by DCBS and Revenue.

Section 21 – Operative Dates

- This section sets the operative dates for the program. There will be a delayed operative date to allow the agencies to prepare to begin collecting payroll contributions and administer the program. Payroll contributions will begin being collected on Jan. 1, 2019. These contributions will be collected for at most 2 years and the program will begin administering benefits by Jan. 1, 2021. If DCBS determines the fund is sufficient to begin administering benefits sooner, they are permitted to do so.
- The opt-in for self-employed individuals also has a delayed operative date and self-employed won't be able to enroll until 2021. This is to ensure that DCBS is given sufficient time to report back on and make recommendations on how best to incorporate the self-employed coverage before actual implementation.

Section 22 – Captions

- Specifies that captions are for legislative consideration only and will not be incorporated into actual statute when HB 3087 is enrolled into statute.

Section 23 – Effective date