

HB 3087-2  
(LC 1458)  
4/10/17 (CMT/rh/ps)

Requested by Representative WILLIAMSON

**PROPOSED AMENDMENTS TO  
HOUSE BILL 3087**

1       On page 1 of the printed bill, delete lines 6 through 25 and delete pages  
2 2 through 11 and insert:

3       **“SECTION 1. Definitions. As used in sections 1 to 17 of this 2017**  
4 **Act:**

5       **“(1) ‘Average weekly wage’ means the amount calculated by the**  
6 **Employment Department under ORS 657.150 (4)(d) as determined not**  
7 **more than once per year.**

8       **“(2) ‘Base year’ means the first four of the last five completed cal-**  
9 **endar quarters preceding the benefit year.**

10      **“(3) ‘Benefit year’ means the 12-month period beginning on the first**  
11 **day of the week in which a covered individual files an application for**  
12 **family and medical leave insurance benefits.**

13      **“(4) ‘Covered individual’ means:**

14      **“(a) An eligible employee who:**

15      **“(A) Files an application for family and medical leave insurance**  
16 **benefits; and**

17      **“(B) Contributes an amount determined by the Director of the De-**  
18 **partment of Consumer and Business Services to the Family and Med-**  
19 **ical Leave Insurance Fund during the base year prior to filing an**  
20 **application; or**

21      **“(b) A self-employed individual who:**

1       **“(A) Elects coverage under section 13 of this 2017 Act;**

2       **“(B) Files an application for family and medical leave insurance**  
3 **benefits; and**

4       **“(C) Contributes an amount determined by the Director of the De-**  
5 **partment of Consumer and Business Services to the Family and Med-**  
6 **ical Leave Insurance Fund during the base year prior to filing an**  
7 **application.**

8       **“(5) ‘Covered service member’ means an employee who is eligible**  
9 **for leave under ORS 659A.093 or the federal Family and Medical Leave**  
10 **Act of 1993, as amended and in effect on the effective date of this 2017**  
11 **Act.**

12       **“(6) ‘Eligible employee’ means an employee who has worked for at**  
13 **least 90 days with the employer.**

14       **“(7) ‘Eligible employee’s average wage’ means an amount deter-**  
15 **mined by the director based on an eligible employee’s average wages**  
16 **per week during the base year.**

17       **“(8)(a) ‘Employee’ means an individual employed for remuneration**  
18 **or under any contract of hire, written or oral, express or implied, by**  
19 **an employer.**

20       **“(b) ‘Employee’ does not include:**

21       **“(A) An independent contractor as defined in ORS 670.600 who is**  
22 **not a covered individual.**

23       **“(B) A participant in a work training program administered under**  
24 **a state or federal assistance program.**

25       **“(C) A participant in a work-study program that provides students**  
26 **in secondary or post-secondary educational institutions with employ-**  
27 **ment opportunities for financial assistance or vocational training.**

28       **“(D) A railroad worker exempted under the federal Railroad Un-**  
29 **employment Insurance Act.**

30       **“(E) A volunteer.**

1       **“(9)(a) ‘Employer’ means any person that employs one or more**  
2 **employees working anywhere in this state, a political subdivision of**  
3 **the state and any county, city, district, authority, public corporation**  
4 **or entity, and any instrumentality of a county, city, district, author-**  
5 **ity, public corporation or entity, organized and existing under law or**  
6 **charter.**

7       **“(b) ‘Employer’ does not include the federal government or a tribal**  
8 **government.**

9       **“(10) ‘Family and medical leave insurance benefits’ means the in-**  
10 **surance benefits provided under the terms of sections 1 to 17 of this**  
11 **2017 Act.**

12       **“(11) ‘Family member’ means:**

13       **“(a) A family member as defined in ORS 659A.150; or**

14       **“(b) An individual related by blood or affinity to the employee**  
15 **whose close association with the employee is the equivalent of a family**  
16 **member.**

17       **“(12) ‘Health care provider’ has the meaning given that term in ORS**  
18 **659A.150.**

19       **“(13) ‘Next of kin’ has the meaning given that term in 29 C.F.R.**  
20 **825.127.**

21       **“(14) ‘Parental leave’ means leave taken to care for a new child**  
22 **during the first year after the birth, adoption or placement through**  
23 **foster care of the child.**

24       **“(15) ‘Qualifying exigency leave’ has the meaning described in 29**  
25 **C.F.R. 825.126.**

26       **“(16) ‘Self-employment income’ has the meaning given that term in**  
27 **section 1402(b) of the Internal Revenue Code as amended and in effect**  
28 **on December 31, 2016.**

29       **“(17) ‘Self-employed individual’ is an individual who has self-**  
30 **employment income.**

1       “(18) ‘Serious health condition’ has the meaning given that term in  
2 the federal Family and Medical Leave Act of 1993.

3       “(19) ‘Wages’ has the meaning given that term in ORS 657.105.

4       “(20) ‘Week’ means a period of seven consecutive calendar days as  
5 determined by the director.

6       “SECTION 2. Eligibility for benefits. (1) Family and medical leave  
7 insurance benefits are payable to an eligible employee, regardless of  
8 the number of employees employed by the employer, who:

9           “(a) Is taking parental leave;

10          “(b) Is caring for a family member with a serious health condition;

11          “(c) Has a serious health condition, including pregnancy;

12          “(d) Is caring for a covered service member who is the eligible  
13 employee’s next of kin;

14          “(e) Is taking military family leave described under ORS 659A.090  
15 to 659A.099;

16          “(f) Is taking qualifying exigency leave; or

17          “(g) Is taking leave for any reason set forth in ORS 659A.159.

18        “(2) Family and medical leave insurance benefits are payable to a  
19 covered individual who is a self-employed individual and who takes  
20 leave for a reason described in subsection (1)(a) to (g) of this section.

21        “(3) A covered individual who receives family and medical leave  
22 insurance benefits under this section must, upon request by the cov-  
23 ered individual’s employer or the Director of the Department of Con-  
24 sumer and Business Services, provide verification of the need for leave  
25 in a manner determined by the director. The director, upon request  
26 by an employer, shall provide any verification that the director has  
27 received under this subsection to the employer.

28        “SECTION 3. Duration of benefits. (1)(a) A covered individual may  
29 qualify for up to 12 weeks of family and medical leave insurance ben-  
30 efits per benefit year.

1       **(b) In addition to the 12 weeks of family and medical leave insurance benefits described in paragraph (a) of this subsection, a covered individual may qualify for six weeks of benefits for parental leave.**

4       **(2) Except as provided in section 6 of this 2017 Act, family and medical leave insurance benefits are not payable for leave of less than one week.**

7       **(3) The first payment of benefits must be made to a covered individual within two weeks after the individual files a claim and subsequent payments must be made every two weeks.**

10      **(4) An employer may not require an eligible employee to take more leave than the eligible employee requests.**

12      **(5) A covered individual may take less leave than available to the individual under this section.**

14      **SECTION 4. Amount of benefits and applicability of tax laws.** (1) The Director of the Department of Consumer and Business Services shall determine the amount of family and medical leave insurance benefits an eligible employee qualifies for, as follows:

18      **(a) The director shall determine the eligible employee's average wage based on the eligible employee's wages earned during the base year.**

21      **(b) The director shall set the weekly benefit amount at:**

22      **(A) If the eligible employee's average wage is more than the average weekly wage, 90 percent of the average weekly wage plus 50 percent of the difference between the eligible employee's average wage and the average weekly wage.**

26      **(B) If the eligible employee's average wage is equal to or less than the average weekly wage, 90 percent of the eligible employee's average wage.**

29      **(c) The director shall establish a maximum weekly benefit amount of 130 percent of the average weekly wage.**

1       “(d) The director may adjust the maximum weekly benefit amount  
2 described in paragraph (c) of this subsection on an annual basis if  
3 necessary to maintain fiscal solvency of the Family and Medical Leave  
4 Insurance Fund.

5       “(2) The director shall determine the amount of family and medical  
6 leave insurance benefits a self-employed individual qualifies for based  
7 on the self-employed individual’s contribution amount described in  
8 section 5 of this 2017 Act.

9       “(3) Family and medical leave insurance benefits are payable only  
10 to the extent that moneys are available in the Family and Medical  
11 Leave Insurance Fund for that purpose. The state, any political sub-  
12 division of the state or any state agency is not liable for any amount  
13 in excess of this limit.

14       “(4) Except as otherwise provided in sections 1 to 17 of this 2017 Act  
15 or where the context requires otherwise, the provisions of ORS chap-  
16 ters 305 and 314 as to the audit and examination of returns, periods  
17 of limitation, determination of and notices of deficiencies, assess-  
18 ments, collections, liens, delinquencies, claims for refund and refunds,  
19 conferences, appeals to the Oregon Tax Court, stays of collection  
20 pending appeal, confidentiality of returns and the penalties relative  
21 thereto, and the procedures relating thereto, apply to the determi-  
22 nations of taxes, penalties and interest under sections 1 to 17 of this  
23 2017 Act.

24       “**SECTION 5. Contributions.** (1) The Director of the Department of  
25 Consumer and Business Services shall deposit moneys collected under  
26 this section into the Family and Medical Leave Insurance Fund. Sub-  
27 ject to the limits in this section, the amount of the contributions  
28 provided in this section may be adjusted to meet the needs of the  
29 Family and Medical Leave Insurance Fund for the expenditures of the  
30 Department of Consumer and Business Services in carrying out its

1   functions and duties pursuant to sections 1 to 17 of this 2017 Act. In  
2   making adjustments under this subsection, the department shall con-  
3   sider the cash balance of the Family and Medical Leave Insurance  
4   Fund and other factors as determined by the director.

5       “(2)(a) Payroll contributions from an eligible employee may not  
6   exceed 0.5 percent of the employee’s wages. Payroll contributions shall  
7   be paid by employers and employees in equal amounts at a rate de-  
8   termined by the director under subsection (3) of this section. The di-  
9   rector shall evaluate and determine on an annual basis the amount  
10   of payroll contributions, timing of payroll contributions and maximum  
11   employee contributions necessary to finance sections 1 to 17 of this  
12   2017 Act.

13       “(b) Contributions from a self-employed individual who elects cov-  
14   erage under section 13 of this 2017 Act must be equivalent to an  
15   amount determined by the director by rule.

16       “(3) The director shall set rates for the collection of payroll contri-  
17   butions consistent with subsection (2) of this section in a manner such  
18   that:

19       “(a) At the end of the period for which the rates are effective, the  
20   balance of moneys in the Family and Medical Leave Insurance Fund  
21   is an amount not less than six months’ worth of projected expendi-  
22   tures from the fund for performance of the director’s functions and  
23   duties under sections 1 to 17 of this 2017 Act; and

24       “(b) The volatility of the rates assessed is minimized.

25       “(4) The director may adjust the assessment rate, subject to the  
26   limitations in subsection (2) of this section, if the director determines  
27   that a different rate is necessary to avoid unintentional program or  
28   benefit reductions in the time period immediately following the period  
29   for which the rate is being set.

30       “(5) An employer shall remit the moneys described under subsection

1   **(2) of this section in a manner determined by the director in coordi-**  
2   **nation with the Department of Revenue.**

3   **“(6) Every employer or temporary employment agency that collects**  
4   **any amount under this section shall hold the same in trust for the**  
5   **State of Oregon and for the payment thereof to the Department of**  
6   **Revenue in the manner determined by the department by rule.**

7   **“(7) At any time an employer or temporary employment agency**  
8   **fails to remit any amount collected, the Department of Revenue may**  
9   **enforce collection by the issuance of a distress warrant for the col-**  
10   **lection of the delinquent amount and all penalties, interest and col-**  
11   **lection charges accrued thereon. The warrant shall be issued, recorded**  
12   **and proceeded upon in the same manner and shall have the same force**  
13   **and effect as is prescribed with respect to warrants for the collection**  
14   **of delinquent income taxes.**

15   **“(8)(a) In the case of an employer or temporary employment agency**  
16   **that is assessed pursuant to the provisions of ORS 305.265 (12) and**  
17   **314.407 (1), the Department of Revenue may issue a notice of liability**  
18   **to any officer, employee or member of the employer or temporary**  
19   **employment agency within three years from the time of assessment.**  
20   **Within 30 days from the date the notice of liability is mailed to the**  
21   **officer, employee or member, the officer, employee or member shall**  
22   **pay the assessment, plus penalties and interest, or advise the depart-**  
23   **ment in writing of objections to the liability and, if desired, request a**  
24   **conference. A conference shall be governed by the provisions of ORS**  
25   **305.265 pertaining to a conference requested from a notice of defi-**  
26   **ciency.**

27   **“(b) After a conference or, if no conference is requested, a deter-**  
28   **mination of the issues considering the written objections, the depart-**  
29   **ment shall mail the officer, employee or member a conference letter**  
30   **affirming, canceling or adjusting the notice of liability. Within 90 days**

1   **from the date the conference letter is mailed to the officer, employee  
2   or member, the officer, employee or member shall pay the assessment,  
3   plus penalties and interest, or appeal to the tax court in the manner  
4   provided for an appeal from a notice of assessment.**

5       **“(c) If the department does not receive payment or written ob-  
6   jection to the notice of liability within 30 days after the notice of li-  
7   ability was mailed, the notice of liability becomes final. In that event,  
8   the officer, employee or member may appeal the notice of liability to  
9   the tax court within 90 days after it became final in the manner pro-  
10   vided for an appeal from a notice of assessment.**

11      **“(9)(a) In the case of a failure to file a report on the due date,  
12   governed by the provisions of ORS 305.265 (10) and 314.400, the De-  
13   partment of Revenue, in addition to any action described in the pro-  
14   visions of ORS 305.265 (10) and 314.400, may send notices of  
15   determination and assessment to any officer, employee or member any  
16   time within three years after the assessment. The time of assessment  
17   against the officer, employee or member is 30 days after the date the  
18   notice of determination and assessment is mailed. Within 30 days from  
19   the date the notice of determination and assessment is mailed to the  
20   officer, employee or member, the officer, employee or member shall  
21   pay the assessment, plus penalties and interest, or advise the depart-  
22   ment in writing of objections to the assessment and, if desired, request  
23   a conference. A conference shall be governed by the provisions of ORS  
24   305.265 pertaining to a conference requested from a notice of defi-  
25   ciency.**

26      **“(b) After a conference or, if no conference is requested, a deter-  
27   mination of the issues considering the written objections, the depart-  
28   ment shall mail the officer, employee or member a conference letter  
29   affirming, canceling or adjusting the notice of determination and as-  
30   essment. Within 90 days from the date the conference letter is mailed**

1 to the officer, employee or member, the officer, employee or member  
2 shall pay the assessment, plus penalties and interest, or appeal in the  
3 manner provided for an appeal from a notice of assessment.

4 “(c) If the department does not receive payment or written ob-  
5 jection to the notice of determination and assessment within 30 days  
6 after the notice of determination and assessment was mailed, the no-  
7 tice of determination and assessment becomes final. In that event, the  
8 officer, employee or member may appeal the notice of determination  
9 and assessment to the tax court within 90 days after it became final  
10 in the manner provided for an appeal from a notice of assessment.

11 “(10)(a) More than one officer or employee of a corporation may be  
12 held jointly and severally liable for payment of unpaid contributions.

13 “(b) Notwithstanding the confidentiality provisions of section 11 of  
14 this 2017 Act, if more than one officer or employee of a corporation  
15 may be held jointly and severally liable for payment of unpaid contri-  
16 butions, the Department of Revenue may require any or all of the of-  
17 ficers, members or employees who may be held liable to appear before  
18 the department for a joint determination of liability. The department  
19 shall notify each officer, member or employee of the time and place  
20 set for the determination of liability.

21 “(c) Each person notified of a joint determination under this sub-  
22 section shall appear and present such information as is necessary to  
23 establish that person’s liability or nonliability for payment of unpaid  
24 contributions to the department. If a person who was notified fails to  
25 appear, the department shall make its determination on the basis of  
26 all the information and evidence presented. The department’s deter-  
27 mination is binding on all persons notified and required to appear un-  
28 der this subsection.

29 “(d)(A) If an appeal is taken to the Oregon Tax Court by any person  
30 determined to be liable for unpaid contributions under this subsection,

1    each person required to appear before the department under this sub-  
2    section shall be impleaded by the plaintiff. The department may  
3    implead any officer, employee or member who may be held jointly and  
4    severally liable for the payment of unpaid contributions. Each person  
5    impleaded under this paragraph shall be made a party to the action  
6    before the tax court and shall make available to the tax court the in-  
7    formation that was presented before the department, as well as other  
8    information that may be presented to the court.

9        “(B) The court may determine that one or more persons impleaded  
10   under this paragraph are liable for unpaid contributions without re-  
11   gard to any earlier determination by the department that an impleaded  
12   person was not liable for unpaid contributions.

13        “(C) If a person required to appear before the court under this  
14   subsection fails or refuses to appear or bring such information in part  
15   or in whole, or is outside the jurisdiction of the tax court, the court  
16   shall make its determination on the basis of all the evidence intro-  
17   duced. Notwithstanding the confidentiality provisions of section 11 of  
18   this 2017 Act, the evidence constitutes a public record and shall be  
19   available to the parties and the court. The determination of the tax  
20   court is binding on all persons made parties to the action under this  
21   subsection.

22        “(e) This section may not be construed to preclude a determination  
23   by the department or the Oregon Tax Court that more than one offi-  
24   cer, employee or member are jointly and severally liable for unpaid  
25   contributions.

26        “(11)(a) Every employer required to make contributions under this  
27   section shall make and file a report of wages earned and payroll con-  
28   tributions and employer contributions made under this section upon  
29   a combined report form prescribed by the Department of Revenue.

30        “(b) The report shall be filed with the department at the times and

1   in the manner prescribed in ORS 316.168 and 316.197.

2       “(c) The department may assess a penalty in an amount not to ex-  
3       ceed \$1,000 for an employer’s failure to comply with this subsection.

4       “(12) Moneys collected under this section shall be deposited in the  
5       Family and Medical Leave Insurance Fund for the purpose of carrying  
6       out the functions and duties of the director under sections 1 to 17 of  
7       this 2017 Act.

8       “(13) A temporary employment agency that provides employees on  
9       a temporary basis to its customers is responsible for collection of  
10      payroll contributions under this section.

11      “(14)(a) If an employer quits business or sells out, exchanges or  
12      otherwise disposes of the business or stock of goods, any payroll con-  
13      tribution payable under this section is immediately due and payable,  
14      and the employer shall, within 10 calendar days, pay the payroll con-  
15      tributions due. Any person who becomes a successor to the business  
16      is liable for the full amount of the contribution.

17      “(b) The director shall adopt rules for compliance with sections 1  
18      to 17 of this 2017 Act related to payroll contributions from an  
19      employer’s successor in interest.

20      “**SECTION 6. Benefits for reduced leave.** (1) A covered individual  
21      may use family and medical leave insurance benefits for leave taken  
22      in increments of less than 40 hours, provided that:

23       “(a) Leave is taken in increments no shorter than eight hours;

24       “(b) Leave that is taken in an increment of less than 40 hours is  
25      predictable on a weekly basis and verified by the covered individual  
26      under section 2 of this 2017 Act;

27       “(c) Benefit amounts, as calculated under section 4 of this 2017 Act,  
28      are prorated to increments of no less than eight hours; and

29       “(d) Benefits are payable in increments of 40 hours.

30       “(2) An eligible employee shall make a reasonable effort to schedule

1 paid family and medical leave under this section so as not to unduly  
2 disrupt the operations of the employer. The eligible employee shall  
3 provide the employer with prior notice of the schedule on which the  
4 eligible employee will be taking the leave, to the extent practicable.

5       “(3) An employer or self-employed individual shall notify the Di-  
6 rector of the Department of Consumer and Business Services, upon  
7 request, of the actual amount of leave taken each week for the pur-  
8 pose of verifying the amount of benefits that are payable to the cov-  
9 ered individual.

10      “(4) Paid family and medical leave taken under this section shall  
11 not result in a reduction of the total amount of leave to which a cov-  
12 ered individual is entitled beyond the amount of leave actually taken.

13      “(5) Nothing in this section shall be construed to entitle a covered  
14 individual to a benefit amount that is more than required under sec-  
15 tion 3 of this 2017 Act.

16      “**SECTION 7. Notice to employer.** (1) Except as provided in sub-  
17 section (2) of this section, an employer may require an eligible em-  
18 ployee to give the employer written notice at least 30 days before  
19 commencing leave. The employer may require the employee to include  
20 an explanation of the need for the leave in the notice.

21      “(2) An eligible employee may commence taking leave without 30  
22 days’ advance notice if the leave is not foreseeable, including under  
23 the following circumstances:

24       “(a) An unexpected serious health condition of the employee or a  
25 family member of the employee;

26       “(b) An unexpected illness, injury or condition of a child of the  
27 employee that requires home care;

28       “(c) A premature birth, unexpected adoption or unexpected foster  
29 placement by or with the employee; or

30       “(d) The death of a family member of the employee.

1       **“(3) If an employee commences leave without advance notice under**  
2       **subsection (2) of this section:**

3       **“(a) The employee shall give notice to the employer as soon as**  
4       **practicable, but in no event later than 45 days after the first date of**  
5       **illness or injury, in a manner determined by the Director of the De-**  
6       **partment of Consumer and Business Services; and**

7       **“(b) The employee shall receive family and medical leave insurance**  
8       **benefits for the period that begins on the first date of illness or injury.**

9       **“(4) The notice described in subsection (3) of this section may be**  
10      **given by a family member, health care provider or authorized repre-**  
11      **sentative on behalf of the employee taking the leave.**

12      **“SECTION 8. Employment protection; retaliation prohibited.** (1)  
13      After returning to work, an eligible employee is entitled to be restored  
14      to the position of employment held by the employee when the leave  
15      commenced if that position still exists, without regard to whether the  
16      employer filled the position with a replacement worker during the pe-  
17      riod of leave taken under section 3 of this 2017 Act. If the position held  
18      by the employee at the time leave commenced no longer exists, the  
19      employee is entitled to be restored to any available equivalent position  
20      with equivalent employment benefits, pay and other terms and condi-  
21      tions of employment.

22      **“(2) During any leave taken pursuant to section 3 of this 2017 Act,**  
23      **the employer shall maintain any health care benefits the eligible em-**  
24      **ployee had prior to taking such leave for the duration of the leave as**  
25      **if the employee had continued in employment continuously from the**  
26      **date the employee commenced the leave until the date the family and**  
27      **medical leave insurance benefits terminate.**

28      **“(3) This section does not entitle any employee to:**

29      **“(a) Any accrual of seniority or employment benefits during a pe-**  
30      **riod of leave taken under section 3 of this 2017 Act; or**

1       **(b) Any right, benefit or position of employment other than the**  
2       **rights, benefits and position that the employee would have been enti-**  
3       **tled to had the employee not taken the leave under section 3 of this**  
4       **2017 Act.**

5       **“(4) During a period of an eligible employee’s using family and**  
6       **medical leave insurance benefits, the Director of the Department of**  
7       **Consumer and Business Services or an employer may require the em-**  
8       **ployee or a family member, health care provider or authorized repre-**  
9       **sentative of the employee to report periodically to the director or the**  
10       **employer on the employee’s status and on the employee’s intention to**  
11       **return to work.**

12       **“(5) It is an unlawful practice for a person to:**

13       **“(a) Violate subsections (1) to (4) of this section;**

14       **“(b) Interfere with a right to which a covered individual is entitled**  
15       **under sections 1 to 17 of this 2017 Act; or**

16       **“(c) Retaliate or in any way discriminate against an individual with**  
17       **respect to hire or tenure or any other term or condition of employ-**  
18       **ment because the individual has inquired about the provisions of**  
19       **sections 1 to 17 of this 2017 Act, filed an application for coverage or**  
20       **invoked any provision of sections 1 to 17 of this 2017 Act.**

21       **“SECTION 9. Coordination of benefits. (1) For employees eligible for**  
22       **leave under ORS 659A.150 to 659A.186, leave taken under sections 1 to**  
23       **17 of this 2017 Act shall run concurrently with leave under ORS**  
24       **659A.150 to 659A.186.**

25       **“(2)(a) Sections 1 to 17 of this 2017 Act do not diminish an**  
26       **employer’s obligation to comply with a collective bargaining agree-**  
27       **ment, an employer policy or local, state or federal law.**

28       **“(b) An eligible employee’s right to family and medical leave in-**  
29       **surance benefits under sections 1 to 17 of this 2017 Act may not be**  
30       **diminished by a collective bargaining agreement entered into or re-**

1 newed, or an employee policy adopted or retained, after the effective  
2 date of this 2017 Act.

3       “(c) The eligibility of an employee for benefits is not affected by a  
4 strike or lockout at the store, factory, establishment or other premises  
5 at which the employee is or was last employed.

6       “(d) An employee who has received benefits under sections 1 to 17  
7 of this 2017 Act may not lose any other employment benefits, including  
8 seniority or pension rights, accrued before the date that leave com-  
9 menced. However, this section does not entitle an employee to accrue  
10 employment benefits during a period of leave or to a right, benefit or  
11 position of employment other than a right, benefit or position to which  
12 the employee would have been entitled had the employee not taken  
13 leave.

14       “(3)(a) An employer may not require an employee to use paid sick  
15 time, paid vacation time or any other paid time off before or as a  
16 condition of using family and medical leave insurance benefits.

17       “(b) An eligible employee is entitled to use any paid accrued sick  
18 time or other paid leave without a reduction in paid family and med-  
19 ical leave insurance benefits.

20       “(4) Family and medical leave taken under sections 1 to 17 of this  
21 2017 Act does not include leave taken by an eligible employee who is  
22 unable to work because of a disabling compensable injury, as defined  
23 in ORS 656.005, unless the employee has refused a suitable offer of  
24 light duty or modified employment as defined by the Director of the  
25 Department of Consumer and Business Services.

26       “(5) An employer’s failure to provide information to the Department  
27 of Consumer and Business Services upon written request by the di-  
28 rector or the director’s authorized representative to assist with the  
29 processing of a claim under sections 1 to 17 of this 2017 Act shall  
30 constitute interference under section 8 of this 2017 Act.

1       **“SECTION 10. Notice to employees.** An employer shall display and  
2 provide written notice of employee rights under sections 1 to 17 of this  
3 2017 Act in a manner determined by the Director of the Department  
4 of Consumer and Business Services. Such notice shall include:

5       “(1) The employee’s right to apply for and receive family and med-  
6 ical leave insurance benefits under sections 1 to 17 of this 2017 Act and  
7 the terms under which the benefits may be used;

8       “(2) The criteria used to determine eligibility for and the amount  
9 of family and medical leave insurance benefits;

10      “(3) The procedure for filing a claim for benefits;

11      “(4) The right to job protection and benefits continuation under  
12 section 8 of this 2017 Act;

13      “(5) That discrimination and retaliatory personnel actions against  
14 an individual for requesting, applying for or using family and medical  
15 leave insurance benefits is prohibited under section 8 of this 2017 Act;  
16 and

17      “(6) That the employee has a right to file a complaint for violation  
18 of section 8 of this 2017 Act.

19      **“SECTION 11. Enforcement.** (1) Notwithstanding ORS 183.635, the  
20 Director of the Department of Consumer and Business Services shall  
21 establish a system for enforcement and appeal of contested cases in-  
22 volving family and medical leave insurance benefit claims under ORS  
23 chapter 183. In establishing the system, the director may utilize any  
24 and all procedures and appeals mechanisms.

25      “(2) The director shall implement procedures to ensure  
26 confidentiality of all information related to any claims filed or appeals  
27 taken to the maximum extent permitted by applicable laws.

28      “(3) All information in the records of the Department of Consumer  
29 and Business Services pertaining to the administration of sections 1  
30 to 17 of this 2017 Act:

1       **“(a) Is confidential and for the exclusive use and information of the**  
2 **director in administering sections 1 to 17 of this 2017 Act;**

3       **“(b) May not be used in any court action or in any proceeding**  
4 **Pending in the court unless the director or the state is a party to the**  
5 **action or proceeding or unless the action or proceeding concerns the**  
6 **establishment, enforcement or modification of a support obligation**  
7 **and support services are being provided by the Division of Child Sup-**  
8 **port or the district attorney pursuant to ORS 25.080; and**

9       **“(c) Is exempt from disclosure under ORS 192.410 to 192.505.**

10      **“(4) At the discretion of the director and subject to an interagency**  
11 **agreement, the director may disclose information to a public official**  
12 **in the performance of the public official’s official duties administering**  
13 **or enforcing laws within the public official’s authority and to an agent**  
14 **or contractor of a public official. The public official shall agree to as-**  
15 **sume responsibility for misuse of the information by the official’s**  
16 **agent or contractor.**

17      **“SECTION 12. Noncompliance and erroneous payments.** (1) An em-  
18 ployer or individual acting on behalf of an employer may not willfully  
19 make or cause to be made false statements or willfully fail to report  
20 a material fact regarding the claim of an eligible employee or regard-  
21 ing an employee’s eligibility for benefits under sections 1 to 17 of this  
22 2017 Act.

23      **“(2) The Director of the Department of Consumer and Business**  
24 **Services may assess a civil penalty in an amount not to exceed \$1,000**  
25 **against an employer for each occurrence that violates subsection (1)**  
26 **of this section.**

27      **“(3)(a) An eligible employee is disqualified from family and medical**  
28 **leave insurance benefits for one year if the employee is determined by**  
29 **the director to have willfully made a false statement or willfully failed**  
30 **to report a material fact to obtain benefits under sections 1 to 17 of**

1 this 2017 Act.

2       “(b) A self-employed individual is disqualified from family and  
3 medical leave insurance benefits for three years if the individual is  
4 determined by the director to have willfully made a false statement  
5 or willfully failed to report a material fact to obtain benefits under  
6 sections 1 to 17 of this 2017 Act.

7       “(4) If family and medical leave insurance benefits are paid erro-  
8 neously or as a result of willful misrepresentation, or if a claim for  
9 family and medical leave insurance benefits is rejected after benefits  
10 are paid except for matters that have been timely appealed, the di-  
11 rector:

12       “(a) May seek repayment of benefits from an eligible employee upon  
13 issuance of a final order in a manner provided by rule;

14       “(b) May seek repayment of benefits from a self-employed individual  
15 and may also seek payment of a penalty of up to 100 percent of the  
16 amount of benefits that the self-employed individual erroneously re-  
17 ceived upon issuance of a final order, in a manner provided by rule;  
18 and

19       “(c) Shall exercise the director’s discretion to waive, in whole or in  
20 part, the amount of any such payments where the recovery would be  
21 against equity, good conscience or administrative efficiency.

22       **“SECTION 13. Elective coverage.** (1) A self-employed individual may  
23 elect coverage under sections 1 to 17 of this 2017 Act. The self-  
24 employed individual must file a notice of election in writing with the  
25 Director of the Department of Consumer and Business Services, as  
26 required by the director, and contribute to the Family and Medical  
27 Leave Insurance Fund in a manner determined by the director. The  
28 election becomes effective on the date of filing the notice. The self-  
29 employed individual must agree to supply any information concerning  
30 income that the director deems necessary.

1       “(2) A self-employed individual who has elected coverage may  
2 withdraw after three consecutive years of coverage, or at times as the  
3 director may prescribe by rule, including at a change in the self-  
4 employed individual’s employment status, by filing written notice with  
5 the director. The withdrawal may not take effect sooner than 30 days  
6 after filing the notice.

7       “(3) Notwithstanding subsection (2) of this section, a self-employed  
8 individual who has elected coverage may terminate coverage on the  
9 date of filing a voluntary or involuntary bankruptcy petition. The  
10 self-employed individual’s elective coverage terminates on the date the  
11 self-employed individual provides to the director documentation to  
12 support the self-employed individual’s filing of the bankruptcy petition  
13 and files written notice with the director. At any time thereafter, the  
14 self-employed individual may reelect coverage under this section.

15      “**SECTION 14. Administration.** (1) The Director of the Department  
16 of Consumer and Business Services shall adopt rules for the estab-  
17 lishment and administration of sections 1 to 17 of this 2017 Act.

18      “(2) The director may enter into interagency agreements to estab-  
19 lish and administer sections 1 to 17 of this 2017 Act.

20      “(3) All agencies of state government, as defined in ORS 174.111, are  
21 directed to assist the Department of Consumer and Business Services  
22 upon request in the performance of its duties under sections 1 to 17  
23 of this 2017 Act, including outreach, technical assistance and training.

24      “**SECTION 15. Family and Medical Leave Insurance Fund.** (1) The  
25 Family and Medical Leave Insurance Fund is established in the State  
26 Treasury, separate and distinct from the General Fund. The Family  
27 and Medical Leave Insurance Fund consists of moneys deposited in the  
28 fund under sections 1 to 17 of this 2017 Act and may include fees,  
29 revenues or other income deposited in the fund.

30      “(2) Interest earned by the fund shall be credited to the fund. All

1 moneys in the fund are continuously appropriated to the Director of  
2 the Department of Consumer and Business Services for the purposes  
3 of carrying out sections 1 to 17 of this 2017 Act, including repayment  
4 of any funds used for start-up costs.

5 “(3) Notwithstanding any other provision of sections 1 to 17 of this  
6 2017 Act, if the director determines at any time that there are insuf-  
7 ficient moneys in the fund to pay the expenses of programs for which  
8 expenditure of the fund is authorized, the director may reduce the  
9 level of family and medical leave insurance benefits payable accord-  
10 ingly.

11 “(4) Whenever, in the judgment of the director, there is in the fund  
12 an amount of moneys in excess of the amount sufficient to meet the  
13 current expenditures for a self-sustaining insurance account, the di-  
14 rector shall have full power to invest, reinvest, manage, contract, sell  
15 or exchange investments acquired with such excess funds to reduce  
16 contribution rates.

17 “(5) Contributions under section 5 of this 2017 Act that are intended  
18 for the fund and moneys in the fund may not be subject to execution,  
19 attachment or any other process or to the operation of any bankruptcy  
20 or insolvency law.

21 “(6) Expenditures from the fund may not be used for purposes other  
22 than the family and medical leave insurance program.

23 “**SECTION 16. Reports.** (1) The Director of the Department of Con-  
24 sumer and Business Services shall submit a report in the manner  
25 provided by ORS 192.245, and may include recommendations for legis-  
26 lation, to the interim committees of the Legislative Assembly related  
27 to workforce or business and labor no later than January 1, 2020, and  
28 January 1 of every even-numbered year thereafter.

29 “(2) The Department of Consumer and Business Services shall con-  
30 duct a study to determine how to implement the provisions of sections

1   **1 to 17 of this 2017 Act, as those provisions pertain to self-employed**  
2   **individuals who elect coverage under section 13 of this 2017 Act. The**  
3   **study shall include procedures for determining the amount of payroll**  
4   **contributions that a self-employed individual must make and the**  
5   **amount of family medical leave insurance benefits that a self-**  
6   **employed individual shall receive. The director shall include recom-**  
7   **mendations based on that study in the report described in subsection**  
8   **(1) of this section.**

9       **“(3) The director shall include in reports submitted after January**  
10   **1, 2022, analysis of data regarding program participation, reasons for**  
11   **leave, gender of covered individuals taking leave, contribution rates,**  
12   **balances in the Family and Medical Leave Insurance Fund, outreach**  
13   **efforts and, if applicable, family members for whom leave was taken**  
14   **to provide care.**

15       **“SECTION 17. Sharing technology. The Director of the Department**  
16   **of Consumer and Business Services is encouraged to use state data**  
17   **collection and technology to the extent possible and to integrate the**  
18   **program with existing state policies.**

19       **“SECTION 18. ORS 659A.156 is amended to read:**

20       **“659A.156. (1) All employees of a covered employer are eligible to take**  
21   **leave for one of the purposes specified in ORS 659A.159 (1)(b) to (e) except:**

22       **“(a) An employee who was employed by the covered employer for fewer**  
23   **than [180] 90 days immediately before the date on which the family leave**  
24   **would commence.**

25       **“(b) An employee who worked an average of fewer than 25 hours per week**  
26   **for the covered employer during the [180] 90 days immediately preceding the**  
27   **date on which the family leave would commence.**

28       **“(2) All employees of a covered employer are eligible to take leave for the**  
29   **purpose specified in ORS 659A.159 (1)(a) except an employee who was em-**  
30   **ployed by the covered employer for fewer than [180] 90 days immediately**

1 before the date on which the family leave would commence.

2       **“SECTION 19.** ORS 659A.885, as amended by section 5, chapter 73,  
3 Oregon Laws 2016, is amended to read:

4       “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-  
5 tice specified in subsection (2) of this section may file a civil action in cir-  
6 cuit court. In any action under this subsection, the court may order  
7 injunctive relief and any other equitable relief that may be appropriate, in-  
8 cluding but not limited to reinstatement or the hiring of employees with or  
9 without back pay. A court may order back pay in an action under this sub-  
10 section only for the two-year period immediately preceding the filing of a  
11 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-  
12 bor and Industries, or if a complaint was not filed before the action was  
13 commenced, the two-year period immediately preceding the filing of the  
14 action. In any action under this subsection, the court may allow the pre-  
15 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-  
16 cept as provided in subsection (3) of this section:

17       “(a) The judge shall determine the facts in an action under this sub-  
18 section; and

19       “(b) Upon any appeal of a judgment in an action under this subsection,  
20 the appellate court shall review the judgment pursuant to the standard es-  
21 tablished by ORS 19.415 (3).

22       “(2) An action may be brought under subsection (1) of this section alleg-  
23 ing a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237  
24 (2), 475B.233, 476.574, 652.355, 653.060, 653.601 to 653.661, 659.852, 659A.030,  
25 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103  
26 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218,  
27 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277,  
28 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320,  
29 659A.355, 659A.421, 653.547 or 653.549.

30       “(3) In any action under subsection (1) of this section alleging a violation

1 of ORS 25.337, 25.424, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,  
2 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,  
3 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.421, 653.547 or  
4 **653.549 or section 8 of this 2017 Act:**

5       “(a) The court may award, in addition to the relief authorized under  
6 subsection (1) of this section, compensatory damages or \$200, whichever is  
7 greater, and punitive damages;

8       “(b) At the request of any party, the action shall be tried to a jury;

9       “(c) Upon appeal of any judgment finding a violation, the appellate court  
10 shall review the judgment pursuant to the standard established by ORS  
11 19.415 (1); and

12       “(d) Any attorney fee agreement shall be subject to approval by the court.

13       “(4) In any action under subsection (1) of this section alleging a violation  
14 of ORS 652.355 or 653.060, the court may award, in addition to the relief  
15 authorized under subsection (1) of this section, compensatory damages or  
16 \$200, whichever is greater.

17       “(5) In any action under subsection (1) of this section alleging a violation  
18 of ORS 171.120, 476.574 or 659A.218, the court may award, in addition to the  
19 relief authorized under subsection (1) of this section, compensatory damages  
20 or \$250, whichever is greater.

21       “(6) In any action under subsection (1) of this section alleging a violation  
22 of ORS 10.090 or 10.092, the court may award, in addition to the relief au-  
23 thorized under subsection (1) of this section, a civil penalty in the amount  
24 of \$720.

25       “(7) Any individual against whom any distinction, discrimination or re-  
26 striction on account of race, color, religion, sex, sexual orientation, national  
27 origin, marital status or age, if the individual is 18 years of age or older,  
28 has been made by any place of public accommodation, as defined in ORS  
29 659A.400, by any employee or person acting on behalf of the place or by any  
30 person aiding or abetting the place or person in violation of ORS 659A.406

1 may bring an action against the operator or manager of the place, the em-  
2 ployee or person acting on behalf of the place or the aider or abettor of the  
3 place or person. Notwithstanding subsection (1) of this section, in an action  
4 under this subsection:

5       “(a) The court may award, in addition to the relief authorized under  
6 subsection (1) of this section, compensatory and punitive damages;

7       “(b) The operator or manager of the place of public accommodation, the  
8 employee or person acting on behalf of the place, and any aider or abettor  
9 shall be jointly and severally liable for all damages awarded in the action;

10      “(c) At the request of any party, the action shall be tried to a jury;

11      “(d) The court shall award reasonable attorney fees to a prevailing  
12 plaintiff;

13      “(e) The court may award reasonable attorney fees and expert witness fees  
14 incurred by a defendant who prevails only if the court determines that the  
15 plaintiff had no objectively reasonable basis for asserting a claim or no  
16 reasonable basis for appealing an adverse decision of a trial court; and

17      “(f) Upon any appeal of a judgment under this subsection, the appellate  
18 court shall review the judgment pursuant to the standard established by ORS  
19 19.415 (1).

20      “(8) When the commissioner or the Attorney General has reasonable cause  
21 to believe that a person or group of persons is engaged in a pattern or  
22 practice of resistance to the rights protected by ORS 659A.145 or 659A.421  
23 or federal housing law, or that a group of persons has been denied any of the  
24 rights protected by ORS 659A.145 or 659A.421 or federal housing law, the  
25 commissioner or the Attorney General may file a civil action on behalf of  
26 the aggrieved persons in the same manner as a person or group of persons  
27 may file a civil action under this section. In a civil action filed under this  
28 subsection, the court may assess against the respondent, in addition to the  
29 relief authorized under subsections (1) and (3) of this section, a civil penalty:

30       “(a) In an amount not exceeding \$50,000 for a first violation; and

1       “(b) In an amount not exceeding \$100,000 for any subsequent violation.  
2       “(9) In any action under subsection (1) of this section alleging a violation  
3       of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing  
4       law, when the commissioner is pursuing the action on behalf of an aggrieved  
5       complainant, the court shall award reasonable attorney fees to the commis-  
6       sioner if the commissioner prevails in the action. The court may award rea-  
7       sonable attorney fees and expert witness fees incurred by a defendant that  
8       prevails in the action if the court determines that the commissioner had no  
9       objectively reasonable basis for asserting the claim or for appealing an ad-  
10      verse decision of the trial court.

11      “(10) In an action under subsection (1) or (8) of this section alleging a  
12      violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-  
13      ing law:

14       “(a) ‘Aggrieved person’ includes a person who believes that the person:  
15           “(A) Has been injured by an unlawful practice or discriminatory housing  
16          practice; or  
17           “(B) Will be injured by an unlawful practice or discriminatory housing  
18          practice that is about to occur.

19       “(b) An aggrieved person in regard to issues to be determined in an action  
20      may intervene as of right in the action. The Attorney General may intervene  
21      in the action if the Attorney General certifies that the case is of general  
22      public importance. The court may allow an intervenor prevailing party costs  
23      and reasonable attorney fees at trial and on appeal.

24      **“SECTION 20. Operative date. (1)(a) Sections 1 and 3 to 12 of this**  
25      **2017 Act and the amendments to ORS 659A.156 and 659A.885 by sections**  
26      **18 and 19 of this 2017 Act become operative on January 1, 2019.**

27      **“(b) Sections 2 and 13 of this 2017 Act become operative on January**  
28      **1, 2021.**

29      **“(2) The Department of Consumer and Business Services, the Bu-**  
30      **reau of Labor and Industries, the Employment Department and the**

1   **Department of Revenue may take any action before the operative date**  
2   **specified in subsection (1) of this section that is necessary to enable**  
3   **the bureau and departments to exercise, on and after the operative**  
4   **date specified in subsection (1) of this section, the duties, functions**  
5   **and powers conferred on the bureau and departments by sections 1 to**  
6   **17 of this 2017 Act and the amendments to ORS 659A.156 and 659A.885**  
7   **by sections 18 and 19 of this 2017 Act.**

8    **“SECTION 21. Captions.** The section captions used in this 2017 Act  
9    are provided only for the convenience of the reader and do not become  
10   part of the statutory law of this state or express any legislative intent  
11   in the enactment of this 2017 Act.

12    **“SECTION 22. Effective date.** This 2017 Act takes effect on the 91st  
13   day after the date on which the 2017 regular session of the Seventy-  
14   ninth Legislative Assembly adjourns sine die.”.

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