# HB 3031 Issue Brief
# Family & Medical Leave Insurance (FAMLI) Equity Act

**Overview:**
Whether it's the birth of a child, the serious illness of a spouse, or the end-of-life for a parent -- we all need time to care for our families. Caring for a family is important work, and shouldn't mean losing wages or compromising our economic security. Our workplace and public policies have not kept pace with the growing number of families with all available adults in the workforce.

The United States is one of only a few nations in the world that does not provide paid maternity leave to working mothers, and one of only a handful of economically advanced nations that does not guarantee the right to paid leave for fathers or workers who provide care for seriously ill family members. Six states and Washington DC have already passed or established some form of paid parental or family leave: Washington, California, New Jersey, Rhode Island, Massachusetts and New York. In California and New Jersey, two states with long-standing paid family medical leave programs, the cost has been minimal — less than 1% of wages. Washington is in the process of implementing their program now.

The overwhelming majority of voters, regardless of age, party, region, or parental status, support a comprehensive paid family and medical leave policy that covers *all* workers, whether they're full-time, part-time, high wage, or minimum wage.

**Who is Covered:**
HB 3031 creates a paid family and medical leave insurance program that ensures every working Oregonian will have paid time away from work to welcome a new child, to recover from a serious illness or to care for a loved one recovering from a serious illness. Paid leave insurance benefits would also be available for military leaves provided in FMLA and the Oregon Military Family Leave Act. Coverage will be provided to *all* employees, regardless of employer size, industry or sector, and for part-time workers.

Workers will be able to take up to 12 weeks of paid leave to recover from a serious illness, to care for a seriously ill family member, or for military leaves. An additional 14 weeks of paid leave will be available to welcome a new child via birth, foster care, or adoption. In the case of a serious health condition related to pregnancy, an additional 6 weeks of paid leave will be available. This ensures that pregnant people with complicated deliveries aren't penalized for taking needed time and lose time for parental bonding.

The proposal also includes a definition of family member that better captures the nature of today's family structures and relationships. It would include:

- An individual who is biologically related to the employee;
- An individual who lives with the employee;
- An individual for whom the employee is responsible for providing unpaid care, accessing or managing medical treatment or support with the activities of daily living;[1] or

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[1] HB 3031 needs an amendment to specify *unpaid* care and to change "...related to [*an*] **the** employee…" in Section 1(12)(a)-(f)

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- An individual whose close association with the employee is the equivalent of a family member, as shown by a nexus of factors that demonstrate either unilateral dependence or mutual interdependence. For example, this would include -- but not be limited to -- shared bank accounts, common ownership of property, or if an individual is authorized to make healthcare or legal decisions on behalf of the employee.

All employees working in Oregon will be covered as long as they are working, contributing to the insurance fund, and have earned at least $300 in wages in the base year.[2] Oregonians who are self-employed and tribal governments would be able to opt in to the insurance fund.

**How it works:**
This FAMLI program would be managed by Oregon's Department of Consumer & Business Services.[3] Employees and employers will each contribute a maximum of 0.5% (half of one percent) of an employee's wages or payroll through a regular payroll deduction, collected by the Oregon Department of Revenue. The actual cost is anticipated to be lower than the 0.5% statutory cap and the bill gives the agency flexibility to adjust the contribution within a range as necessary to maintain fund solvency, appropriate reserves and contribution rates. When an employee has a qualifying reason for leave they would submit a claim to DCBS¹ and receive partial wage replacement for their time away from work directly from the state insurance fund, much like workers compensation and unemployment insurance. DCBS¹ will verify individual employee eligibility with appropriate medical or other verification and determine the benefit amount. This process removes the administrative burden of determining eligibility and length of leave from individual businesses and provides an operating structure based on other insurance programs that work. In fact, 72% of voters support a paid family and medical leave insurance program that is funded through a 1% payroll contribution (paid by both workers and employers) and provides partial income replacement benefits. Paid family and medical leave would run concurrent with OFLA and FMLA leaves whenever possible.

The program also allows for intermittent leave for those with caregiving responsibilities or ongoing regular medical care needs. Paid leave in these instances would only be available in full-day 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 two days each week and has siblings who provide care on the other days.

Employees are required to provide 30 days notice to an employer when an employee has a foreseeable need of paid leave benefits. If the need for leave is not foreseeable, like an unexpected injury/accident, notice should be given as soon as is practicable.

The insurance benefit will pay an amount based on an individual's own earnings and Oregon's Average Weekly Wage (AWW), which is currently $976 a week. The weekly benefit amount will be capped at 130% of AWW for all workers. The program will draw on Oregon Employment Department data on individual wages and income. An individual's own earnings would be calculated in the same way

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[2] There will also be an amendment to align annual eligibility thresholds to UI eligibility thresholds in 657.150
[3] Time to Care is working on an amendment that will change the administering agency from DCBS to Employment

unemployment insurance currently calculates wages for unemployment insurance benefits. A few examples of how the wage replacement formula would work at various income levels:

100% wage replacement up to 65% of AWW, 90% wage replacement 66-100% up to AWW
90% of AWW + 50% of additional weekly wages up to $1,268.80/week cap
(cap adjusted annually for inflation)

| Hourly Wage | Weekly wage (40 hrs/week, before deductions) | Annual wage (52 weeks) | Employer Contribution/week @ 0.5% | Employee Contribution/week @ 0.5% | Annual Contribution (for each employer & employee) | Benefit/week of leave | Benefit % of regular wages |
|---|---|---|---|---|---|---|---|
| $11.50 | $460.00 | $23,920.00 | $2.30 | $2.30 | $119.60 | $460.00 | 100.00% |
| $15.00 | $600.00 | $31,200.00 | $3.00 | $3.00 | $156.00 | $600.00 | 100.00% |
| $20.00 | $800.00 | $41,600.00 | $4.00 | $4.00 | $208.00 | $720.00 | 90.00% |
| $25.00 | $1,000.00 | $52,000.00 | $5.00 | $5.00 | $260.00 | $868.81 | 86.88% |
| $30.00 | $1,200.00 | $62,400.00 | $6.00 | $6.00 | $312.00 | $968.81 | 80.73% |
| $35.00 | $1,400.00 | $72,800.00 | $7.00 | $7.00 | $364.00 | $1,068.81 | 76.34% |
| $37.50 | $1,500.00 | $78,000.00 | $7.50 | $7.50 | $390.00 | $1,118.81 | 74.59% |
| $40.00 | $1,600.00 | $83,200.00 | $8.00 | $8.00 | $416.00 | $1,168.81 | 73.05% |
| $50.00 | $2,000.00 | $104,000.00 | $10.00 | $10.00 | $520.00 | $1,268.80 | 63.44% |
| $60.00 | $2,400.00 | $124,800.00 | $12.00 | $12.00 | $624.00 | $1,268.80 | 52.87% |

Based on Dec 2018 Oregon average weekly wage of $976

Low wage workers, employees earning no more than about $634 a week or 65%[4] of AWW,will receive 100% wage replacement. Individuals earning between 66% and 100% of AWW would receive 90% of their salary while on leave. Employees earning more than the AWW would receive 90% of the AWW plus 50% of their additional weekly wages up to a cap of $1,268.80 per week (130% of AWW in 2018). The wage replacement formula ensures that every worker, including minimum wage and low income workers, are able to take the time they need without sacrificing their economic security.

Appeals of coverage determinations, payroll reporting and withholdings will be handled by the Office of Administrative hearings. Either an employer or an employee can appeal a decision made by the administering agency.

**Employment Protections:**
The FAMLI Act offers basic employment protections so that no one can be fired or retaliated against when they welcome a new child to their home or attend to their own or a family member's serious health condition.  Consistent with existing Oregon laws:

- Every employee will be entitled to return to their position of employment, regardless of whether their position was filled with a temporary employee while they were on leave.
- If the position held by the employee at the time the leave began no longer exists, the employee is entitled to an available equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

[4] This number to be filled in by amendment. HB 3031 is currently blank related to what percentage of AWW will merit 100% wage replacement.

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- Employees will retain access to employer provided health care benefits (including any required employee contribution) through the duration of their leave.
- Just like with paid sick days, employees who separate employment and return to work for the same employer within 180 days--like teachers or school bus drivers--will not have to restart the clock for employment protections.

Employment protections would be enforced by the Bureau of Labor and Industries and will available to workers after 90 days of employment with new current employer. HB 3031 also drops the OFLA waiting period to 90 days to enable those leave to run concurrently in most instances. Insurance benefits do not require this 90 day waiting period.

**Timeline for Implementation:**
Agencies will begin preparations to administer the fund almost immediately after passage, but will not be able to collect the payroll assessment until January 1, 2021. This will give them time to complete rulemaking and prepare to administer the program.

These contributions will be collected for one to two years and the program will begin administering benefits no later than January 1, 2023. If DCBS[1] determines the fund is sufficient to begin administering benefits sooner, they are permitted to do so.

**It's time for Oregon to have paid family and medical leave:**
At some point, almost every Oregonian will need to take time away from work to deal with a family or medical issue, whether it's to welcome a new child, aid a loved one with a serious illness or injury, or to get care for themselves. These events happen to all of us, but only 15% of American workers have access to paid family and medical leave through their employer, and fewer than 40% have access to medical leave through job-provided, short-term disability insurance.

It's time to level the playing field so that all Oregon workers can care for their families without risking their economic security. It's time for Oregon to have paid family and medical leave.

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