

# House Bill 2005

Sponsored by Representative WILLIAMSON, Senator TAYLOR; Representative BARKER

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates family and medical leave insurance program to provide employee who is eligible for coverage with portion of wages while employee is on family leave or medical leave. Requires employer and employee contributions to fund program.

Allows self-employed individuals and tribal government employers to elect family and medical leave insurance coverage. Directs Director of Employment Department to determine contribution amounts and weekly benefit amounts for self-employed individuals and tribal government employers that elect coverage.

Protects eligible employee's position of employment with employer while employee is on leave if employee has been employed with employer for 90 days before commencing leave. Prohibits employer from retaliating against employee who invokes program and from interfering with employee rights under program. Establishes right for civil action for certain employer violations.

Allows Employment Department to award grant to employers that employ fewer than 25 employees to defray hiring and wage-related costs incurred as result of employee taking family leave or medical leave.

Establishes Paid Family and Medical Leave Insurance Fund and continuously appropriates moneys in fund to Employment Department for purposes of Act.

Permits Director of Employment Department to contract with third party to serve as administrator of program.

Becomes operative on January 1, 2021. Provides that provisions relating to leave, payment of benefits and elective coverage for self-employed individuals and tribal governments become operative on January 1, 2022.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to family medical leave benefits; creating new provisions; amending ORS 657.100 and 659A.885; prescribing an effective date; and providing for revenue raising that requires approval by a three-fifths majority.

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

**SECTION 1. Legislative Findings. The Legislative Assembly finds that:**

**(1) Employees experience a variety of caregiving obligations that interfere with work time.**

**(2) It is in the public interest to create a family and medical leave insurance program to provide to employees and certain other individuals compensated time off from work to care for and bond with a child during the first year after the child's birth or arrival through adoption or foster care, to provide care for a family member who has a serious health condition or to recover from an employee's or an individual's own serious health condition.**

**SECTION 2. Definitions. As used in sections 1 to 14 of this 2019 Act:**

**(1) "Average weekly wage" means the amount calculated by the Employment Department as the state average weekly covered wage under ORS 657.150 (4)(d) as determined not more than once per year.**

**(2) "Base year" means the first four of the last five completed calendar quarters preceding the benefit year.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1       (3) **“Benefit year” means the 12-month period beginning on the first day of the week in**  
2 **which a covered individual’s period of family leave or medical leave commences.**

3       (4) **“Child” means:**

4       (a) **A biological child, adopted child, stepchild or foster child of a covered individual or**  
5 **of the covered individual’s spouse or domestic partner;**

6       (b) **A person who is or was a legal ward of a covered individual or of the covered**  
7 **individual’s spouse or domestic partner; or**

8       (c) **A person who was or is in a relationship of in loco parentis with a covered individual**  
9 **or with the covered individual’s spouse or domestic partner.**

10       (5) **“Committed relationship” means an exclusive relationship between a covered individ-**  
11 **ual and the individual’s domestic partner in which there is a shared responsibility for a sig-**  
12 **nificant measure of each other’s common welfare and financial obligations.**

13       (6) **“Covered individual” means any one of the following who qualify to receive family and**  
14 **medical leave insurance benefits:**

15       (a) **An eligible employee;**

16       (b) **A self-employed individual; or**

17       (c) **An employee of a tribal government.**

18       (7) **“Domestic partner” means an adult who is in a committed relationship with a covered**  
19 **individual.**

20       (8) **“Eligible employee” means an employee who has earned at least \$1,000 in wages during**  
21 **the base year and may apply for paid family and medical leave insurance coverage under**  
22 **section 3 of this 2019 Act.**

23       (9) **“Eligible employee’s average weekly wage” means an amount determined by the Di-**  
24 **rector of the Employment Department on the basis of an eligible employee’s average wages**  
25 **per week during the base year.**

26       (10)(a) **“Employee” means an individual employed for remuneration or under any contract**  
27 **of hire, written or oral, express or implied, by an employer.**

28       (b) **“Employee” does not include:**

29       (A) **An independent contractor as defined in ORS 670.600.**

30       (B) **A participant in a work training program administered under a state or federal as-**  
31 **sistance program.**

32       (C) **A participant in a work-study program that provides students in secondary or**  
33 **postsecondary educational institutions with employment opportunities for financial assist-**  
34 **ance or vocational training.**

35       (D) **A railroad worker exempted under the federal Railroad Unemployment Insurance**  
36 **Act.**

37       (E) **A volunteer.**

38       (11)(a) **“Employer” means any person that employs one or more employees working any-**  
39 **where in this state, a political subdivision of this state or any county, city, district, author-**  
40 **ity, public corporation or entity, or any instrumentality of a county, city, district, authority,**  
41 **public corporation or entity, organized and existing under law or charter.**

42       (b) **“Employer” does not include the federal government or a tribal government.**

43       (12) **“Family and medical leave insurance benefits” means the insurance benefits provided**  
44 **to a covered individual under sections 1 to 14 of this 2019 Act.**

45       (13) **“Family leave” means leave taken by a covered individual from work:**

1 (a) For parental leave; or

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

3 (14) "Family member" means:

4 (a) The spouse of a covered individual;

5 (b) A child of a covered individual or the child's spouse or domestic partner;

6 (c) A parent of a covered individual or the parent's spouse or domestic partner;

7 (d) A sibling or stepsibling of a covered individual or the sibling's or stepsibling's spouse  
8 or domestic partner;

9 (e) A grandparent of a covered individual or the grandparent's spouse or domestic part-  
10 ner;

11 (f) A grandchild of a covered individual or the grandchild's spouse or domestic partner;

12 (g) The domestic partner of a covered individual; or

13 (h) Any individual related by blood or affinity whose close association with a covered in-  
14 dividual is the equivalent of a family relationship.

15 (15) "Medical leave" means leave taken by a covered individual from work made neces-  
16 sary by the individual's own serious health condition.

17 (16) "Parent" means:

18 (a) A biological parent, adoptive parent, stepparent or foster parent of a covered indi-  
19 vidual;

20 (b) A person who was a foster parent of a covered individual when the covered individual  
21 was a minor;

22 (c) A person designated as the legal guardian of a covered individual at the time the  
23 covered individual was a minor or required a legal guardian;

24 (d) A person with whom a covered individual was or is in a relationship of in loco  
25 parentis; or

26 (e) A parent of a covered individual's spouse or domestic partner who meets a description  
27 under paragraphs (a) to (d) of this subsection.

28 (17) "Parental leave" means leave taken by a covered individual from work to care for  
29 and bond with a child during the first year after the child's birth or during the first year  
30 after the placement of the child through foster care or adoption.

31 (18) "Self-employed individual" is an individual who has self-employment income as de-  
32 fined in section 1402(b) of the Internal Revenue Code as amended and in effect on December  
33 31, 2018.

34 (19) "Serious health condition" has the meaning given that term in ORS 659A.150.

35 (20) "Tribal government" has the meaning given that term in ORS 181A.680.

36 (21) "Wages" has the meaning given that term in ORS 657.105.

37 **SECTION 3. Benefit eligibility.** (1) Any individual may apply for family and medical leave  
38 insurance coverage under the program established under section 9 of this 2019 Act in a  
39 manner determined by the Employment Department by rule.

40 (2) Family and medical leave insurance benefits are payable to a covered individual who  
41 takes leave from work for family leave or medical leave, who submits a claim for benefits in  
42 accordance with the requirements under section 5 of this 2019 Act and who is:

43 (a) An eligible employee who:

44 (A) Applies for family and medical leave insurance coverage in a manner determined by  
45 the Director of the Employment Department by rule; and

1 (B) During the base year, contributes to the Paid Family and Medical Leave Insurance  
2 Fund established under section 14 of this 2019 Act an amount determined by the director  
3 under section 7 of this 2019 Act;

4 (b) A self-employed individual who:

5 (A) Elects coverage under section 11 of this 2019 Act; and

6 (B) During the base year, contributes to the Paid Family and Medical Leave Insurance  
7 Fund established under section 14 of this 2019 Act an amount determined by the director  
8 under section 7 of this 2019 Act; or

9 (c) An employee of a tribal government that has elected coverage for its employees under  
10 section 11 of this 2019 Act.

11 **SECTION 4. Duration of benefits.** (1)(a) Beginning January 1, 2022, a covered individual  
12 may qualify to take the following periods of leave per benefit year:

13 (A) Up to 10 weeks for parental leave; and

14 (B) Up to eight weeks for medical leave or for leave to care for a family member with a  
15 serious health condition.

16 (b) In addition to the periods of leave authorized under paragraph (a) of this subsection,  
17 a covered individual may qualify for up to an additional four weeks of leave for an illness,  
18 injury or condition related to pregnancy or childbirth that disables the individual from per-  
19 forming the individual's regular job duties.

20 (c) The combined total amount of leave that a covered individual may take under this  
21 subsection may not exceed 22 weeks per benefit year.

22 (2)(a) Beginning January 1, 2023, an eligible employee may qualify to take leave for the  
23 following periods of leave per benefit year:

24 (A) Up to 12 weeks for parental leave; and

25 (B) Up to 10 weeks for medical leave or for leave to care for a family member with a  
26 serious health condition.

27 (b) In addition to the periods of leave authorized under paragraph (a) of this subsection,  
28 a covered individual may qualify for up to an additional four weeks of leave for an illness,  
29 injury or condition related to pregnancy or childbirth that disables the individual from per-  
30 forming the individual's regular job duties.

31 (c) The combined total amount of leave that a covered individual may take under this  
32 subsection may not exceed 26 weeks per benefit year.

33 (3)(a) Beginning January 1, 2024, and for each succeeding year thereafter, a covered in-  
34 dividual may qualify to take the following periods of leave per benefit year:

35 (A) Up to 14 weeks for parental leave; and

36 (B) Up to 12 weeks for medical leave or for leave to care for a family member with a  
37 serious illness.

38 (b) In addition to the periods of leave authorized under paragraph (a) of this subsection,  
39 a covered individual may qualify for up to an additional four weeks of leave for an illness,  
40 injury or condition related to pregnancy or childbirth that disables the individual from per-  
41 forming the individual's regular job duties, provided that the combined total amount of leave  
42 does not exceed 26 weeks per benefit year.

43 (4) An eligible employee shall take any leave authorized under this section in increments  
44 no less than eight hours.

45 **SECTION 5. Payment of benefits.** (1) A covered individual shall submit a claim to the

1 Employment Department in a manner determined by the department by rule before the in-  
 2 dividual may receive family and medical leave insurance benefits.

3 (2)(a) A covered individual shall submit a weekly claim to the department for payment  
 4 of family and medical leave insurance benefits.

5 (b) A weekly claim may consist of leave that is taken in eight-hour increments that occur  
 6 each day for a period of five consecutive days or that occur once each week for a period of  
 7 five consecutive weeks.

8 (3) Benefit amounts, as determined under section 6 of this 2019 Act:

9 (a) Must be prorated to increments of not less than eight hours of leave; and

10 (b) Must be paid in increments of 40 hours.

11 (4) The first payment of family and medical leave insurance benefits shall be paid within  
 12 two weeks after the covered individual submits a claim for benefits.

13 **SECTION 6. Amount of benefits.** (1) The amount of family and medical leave insurance  
 14 benefits that an eligible employee qualifies for shall be determined as follows:

15 (a) If the eligible employee is an employee who is paid for each hour of work at the  
 16 minimum wage rate required under ORS 653.025, the weekly benefit amount shall be paid at  
 17 100 percent of the eligible employee's average weekly wage.

18 (b) If the eligible employee's average weekly wage is 50 percent or less of the average  
 19 weekly wage, the weekly benefit amount shall be paid at 90 percent of the eligible employee's  
 20 average weekly wage.

21 (c) If the eligible employee's average weekly wage is greater than 50 percent of the av-  
 22 erage weekly wage, the employee's weekly benefit amount is the sum of:

23 (A) Ninety percent of the eligible employee's average weekly wage up to 50 percent of the  
 24 average weekly wage; and

25 (B) Fifty percent of the eligible employee's average weekly wage that is greater than 50  
 26 percent of the average weekly wage.

27 (2) The Director of the Employment Department shall determine the amount of family  
 28 and medical leave insurance benefits that a covered individual who is self-employed qualifies  
 29 for on the basis of the self-employed individual's contribution amount described in section 7  
 30 of this 2019 Act.

31 (3) The director shall determine the amount of family and medical leave insurance bene-  
 32 fits that a covered individual who is an employee of a tribal government that elects coverage  
 33 for its employees under section 11 of this 2019 Act qualifies for on the basis of the tribal  
 34 government's contribution amount described in section 7 of this 2019 Act.

35 (4) Family and medical leave insurance benefits are payable only to the extent that  
 36 moneys are available in the Paid Family and Medical Leave Insurance Fund for that purpose.  
 37 The state, any political subdivision of the state or any state agency is not liable for any  
 38 amount in excess of this limit.

39 **SECTION 7. Contributions.** (1)(a) All employers and eligible employees shall contribute  
 40 to the Paid Family and Medical Leave Insurance Fund established under section 14 of this  
 41 2019 Act. Contributions shall be paid by an employer and an eligible employee through payroll  
 42 deductions in equal amounts at a rate determined by the Director of the Employment De-  
 43 partment not to exceed one percent of the employee's wages.

44 (b) Subject to section 11 (2) and (3) of this 2019 Act, a self-employed individual who has  
 45 elected coverage under section 11 (1) of this 2019 Act shall contribute to the fund at a rate

1 that may not exceed one percent of the individual's taxable income as reported for purposes  
 2 of ORS chapter 316 for a period of not less than three years from the date that the election  
 3 becomes effective.

4 (c) A tribal government that elects coverage under section 11 of this 2019 Act shall con-  
 5 tribute to the fund at a rate as determined by the director by rule.

6 (2) The Director of the Employment Department shall set rates for the collection of  
 7 payroll contributions consistent with subsection (1) of this section and in a manner such  
 8 that:

9 (a) At the end of the period for which the rates are effective, the balance of moneys in  
 10 the fund is an amount not less than six months' worth of projected expenditures from the  
 11 fund for performance of the functions and duties of the director under sections 1 to 14 of this  
 12 2019 Act; and

13 (b) The volatility of the contribution rates is minimized.

14 (3) An employer shall hold any moneys collected under this section in trust for the State  
 15 of Oregon and for the payment thereof to the Department of Revenue in the manner de-  
 16 scribed in subsection (4) of this section.

17 (4)(a) An employer shall make and file a combined quarterly report of wages earned and  
 18 contributions paid under this section upon a report form prescribed by the Department of  
 19 Revenue.

20 (b) The report shall be filed with the Department of Revenue on or before the last day  
 21 of the month following the quarter to which the report relates and shall be deemed received  
 22 on the date of mailing.

23 (c) The report shall be accompanied by payment of any contributions due under this  
 24 section in a manner determined by the Department of Revenue by rule.

25 (d) The Director of the Employment Department may assess a civil penalty in an amount  
 26 not to exceed \$1,000 for an employer's failure to comply with this subsection.

27 (5) If an employer fails to remit any moneys collected under this section, the Employ-  
 28 ment Department may enforce collection by the issuance of a distraint warrant for the col-  
 29 lection of the delinquent amount and all penalties, interest and collection charges accrued  
 30 thereon. The warrant shall be issued and proceeded upon in the same manner and shall have  
 31 the same force and effect as a judgment issued and proceeded upon as provided in ORS  
 32 205.125.

33 (6)(a) If an employer fails to pay sufficient payroll contributions under this section, the  
 34 Employment Department may issue a notice of liability to any officer, employee or member  
 35 of the employer within three years of the due date of the contributions.

36 (b) Within 30 days from the date the notice of liability is mailed to the officer, employee  
 37 or member of the employer, the officer, employee or member shall pay the amount due, plus  
 38 penalties and interest, or shall request a hearing on the matter in writing to the Director  
 39 of the Employment Department. A hearing will not be granted unless the request specifies  
 40 the grounds upon which the officer, employer or member requesting the hearing contests the  
 41 liability.

42 (c) Hearings conducted under this subsection shall be held before an administrative law  
 43 judge assigned from the Office of Administrative Hearings established under ORS 183.605.  
 44 The procedure shall be that for a contested case under ORS chapter 183.

45 (d) More than one officer, employee or member of an employer may be held jointly and

1 severally liable for the payment of unpaid contributions.

2 (7) Moneys collected under this section shall be deposited in the fund for the purpose of  
3 carrying out the functions and duties of the director under sections 1 to 14 of this 2019 Act.

4 (8)(a) If an employer quits business or sells out, exchanges or otherwise disposes of the  
5 business or stock of goods, any payroll contribution payable under this section is immediately  
6 due and payable, and the employer shall, within 10 calendar days, pay the payroll contribu-  
7 tions due. Any person who becomes a successor to the business is liable for the full amount  
8 of the payroll contribution.

9 (b) The Director of the Employment Department shall adopt rules for compliance with  
10 sections 1 to 14 of this 2019 Act related to payroll contributions from an employer's succes-  
11 sor in interest.

12 SECTION 8. Coordination of leave. Family or medical leave taken under sections 1 to 14  
13 of this 2019 Act must be taken concurrently with any leave that may be taken by an eligible  
14 employee who also is eligible for leave under ORS 659A.150 to 659A.186 or under the federal  
15 Family and Medical Leave Act of 1993 (P.L. 103-3) for the same or similar purposes.

16 SECTION 9. Family and medical leave insurance program; administration of program. (1)  
17 The Director of the Employment Department shall establish a family and medical leave in-  
18 surance program to provide family and medical leave insurance benefits to a covered indi-  
19 vidual as specified in sections 1 to 14 of this 2019 Act.

20 (2) The Employment Department may enter into an agreement with a third party to im-  
21 plement sections 1 to 14 of this 2019 Act and to serve as the administrator of the program  
22 established under this section.

23 (3) Not later than September 1, 2020, the director shall adopt rules that:

24 (a) Establish the manner in which a covered individual may apply for coverage under  
25 section 3 of this 2019 Act.

26 (b) Establish penalties for the payment or overpayment of family and medical leave in-  
27 surance benefits as a result of fraud, misrepresentation or willful nondisclosure on the part  
28 of a covered individual.

29 (c) Require the maintenance of separate records and accounting for each covered indi-  
30 vidual who qualifies for family and medical leave insurance benefits.

31 (d) Establish a process to collect application, account or administrative fees to defray the  
32 costs of administering the plan.

33 (4) The director shall determine on an annual basis the amount of payroll contributions,  
34 timing of payroll contributions and maximum employee contributions necessary to finance  
35 sections 1 to 14 of this 2019 Act.

36 SECTION 10. Employment protection; retaliation prohibited.

37 (1) After returning to work after a period of leave taken under section 4 of this 2019 Act,  
38 an eligible employee is entitled to be restored to the position of employment held by the  
39 employee when the leave commenced, if that position still exists, without regard to whether  
40 the employer filled the position with a replacement worker during the period of leave. If the  
41 position held by the employee at the time leave commenced no longer exists, the employee  
42 is entitled to be restored to any available equivalent position with equivalent employment  
43 benefits, pay and other terms and conditions of employment.

44 (2) During a period in which an eligible employee takes leave under section 4 of this 2019  
45 Act, the employer shall maintain any health care benefits the employee had prior to taking

1 such leave for the duration of the leave, as if the employee had continued in employment  
 2 continuously from the date the employee commenced the leave until the date the family and  
 3 medical leave insurance benefits terminate.

4 (3) An eligible employee who has taken leave under section 4 of this 2019 Act does not  
 5 lose any employment benefits, including seniority or pension rights, accrued before the date  
 6 that leave commenced.

7 (4) This section does not entitle an eligible employee to accrue employment benefits  
 8 during a period of leave taken under section 4 of this 2019 Act or to a right, benefit or posi-  
 9 tion of employment other than a right, benefit or position to which the employee would have  
 10 been entitled had the employee not taken leave.

11 (5) It is unlawful for an employer to:

12 (a) Violate subsections (1) to (3) of this section;

13 (b) Interfere with a right to which a covered individual is entitled under sections 1 to 14  
 14 of this 2019 Act; or

15 (c) Retaliate or in any way discriminate against an employee with respect to hire or  
 16 tenure or any other term or condition of employment because the employee has inquired  
 17 about the provisions of sections 1 to 14 of this 2019 Act, applied for coverage under section  
 18 3 of this 2019 Act or invoked any provision of sections 1 to 14 of this 2019 Act.

19 (6) An employee who alleges a violation of this section may bring a civil action under ORS  
 20 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Indus-  
 21 tries in the manner provided by ORS 659A.820.

22 (7) The protections for an eligible employee provided under this section apply only to an  
 23 eligible employee who was employed by the employer for at least 90 days before taking leave  
 24 under section 4 of this 2019 Act.

25 **SECTION 11. Elective coverage.** (1) A self-employed individual may elect to be covered  
 26 under sections 1 to 14 of this 2019 Act. The self-employed individual must file a notice of  
 27 election in writing with the Director of the Employment Department, as required by the di-  
 28 rector, and contribute to the Paid Family and Medical Leave Insurance Fund established  
 29 under section 14 of this 2019 Act in a manner determined by the director. The election be-  
 30 comes effective on the date the notice is filed. The self-employed individual must agree to  
 31 supply any information concerning taxable income that the director deems necessary.

32 (2) Subject to section 7 of this 2019 Act, a self-employed individual who has elected cov-  
 33 erage may terminate coverage at times the director may prescribe by rule, including at the  
 34 time of a change in the self-employed individual's employment status, by filing written notice  
 35 with the director. The termination may not take effect sooner than 30 days after filing the  
 36 notice.

37 (3) Notwithstanding subsection (2) of this section, a self-employed individual who has  
 38 elected coverage may terminate coverage on the date of filing of a voluntary or involuntary  
 39 bankruptcy petition. The self-employed individual's elective coverage terminates on the date  
 40 on which the self-employed individual provides to the director documentation to support the  
 41 self-employed individual's filing of the bankruptcy petition and files written notice with the  
 42 director. At any time thereafter, the self-employed individual may re-elect coverage under  
 43 this section.

44 (4) A tribal government may elect to be covered under sections 1 to 14 of this 2019 Act  
 45 in the same manner as provided in subsections (1) to (3) of this section.



1        **SECTION 12. Employer assistance.** (1) Except as provided in subsection (2) of this sec-  
 2 tion, employers that employ fewer than 25 employees and that make the required contribu-  
 3 tions under section 7 of this 2019 Act may apply to the Employment Department to receive  
 4 one of the following grants:

5        (a) If the employer hires a temporary worker to replace an eligible employee who takes  
 6 family or medical leave under section 4 of this 2019 Act for a period of seven or more days,  
 7 a grant of \$3,000.

8        (b) A grant of up to \$1,000 as reimbursement for significant additional wage-related costs  
 9 incurred during a period in which an eligible employee takes family or medical leave.

10       (2) In addition to a grant received under subsection (1)(b) of this section, an employer  
 11 may receive a grant in the amount of the difference between the grant awarded and \$3,000  
 12 if:

13       (a) After the commencement of a period of family or medical leave taken by an eligible  
 14 employee under section 4 of this 2019 Act, the employee extends the period of leave beyond  
 15 the employee's initial expected period of leave; and

16       (b) The employer hired a temporary worker to replace the eligible employee during the  
 17 employee's period of leave.

18       (3) An employer may apply for a grant under subsection (1) of this section not more than  
 19 10 times per calendar year and not more than once for each eligible employee who takes  
 20 leave under section 4 of this 2019 Act.

21       (4) To be eligible for a grant under this section, an employer shall provide to the de-  
 22 partment written documentation showing that the employer hired a temporary worker or  
 23 demonstrating that the wage-related costs incurred are due to an eligible employee's use of  
 24 family or medical leave.

25       (5) The grants awarded under this section must be funded from the Paid Family and  
 26 Medical Leave Insurance Fund established under section 14 of this 2019 Act.

27       (6) The Director of the Employment Department shall adopt any rules necessary to im-  
 28 plement this section.

29       **SECTION 13. Notice to employers.** (1) Except as provided in subsection (2) of this section,  
 30 an employer may require an eligible employee to give the employer written notice at least  
 31 30 days before commencing leave under section 4 of this 2019 Act. The employer may require  
 32 the employee to include in the notice an explanation of the need for the leave.

33       (2) An eligible employee may commence leave without 30 days' advance notice if the leave  
 34 is not foreseeable, including under the following circumstances:

35       (a) An unexpected serious health condition of the employee or a family member of the  
 36 employee; or

37       (b) A premature birth, unexpected adoption or unexpected foster placement by or with  
 38 the employee.

39       (3) If an eligible employee commences leave without advance notice under subsection (2)  
 40 of this section:

41       (a) The employee shall give notice to the employer as soon as practicable, but in no event  
 42 later than 45 days after the date on which the leave commenced, in a manner determined  
 43 by the Director of the Employment Department; and

44       (b) The employee shall receive family and medical leave insurance benefits for the period  
 45 that begins on the date on which the leave commenced.

1 (4) The notice described in subsection (3) of this section may be given by a family mem-  
 2 ber, health care provider or authorized representative on behalf of the eligible employee  
 3 taking the leave.

4 **SECTION 14. Paid Family and Medical Leave Insurance Fund.** (1) The Paid Family and  
 5 Medical Leave Insurance Fund is established in the State Treasury, separate and distinct  
 6 from the General Fund. The Paid Family and Medical Leave Insurance Fund is declared to  
 7 be a trust fund for the uses and purposes set forth in sections 1 to 14 of this 2019 Act.

8 (2) The fund consists of moneys deposited in the fund from the contributions made under  
 9 section 7 of this 2019 Act and may include fees, revenues or other income deposited in the  
 10 fund.

11 (3)(a) The fund shall be used solely in the payment of benefits under sections 1 to 14 of  
 12 this 2019 Act and the payment of administrative costs and expenses that the Employment  
 13 Department incurs in carrying out the provisions of sections 1 to 14 of this 2019 Act.

14 (b) The benefits shall be payable from the fund only to the extent that the contributions  
 15 and moneys collected are available.

16 (4) Interest earned by the fund shall be credited to the fund. All moneys in the fund are  
 17 continuously appropriated to the Employment Department for the purposes of carrying out  
 18 the provisions of sections 1 to 14 of this 2019 Act, including the payment of family and med-  
 19 ical leave insurance benefits under section 5 and the payment of grants awarded under sec-  
 20 tion 12 of this 2019 Act.

21 **SECTION 15.** Section 16 of this 2019 Act is added to and made a part of ORS 657.115 to  
 22 657.140.

23 **SECTION 16. Wages; exclusion of payment to replacement employees.** As used in ORS  
 24 657.105, “wages” includes the amount of any payment made to an individual hired to tempo-  
 25 rarily fill the position of a permanent eligible employee who is taking leave and receiving  
 26 family and medical leave insurance benefits under sections 1 to 14 of this 2019 Act.

27 **SECTION 17.** ORS 657.100 is amended to read:

28 657.100. (1) An individual is deemed “unemployed” in any week during which the individual  
 29 performs no services and with respect to which no remuneration for services performed is paid or  
 30 payable to the individual, or in any week of less than full-time work if the remuneration paid or  
 31 payable to the individual for services performed during the week is less than the individual’s weekly  
 32 benefit amount.

33 (2) For the purposes of ORS 657.155 (1), an individual who performs full-time services in any  
 34 week for an employing unit is not unemployed even though remuneration is neither paid nor payable  
 35 to the individual for the services performed; however, nothing in this subsection shall prevent an  
 36 individual from meeting the definition of “unemployed” as used in this section solely by reason of  
 37 the individual’s performance of volunteer services without remuneration for a charitable institution  
 38 or a governmental entity.

39 (3) An individual may not be deemed “unemployed” under this section for any week in  
 40 which the individual is receiving family and medical leave insurance benefits under sections  
 41 1 to 14 of this 2019 Act.

42 [(3)] (4) The Director of the Employment Department shall prescribe rules as the director deems  
 43 necessary with respect to the various types of unemployment.

44 **SECTION 18.** ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and  
 45 section 13, chapter 691, Oregon Laws 2017, is amended to read:

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

11       (a) The judge shall determine the facts in an action under this subsection; and

12       (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall  
 13 review the judgment pursuant to the standard established by ORS 19.415 (3).

14       (2) An action may be brought under subsection (1) of this section alleging a violation of:

15       (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,  
 16 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,  
 17 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,  
 18 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,  
 19 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,  
 20 659A.318, 659A.320, 659A.355 or 659A.421 **or section 10 of this 2019 Act**; or

21       (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

22       (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,  
 23 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,  
 24 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,  
 25 659A.290, 659A.318, 659A.355 or 659A.421 **or section 10 of this 2019 Act**:

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

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

29       (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-  
 30 ment pursuant to the standard established by ORS 19.415 (1); and

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

32       (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-  
 33 olation of ORS 652.220, the court may award punitive damages if:

34       (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted  
 35 with malice or acted with willful and wanton misconduct; or

36       (b) An employer was previously adjudicated in a proceeding under this section or under ORS  
 37 659A.850 for a violation of ORS 652.220.

38       (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060, the  
 39 court may award, in addition to the relief authorized under subsection (1) of this section,  
 40 compensatory damages or \$200, whichever is greater.

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

44       (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,  
 45 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil

1 penalty in the amount of \$720.

2 (8) Any individual against whom any distinction, discrimination or restriction on account of  
 3 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual  
 4 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS  
 5 659A.400, by any employee or person acting on behalf of the place or by any person aiding or  
 6 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator  
 7 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor  
 8 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-  
 9 section:

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

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

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

16 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

17 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-  
 18 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable  
 19 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;  
 20 and

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

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

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

32 (b) In an amount not exceeding \$100,000 for any subsequent violation.

33 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or  
 34 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing  
 35 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to  
 36 the commissioner if the commissioner prevails in the action. The court may award reasonable at-  
 37 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court  
 38 determines that the commissioner had no objectively reasonable basis for asserting the claim or for  
 39 appealing an adverse decision of the trial court.

40 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145  
 41 or 659A.421 or discrimination under federal housing law:

42 (a) "Aggrieved person" includes a person who believes that the person:

43 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

44 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to  
 45 occur.

1 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of  
 2 right in the action. The Attorney General may intervene in the action if the Attorney General cer-  
 3 tifies that the case is of general public importance. The court may allow an intervenor prevailing  
 4 party costs and reasonable attorney fees at trial and on appeal.

5 **SECTION 19.** ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017,  
 6 and section 13, chapter 691, Oregon Laws 2017, is amended to read:

7 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-  
 8 section (2) of this section may file a civil action in circuit court. In any action under this subsection,  
 9 the court may order injunctive relief and any other equitable relief that may be appropriate, in-  
 10 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A  
 11 court may order back pay in an action under this subsection only for the two-year period imme-  
 12 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau  
 13 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-  
 14 year period immediately preceding the filing of the action. In any action under this subsection, the  
 15 court may allow the prevailing 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 subsection; and

18 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall  
 19 review the judgment pursuant to the standard established by ORS 19.415 (3).

20 (2) An action may be brought under subsection (1) of this section alleging a violation of:

21 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,  
 22 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,  
 23 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,  
 24 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,  
 25 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,  
 26 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421 **or section 10 of this 2019 Act**; or

27 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

28 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,  
 29 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,  
 30 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,  
 31 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421 **or section 10 of this 2019 Act**:

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

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

35 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-  
 36 ment pursuant to the standard established by ORS 19.415 (1); and

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

38 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-  
 39 olation of ORS 652.220, the court may award punitive damages if:

40 (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted  
 41 with malice or acted with willful and wanton misconduct; or

42 (b) An employer was previously adjudicated in a proceeding under this section or under ORS  
 43 659A.850 for a violation of ORS 652.220.

44 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060, the  
 45 court may award, in addition to the relief authorized under subsection (1) of this section,

1 compensatory damages or \$200, whichever is greater.

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

5 (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,  
 6 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil  
 7 penalty in the amount of \$720.

8 (8) Any individual against whom any distinction, discrimination or restriction on account of  
 9 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual  
 10 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS  
 11 659A.400, by any employee or person acting on behalf of the place or by any person aiding or  
 12 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator  
 13 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor  
 14 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-  
 15 section:

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

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

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

22 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

23 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-  
 24 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable  
 25 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;  
 26 and

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

29 (9) When the commissioner or the Attorney General has reasonable cause to believe that a  
 30 person or group of persons is engaged in a pattern or practice of resistance to the rights protected  
 31 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied  
 32 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner  
 33 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same  
 34 manner as a person or group of persons may file a civil action under this section. In a civil action  
 35 filed under this subsection, the court may assess against the respondent, in addition to the relief  
 36 authorized under subsections (1) and (3) of this section, a civil penalty:

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

38 (b) In an amount not exceeding \$100,000 for any subsequent violation.

39 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or  
 40 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing  
 41 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to  
 42 the commissioner if the commissioner prevails in the action. The court may award reasonable at-  
 43 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court  
 44 determines that the commissioner had no objectively reasonable basis for asserting the claim or for  
 45 appealing an adverse decision of the trial court.

1 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145  
2 or 659A.421 or discrimination under federal housing law:

3 (a) “Aggrieved person” includes a person who believes that the person:

4 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

5 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to  
6 occur.

7 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of  
8 right in the action. The Attorney General may intervene in the action if the Attorney General cer-  
9 tifies that the case is of general public importance. The court may allow an intervenor prevailing  
10 party costs and reasonable attorney fees at trial and on appeal.

11 **SECTION 20. Preemption. Sections 1 to 14 of this 2019 Act supersede and preempt any**  
12 **rule, regulation, code or ordinance of any unit of a local government, as defined in ORS**  
13 **174.116, relating to paid family and medical leave.**

14 **SECTION 21. The Director of the Employment Department shall establish the family and**  
15 **medical leave insurance program under section 9 of this 2019 Act such that eligible employ-**  
16 **ees may begin making contributions to the plan through payroll deductions no later than**  
17 **January 1, 2021.**

18 **SECTION 22. Operative Dates. (1)(a) Sections 1 to 3, sections 6 to 10 and sections 13 and**  
19 **14 of this 2019 Act and the amendments to ORS 659A.885 by sections 18 and 19 of this 2019**  
20 **Act become operative on January 1, 2021.**

21 (b) Sections 4 and 5 and sections 11 and 12 become operative on January 1, 2022.

22 (2) The Employment Department and the Department of Revenue may take any action  
23 before the operative dates specified in subsection (1) of this section that is necessary to en-  
24 able the departments to exercise, on or after the operative dates specified in subsection (1)  
25 of this section, the duties, functions and powers conferred on the departments by sections  
26 1 to 14 of this 2019 Act.

27 **SECTION 23. The section captions used in this 2019 Act are provided only for the con-**  
28 **venience of the reader and do not become part of the statutory law of this state or express**  
29 **any legislative intent in the enactment of this 2019 Act.**

30 **SECTION 24. This 2019 Act takes effect on the 91st day after the date on which the 2019**  
31 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

32