

D R A F T

SUMMARY

Modifies definition of “benefit year” for purposes of paid family and medical leave insurance program. Makes conforming changes.

A BILL FOR AN ACT

Relating to family medical leave benefits; amending ORS 657B.010 and 657B.340.

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

SECTION 1. ORS 657B.010 is amended to read:

657B.010. As used in this chapter:

(1) “Alternate base year” means the last four completed calendar quarters preceding the benefit year.

(2) “Average weekly wage” means the amount calculated by the Employment Department as the state average weekly covered wage under ORS 657.150 (4)(e) as determined not more than once per year.

(3) “Base year” means the first four of the last five completed calendar quarters preceding the benefit year.

(4) “Benefits” means family and medical leave insurance benefits.

~~[(5)]~~ **(5)(a)** “Benefit year” means *[the 12-month period as determined by the Director of the Employment Department by rule under ORS 657B.340]*, **except as provided in paragraph (b) of this subsection, a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave, medical leave or safe leave commences.**

(b) “Benefit year” means, in the event that the 52-week period described in paragraph (a) of this subsection would result in an overlap

1 **of any quarter of the base year of a previously filed valid claim, a pe-**
2 **riod of 53 consecutive weeks beginning on the Sunday immediately**
3 **preceding the date on which family leave, medical leave or safe leave**
4 **commences.**

5 (6) “Child” means:

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

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

10 (c) A person who is or was in a relationship of in loco parentis with a
11 covered individual or with the covered individual’s spouse or domestic part-
12 ner.

13 (7) “Contribution” or “contributions” means the money payments made
14 by any of the following under ORS 657B.150:

15 (a) An employer;

16 (b) An eligible employee;

17 (c) A self-employed individual;

18 (d) A tribal government; or

19 (e) An employee of a tribal government.

20 (8) “Covered individual” means any one of the following who qualifies to
21 receive family and medical leave insurance benefits:

22 (a) An eligible employee;

23 (b) A self-employed individual; or

24 (c) An employee of a tribal government.

25 (9) “Domestic partner” means an individual joined in a domestic partner-
26 ship.

27 (10) “Domestic partnership” has the meaning given that term in ORS
28 106.310.

29 (11) “Eligible employee” means:

30 (a)(A) An employee who has earned at least \$1,000 in wages during the
31 base year; or

1 (B) If an employee has not earned at least \$1,000 in wages during the base
2 year, an employee who has earned at least \$1,000 in wages during the alter-
3 nate base year; and

4 (b) Who may apply for paid family and medical leave insurance benefits
5 under ORS 657B.015.

6 (12) “Eligible employee’s average weekly wage” means an amount calcu-
7 lated by the Director of the Employment Department by dividing the total
8 wages earned by an eligible employee during the base year by the number
9 of weeks in the base year.

10 (13)(a) “Employee” means:

11 (A) An individual performing services for an employer for remuneration
12 or under any contract of hire, written or oral, express or implied.

13 (B) A home care worker as defined in ORS 410.600.

14 (b) “Employee” does not include:

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

16 (B) A participant in a work training program administered under a state
17 or federal assistance program.

18 (C) A participant in a work-study program that provides students in sec-
19 ondary or postsecondary educational institutions with employment opportu-
20 nities for financial assistance or vocational training.

21 (D) A railroad worker exempted under the federal Railroad Unemployment
22 Insurance Act.

23 (E) A volunteer.

24 (14)(a) “Employer” means any person that employs one or more employees
25 working anywhere in this state or any agent or employee of such person to
26 whom the duties of the person under this chapter have been delegated.

27 (b) “Employer” includes:

28 (A) A political subdivision of this state or any county, city, district, au-
29 thority or public corporation, or any instrumentality of a county, city, dis-
30 trict, authority or public corporation, organized and existing under law or
31 charter;

1 (B) An individual;

2 (C) Any type of organization, corporation, partnership, limited liability
3 company, association, trust, estate, joint stock company or insurance com-
4 pany;

5 (D) Any successor in interest to an entity described in subparagraph (C)
6 of this paragraph;

7 (E) A trustee, trustee in bankruptcy or receiver; or

8 (F) A trustee or legal representative of a deceased person.

9 (c) "Employer" does not include the federal government or a tribal gov-
10 ernment.

11 (15) "Employment agency" has the meaning given that term in ORS
12 658.005.

13 (16) "Family and medical leave insurance benefits" means the wage re-
14 placement benefits that are available to a covered individual under ORS
15 657B.050 or under the terms of an employer plan approved under ORS
16 657B.210, for family leave, medical leave or safe leave.

17 (17)(a) "Family leave" means leave from work taken by a covered indi-
18 vidual:

19 (A) To care for and bond with a child during the first year after the
20 child's birth or during the first year after the placement of the child through
21 foster care or adoption; or

22 (B) To care for a family member with a serious health condition.

23 (b) "Family leave" does not mean:

24 (A) Leave described in ORS 659A.159 (1)(d);

25 (B) Leave described in ORS 659A.159 (1)(e); or

26 (C) Leave authorized under ORS 659A.093.

27 (18) "Family member" means:

28 (a) The spouse of a covered individual;

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

31 (c) A parent of a covered individual or the parent's spouse or domestic

1 partner;

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

4 (e) A grandparent of a covered individual or the grandparent's spouse or
5 domestic partner;

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

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

9 (h) Any individual related by blood or affinity whose close association
10 with a covered individual is the equivalent of a family relationship.

11 (19) "Medical leave" means leave from work taken by a covered individual
12 that is made necessary by the individual's own serious health condition.

13 (20) "Parent" means:

14 (a) A biological parent, adoptive parent, stepparent or foster parent of a
15 covered individual;

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

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

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

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

24 (21) "Safe leave" means leave taken for any purpose described in ORS
25 659A.272.

26 (22) "Self-employed individual" means:

27 (a) An individual who has self-employment income as defined in section
28 1402(b) of the Internal Revenue Code as amended and in effect on April 1,
29 2021; or

30 (b) An independent contractor as defined in ORS 670.600.

31 (23) "Serious health condition" has the meaning given that term in ORS

1 659A.150.

2 (24) “Third party administrator” means a third party that enters into an
3 agreement with the Director of the Employment Department to implement
4 and administer the paid family and medical leave program established under
5 this chapter.

6 (25) “Tribal government” has the meaning given that term in ORS
7 181A.940.

8 (26) “Wages” has the meaning given that term in ORS 657.105.

9 **SECTION 2.** ORS 657B.340 is amended to read:

10 657B.340. (1) The Director of the Employment Department shall establish
11 a family and medical leave insurance program to provide family and medical
12 leave insurance benefits to a covered individual as specified in this chapter.

13 (2) Not later than September 1, 2022, the director shall adopt rules that
14 are necessary to establish the program under subsection (1) of this section,
15 including but not limited to rules that:

16 (a) Establish an outreach plan for the program to receive input from, and
17 disseminate information to, employers and eligible employees.

18 (b) Establish a process by which employers may apply for approval of an
19 employer-offered benefit plan under ORS 657B.210.

20 *[(c) Establish alternatives by which an employer may determine a benefit*
21 *year period, including on a calendar year and noncalendar year basis.]*

22 (3) The director may enter into interagency agreements to perform the
23 duties and functions necessary to implement and administer this chapter.

24 (4) Whenever possible, the director shall use existing employer and public
25 infrastructure to maintain records, conduct outreach and facilitate contri-
26 butions made to the program.

27 (5) All agencies of state government, as defined in ORS 174.111, shall,
28 upon request of the director, assist in the performance of the director’s du-
29 ties under this chapter, including but not limited to outreach, technical as-
30 sistance and training.

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