House Bill 2474
Sponsored by Representative POWER (Presession filed.)

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.

Expands applicability of certain provisions relating to family leave to employers who employ one or more employees. Includes closure of child care provider or school due to public health emergency as qualifying purpose for which leave may be taken. Reduces amount of time employee must work for employer before becoming eligible to take leave. Eliminates disciplinary action that may be imposed upon employee for employee's failure to comply with leave notice requirements. Allows employee to determine order in which employee may choose to use accrued leave.

A BILL FOR AN ACT

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

SECTION 1. ORS 659A.090 is amended to read:

659A.090. As used in ORS 659A.090 to 659A.099:

(1) Notwithstanding ORS 659A.001, "employee" means an individual who performs services for compensation for an employer [for an average of at least 20 hours per week]. "Employee" includes all individuals employed at any site owned or operated by an employer, but does not include independent contractors.

(2) Notwithstanding ORS 659A.001, "employer" means:

(a) A person, firm, corporation, partnership, legal representative or other business entity that engages in any business, industry, profession or activity in this state and that employs [25] one or more persons in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which leave is taken under ORS 659A.093 or the year immediately preceding the year in which the leave is to be taken;

(b) The state, and a department, agency, board or commission of the state; and

(c) A local government, including, but not limited to, a county, city, town, municipal corporation, independent public corporation or political subdivision of the state.

(3) "Period of military conflict" means a period of war:

(a) Declared by the United States Congress;

(b) Declared by executive order of the President of the United States; or

(c) In which a reserve component of the Armed Forces of the United States is ordered to active duty pursuant to Title 32 of the United States Code or section 12301 or 12302 of Title 10 of the United States Code.

SECTION 2. ORS 659A.150 is amended to read:

659A.150. As used in ORS 659A.150 to 659A.186:

(1) "Babysitter" has the meaning given that term in ORS 329A.250.

(2) "Child care facility" has the meaning given that term in ORS 329A.250.

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.
(3) “Child care provider” includes, but is not limited to, any of the following that provide, on a regular basis, in whole or in part, care, guidance and supervision of a child, with or without compensation:

(a) A person who is related to the child by blood or marriage within the second-degree;
(b) A babysitter;
(c) A child care facility;
(d) A preschool recorded program;
(e) A facility providing enrichment activity programs for school-age children; and
(f) A facility operating as a school-age recorded program.

[(1)] (4) “Covered employer” means an employer described in ORS 659A.153.

[(2)] (5) “Eligible employee” means any employee of a covered employer other than those employees exempted under the provisions of ORS 659A.156.

[(3)] (6) “Family leave” means a leave of absence described in ORS 659A.159, except that “family leave” does not include leave taken by an eligible employee who is unable to work because of a disabling compensable injury, as defined in ORS 656.005, under ORS chapter 656.

[(4)] (7) “Family member” means the spouse of an employee, the biological, adoptive or foster parent or child of the employee, the grandparent or grandchild of the employee, a parent-in-law of the employee or a person with whom the employee was or is in a relationship of in loco parentis.

[(5)] (8) “Health care provider” means:

(a) A person who is primarily responsible for providing health care to an eligible employee or a family member of an eligible employee, who is performing within the scope of the person’s professional license or certificate and who is:

(A) A physician licensed under ORS chapter 677;
(B) A physician assistant licensed under ORS 677.505 to 677.525;
(C) A dentist licensed under ORS 679.090;
(D) A psychologist licensed under ORS 675.030;
(E) An optometrist licensed under ORS 683.070;
(F) A naturopath licensed under ORS 685.080;
(G) A registered nurse licensed under ORS 678.050;
(H) A nurse practitioner licensed under ORS 678.375;
(I) A direct entry midwife licensed under ORS 687.420;
(J) A licensed registered nurse licensed by the Oregon State Board of Nursing as a nurse practitioner specializing in nurse midwifery;
(K) A regulated social worker authorized to practice regulated social work under ORS 675.510 to 675.600; or
(L) A chiropractic physician licensed under ORS 684.054, but only to the extent the chiropractic physician provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays.

(b) A person who is primarily responsible for the treatment of an eligible employee or a family member of an eligible employee solely through spiritual means, including but not limited to a Christian Science practitioner.

(9) “Preschool recorded program” has the meaning given that term in ORS 329A.250.

(10) “School age” has the meaning given that term in ORS 329A.250.

(11) “School-age recorded program” has the meaning given that term in ORS 329A.250.
“(6) (12) “Serious health condition” means:
(a) An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility;
(b) An illness, disease or condition that in the medical judgment of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care;
(c) Any period of disability due to pregnancy, or period of absence for prenatal care; or
(d) Any period of absence for the donation of a body part, organ or tissue, including preoperative or diagnostic services, surgery, post-operative treatment and recovery.

SECTION 3. ORS 659A.153 is amended to read:
659A.153. (1) The requirements of ORS 659A.150 to 659A.186 apply [only] to employers who employ [25] one or more persons in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which the leave is to be taken or in the year immediately preceding the year in which the leave is to be taken.
(2) The requirements of ORS 659A.150 to 659A.186 do not apply to any employer who offers to an eligible employee a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, providing, as one of its options, employee leave at least as generous as the leave required by ORS 659A.150 to 659A.186.

SECTION 4. ORS 659A.156 is amended to read:
659A.156. (1) All employees of a covered employer are eligible to take leave for one of the purposes specified in ORS 659A.159 [(1)(b)] (1)(a) to (e) except:[
[(a) for an employee who was employed by the covered employer for fewer than [180] 30 days immediately before the date on which the family leave would commence.
[(b) An employee who worked an average of fewer than 25 hours per week for the covered employer during the 180 days immediately preceding the date on which the family leave would commence.]
(2) All employees of a covered employer are eligible to take leave for the purpose specified in ORS 659A.159 (1)(a) except an employee who was employed by the covered employer for fewer than 180 days immediately before the date on which the family leave would commence.]
(2) Notwithstanding subsection (1) of this section, if an eligible employee leaves employment with an employer and subsequently is reemployed by the employer within 180 days of separation from employment, the employee is considered immediately eligible to take leave for one of the purposes specified in ORS 659A.159 (1)(a) to (e) on the date of rehire.

SECTION 5. ORS 659A.159 is amended to read:
659A.159. (1) Family leave under ORS 659A.150 to 659A.186 may be taken by an eligible employee for any of the following purposes:
(a) To care for an infant or newly adopted child under 18 years of age, or for a newly placed foster child under 18 years of age, or for an adopted or foster child older than 18 years of age if the child is incapable of self-care because of a mental or physical disability.
(b) To care for a family member with a serious health condition.
(c) To recover from or seek treatment for a serious health condition of the employee that renders the employee unable to perform at least one of the essential functions of the employee's regular position.
(d) To care for a child of the employee who is suffering from an illness, injury or condition that is not a serious health condition but that requires home care, including care for an employee's child whose school or child care provider is closed for any continuous, intermittent or re-
currying period of time by order of a public official due to a public health emergency.

(e) To deal with the death of a family member by:
(A) Attending the funeral or alternative to a funeral of the family member;
(B) Making arrangements necessitated by the death of the family member; or
(C) Grieving the death of the family member.

(2)(a) Leave under subsection (1)(a) of this section must be completed within 12 months after
birth or placement of the child, and an eligible employee is not entitled to any period of family leave
under subsection (1)(a) of this section after the expiration of 12 months after birth or placement of
the child.

(b) Leave under subsection (1)(e) of this section must be completed within 60 days of the date
on which the eligible employee receives notice of the death of a family member.

SECTION 6. ORS 659A.162 is amended to read:
659A.162. (1) Except as specifically provided by ORS 659A.150 to 659A.186, an eligible employee
is entitled to up to a total of 12 weeks of family leave within any one-year period.

(2)(a) Except as provided by paragraph (b) of this subsection, an eligible employee is entitled to
a total of two weeks of family leave for the purposes described in ORS 659A.159 (1)(e).

(b) An eligible employee is entitled to the period of leave described in paragraph (a) of this
subsection upon the death of each family member of the employee within any one-year period, except
that leave taken as provided by this subsection may not exceed the total period of family leave au-
thorized by subsection (1) of this section.

(c) A covered employer may not require an eligible employee to take multiple periods of leave
described in ORS 659A.159 (1)(e) concurrently if more than one family member of the employee dies
during the one-year period.

(d) All leave taken for the purposes described in ORS 659A.159 (1)(e) shall be counted toward
the total period of family leave authorized by subsection (1) of this section.

(3)(a) In addition to the 12 weeks of family leave authorized by subsection (1) of this section,
[a female] an eligible employee may take a total of 12 weeks of leave within any one-year period for
an illness, injury or condition related to pregnancy or childbirth that disables the eligible employee
from performing any available job duties offered by the covered employer.

(b) An eligible employee who takes 12 weeks of family leave within a one-year period for the
purpose specified in ORS 659A.159 (1)(a) may take up to an additional 12 weeks of leave within the
one-year period for the purpose specified in ORS 659A.159 (1)(d).

(4) When two or more family members work for the same covered employer, the eligible em-
ployees may not take concurrent family leave unless:

(a) One employee needs to care for another employee who is a family member and who is suf-
ferring from a serious health condition;

(b) One employee needs to care for a child who has a serious health condition while another
employee who is a family member is also suffering from a serious health condition; or

(c) The employees are taking leave described in ORS 659A.159 (1)(e).

(5) An eligible employee may take family leave for the purpose specified in ORS 659A.159 (1)(a)
in two or more nonconsecutive periods of leave only with the approval of the employer.

(6) Leave need not be provided to an eligible employee by a covered employer for the purpose
specified in ORS 659A.159 (1)(d) if another family member is available to care for the child.

(7) A covered employer may not reduce the amount of family leave available to an eligible em-
ployee under this section by any period the employee is unable to work because of a disabling
(8)(a) The Commissioner of the Bureau of Labor and Industries shall adopt rules governing when family leave for a serious health condition of an eligible employee or a family member of the eligible employee may be taken intermittently or by working a reduced workweek. Rules adopted by the commissioner under this paragraph shall allow taking of family leave on an intermittent basis or by use of a reduced workweek to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis or by use of a reduced workweek does not result in the loss of an eligible employee’s exempt status under the federal Fair Labor Standards Act.

(b) The commissioner shall adopt rules governing when family leave for the purposes described in ORS 659A.159 (1)(e) may be taken to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis does not result in the loss of an eligible employee’s exempt status under the federal Fair Labor Standards Act.

SECTION 7. ORS 659A.162, as amended by section 56, chapter 700, Oregon Laws 2019, is amended to read:

659A.162. (1) Except as specifically provided by ORS 657B.020 and 659A.150 to 659A.186, an eligible employee is entitled to up to a total of 12 weeks of family leave within any one-year period.

(2)(a) Except as provided by paragraph (b) of this subsection, an eligible employee is entitled to a total of two weeks of family leave for the purposes described in ORS 659A.159 (1)(e).

(b) An eligible employee is entitled to the period of leave described in paragraph (a) of this subsection upon the death of each family member of the employee within any one-year period, except that leave taken as provided by this subsection may not exceed the total period of family leave authorized by subsection (1) of this section.

(c) A covered employer may not require an eligible employee to take multiple periods of leave described in ORS 659A.159 (1)(e) concurrently if more than one family member of the employee dies during the one-year period.

(d) All leave taken for the purposes described in ORS 659A.159 (1)(e) shall be counted toward the total period of family leave authorized by subsection (1) of this section.

(3)(a) In addition to the 12 weeks of family leave authorized by subsection (1) of this section, an eligible employee may take a total of 12 weeks of leave within any one-year period for an illness, injury or condition related to pregnancy or childbirth that disables the eligible employee from performing any available job duties offered by the covered employer.

(b) An eligible employee who takes 12 weeks of family leave within a one-year period for the purpose specified in ORS 659A.159 (1)(a) may take up to an additional 12 weeks of leave within the one-year period for the purpose specified in ORS 659A.159 (1)(d).

(4) When two or more family members work for the same covered employer, the eligible employees may not take concurrent family leave unless:

(a) One employee needs to care for another employee who is a family member and who is suffering from a serious health condition;

(b) One employee needs to care for a child who has a serious health condition while another employee who is a family member is also suffering from a serious health condition; or

(c) The employees are taking leave described in ORS 659A.159 (1)(e).

(5) An eligible employee may take family leave for the purpose specified in ORS 659A.159 (1)(a) in two or more nonconsecutive periods of leave only with the approval of the employer.

(6) Leave need not be provided to an eligible employee by a covered employer for the purpose specified in ORS 659A.159 (1)(d) if another family member is available to care for the child.
(7) A covered employer may not reduce the amount of family leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury.

(8)(a) The Commissioner of the Bureau of Labor and Industries shall adopt rules governing when family leave for a serious health condition of an eligible employee or a family member of the eligible employee may be taken intermittently or by working a reduced workweek. Rules adopted by the commissioner under this paragraph shall allow taking of family leave on an intermittent basis or by use of a reduced workweek to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis or by use of a reduced workweek does not result in the loss of an eligible employee’s exempt status under the federal Fair Labor Standards Act.

(b) The commissioner shall adopt rules governing when family leave for the purposes described in ORS 659A.159 (1)(e) may be taken to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis does not result in the loss of an eligible employee’s exempt status under the federal Fair Labor Standards Act.

SECTION 8. ORS 659A.165 is amended to read:

659A.165. (1) Except as provided in subsection (2) of this section, a covered employer may require an eligible employee to give the employer written notice at least 30 days before commencing family leave. The employer may require the employee to include an explanation of the need for the leave in the notice.

(2) An eligible employee may commence taking family leave without prior notice under the following circumstances:

(a) An unexpected serious health condition of an employee or family member of an employee;
(b) An unexpected illness, injury or condition of a child of the employee that requires home care;
(c) A premature birth, unexpected adoption or unexpected foster placement; or
(d) The death of a family member.

(3) If an employee commences leave without prior notice under subsection (2) of this section, the employee must give oral notice to the employer within 24 hours of the commencement of the leave, and must provide the written notice required by subsection (1) of this section within three days after the employee returns to work. The oral notice required by this subsection may be given by any other person on behalf of the employee taking the leave.

(4) Except as provided in this subsection, if the employee fails to give notice as required by subsections (1) and (3) of this section, the employer may reduce the total period of family leave authorized by ORS 659A.162 by three weeks, and the employee may be subject to disciplinary action under a uniformly applied policy or practice of the employer. A reduction of family leave under this subsection may not limit leave described in ORS 659A.159 (1)(e).

SECTION 9. ORS 659A.174 is amended to read:

659A.174. (1) Except as provided in subsection (2) of this section, and unless otherwise provided by the terms of an agreement between the eligible employee and the covered employer, a collective bargaining agreement or an employer policy, family leave is not required to be granted with pay.

(2) An employee taking family leave is entitled to use any paid accrued sick leave or any paid accrued vacation leave during the period of family leave, or to use any other paid leave that is offered by the employer in lieu of vacation leave during the period of family leave.

(3) Subject to the terms of any agreement between the eligible employee and the covered employer or the terms of a collective bargaining agreement, the [employer] employee may determine the particular order in which accrued leave is to be used in circumstances in which more than one
type of accrued leave is available to the employee.

SECTION 10. ORS 653.601 is amended to read:

653.601. As used in ORS 653.601 to 653.661:

(1)(a) “Employee” means an individual who renders personal services at a fixed rate to an employer if the employer either pays or agrees to pay for personal services or permits the individual to perform personal services.

(b) “Employee” includes, but is not limited to:

(A) An individual who is paid on a piece-rate basis or the basis of the number of operations accomplished or quantity produced or handled;

(B) Individuals paid on an hourly, salary or commission basis;

(C) Individuals for whom withholding is required under ORS 316.162 to 316.221;

(D) Home care workers as defined in ORS 410.600; and

(E) Personal support workers as defined in ORS 410.600.

(c) “Employee” does not include:

(A) An employee who receives paid sick time under federal law;

(B) An independent contractor;

(C) A participant in a work training program administered under a state or federal assistance program;

(D) A participant in a work-study program that provides students in secondary or post-secondary educational institutions with employment opportunities for financial assistance or vocational training;

(E) A railroad worker exempted under the federal Railroad Unemployment Insurance Act; and

(F) An individual employed by that individual’s parent, spouse or child.

(2)(a) “Employer” means any person that employs one or more employees working anywhere in this state, a political subdivision of the state and any county, city, district, authority, public corporation or entity, and any instrumentality of a county, city, district, authority, public corporation or entity, organized and existing under law or charter.

(b) “Employer” includes an employer located in a city with a population exceeding 500,000.

(c) “Employer” does not include the federal government.

(3)(a) “Employer located in a city with a population exceeding 500,000” includes, but is not limited to, an employer that maintains any office, store, restaurant or establishment in that city.

(b) “Employer located in a city with a population exceeding 500,000” does not include an employer that maintains only a seasonal farm stand or a trailer that is used temporarily on a construction site for office purposes only.

(4) “Family member” [has the meaning given that term in ORS 659A.150] means the spouse of an employee, the biological, adoptive or foster parent or child of the employee, the grandparent or grandchild of the employee, a parent-in-law of the employee or a person with whom the employee was or is in a relationship of in loco parentis.

(5)(a) “Front-load,” except as provided in paragraph (b) of this subsection, means to assign and make available a certain number of hours of sick time to an employee as soon as the employee becomes eligible to use sick time and on the first day of the immediately subsequent year without regard to an accrual rate.

(b) For employees employed by an employer for less than a full year, “front-load” means to assign and make available to an employee as soon as the employee becomes eligible to use sick time a number of hours of sick time that is the pro rata percentage of the hours the employee would be
entitled to for an entire year based on the number of hours the employee was actually employed by
the employer for the year.

(6) “Paid sick time” means time off:
(a) That is provided to an employee by an employer that employs 10 or more employees;
(b) That may be used for the purposes specified in ORS 653.616; and
(c) That is compensated at the regular rate of pay and without reductions in benefits, including
but not limited to health care benefits, that the employee earns from the employer at the time the
employee uses the paid sick time.

(7) “Sick time” means time during which an employee is permitted to be absent from work for
a reason authorized under ORS 653.616 without a reduction in benefits, including but not limited to
health care benefits, that the employee earns from the employer.

(8) “Year” includes any consecutive 12-month period, such as a calendar year, a tax year, a
fiscal year, a contract year or the 12-month period beginning on the anniversary of the date of em-
ployment of the employee.

SECTION 11. ORS 659A.168 is amended to read:
659A.168. (1) Except as provided in subsection (2) of this section, a covered employer may re-
quire medical verification from a health care provider of the need for the leave if the leave is for
a purpose described in ORS 659A.159 (1)(b) to (d) other than to care for a child who requires
home care due to the closing of the child's school or child care provider. If an employee is
required to give notice under ORS 659A.165 (1), the employer may require that medical verification
be provided by the employee before the leave period commences. If the employee commences family
leave without prior notice pursuant to ORS 659A.165 (2), the medical verification must be provided
by the employee within 15 days after the employer requests the medical verification. The employer
may require an employee to obtain the opinion of a second health care provider designated by the
employer, at the employer's expense. If the opinion of the second health care provider conflicts with
the medical verification provided by the employee, the employer may require the two health care
providers to designate a third health care provider to provide an opinion at the employer's expense.
The opinion of the third health care provider shall be final and binding on the employer and em-
ployee. In addition to the medical verifications provided for in this subsection, an employer may
require subsequent medical verification on a reasonable basis.

(2) A covered employer may require medical verification for leave taken for the purpose de-
scribed in ORS 659A.159 (1)(d), other than to care for a child who requires home care due to
the closing of the child's school or child care provider, only after an employee has taken more
than three days of leave under ORS 659A.159 (1)(d) during any one-year period. Any medical verifi-
cation required under this subsection must be paid for by the covered employer. An employer may
not require an employee to obtain the opinion of a second health care provider for the purpose of
medical verification required under this subsection.

(3) Subject to the approval of the health care provider, the employee taking family leave for a
serious health condition of the employee or a family member of the employee shall make a reason-
able effort to schedule medical treatment or supervision at times that will minimize disruption of the
employer's operations.