

SB 172-3  
(LC 2696)  
4/2/21 (ASD/ps)

Requested by SENATE COMMITTEE ON LABOR AND BUSINESS

**PROPOSED AMENDMENTS TO  
SENATE BILL 172**

1 In line 2 of the printed bill, after “benefits” insert “; creating new pro-  
2 visions; amending ORS 657.150, 657.176, 657.310, 657.315, 657.317 and 657B.010;  
3 and declaring an emergency”.

4 Delete lines 4 through 8 and insert:

5 **“SECTION 1.** ORS 657.310 is amended to read:

6 “657.310. (1)(a) If the Director of the Employment Department decides  
7 that an individual received any benefits under this chapter to which the in-  
8 dividual is not entitled because the individual, regardless of the individual’s  
9 knowledge or intent, made or caused to be made a false statement or mis-  
10 representation of a material fact, or failed to disclose a material fact, the  
11 individual is liable:

12 “[a] (A) To repay the amount of the benefits to the director for the  
13 Unemployment Compensation Trust Fund **within five years following the**  
14 **week in which the decision establishing the erroneous payment be-**  
15 **came final;** or

16 “[b] (B) To have the amount of the benefits deducted from any future  
17 benefits otherwise payable to the individual under this chapter **for any week**  
18 **or weeks within five years following the week in which the decision**  
19 **establishing the erroneous payment became final.**

20 **“(b) For purposes of paragraph (a)(B) of this subsection, the direc-**  
21 **tor may deduct all or any part of the individual’s future weekly bene-**

1 **fits.**

2 **“(c) Notice provided to an individual of the individual’s liability for**  
3 **recovery of benefits under this section must include a description of:**

4 **“(A) The basis for the director’s decision that benefits have been**  
5 **overpaid; and**

6 **“(B) The consequences of the overpayment, including the methods**  
7 **of recovery of the overpaid amount, with interest and penalties, and**  
8 **the possibility of waiver under ORS 657.317.**

9 **“(2) In addition to the liability described in subsection (1) of this section,**  
10 **an individual who has been disqualified for benefits under ORS 657.215 is**  
11 **liable for a penalty imposed at a rate prescribed by the director of at least**  
12 **15, but not greater than 30, percent of the amount of benefits the individual**  
13 **received to which the individual was not entitled.**

14 **“(3) A decision of the director under this section does not authorize the**  
15 **recovery of the amount of any benefits paid to an individual until the deci-**  
16 **sion is final and the decision specifies:**

17 **“(a) That the individual, by reason of the false statement, misrepresen-**  
18 **tation or nondisclosure, is liable to repay the amount to the Unemployment**  
19 **Compensation Trust Fund;**

20 **“(b) The nature of the false statement, misrepresentation or**  
21 **nondisclosure; and**

22 **“(c) The week or weeks for which the benefits were paid.**

23 **“(4)(a) The director may bring a civil action against an individual**  
24 **to collect any amount subject to recovery and any penalty due under this**  
25 **section [may be collected by the director in a civil action against the individ-**  
26 **ual brought in the name of the director].**

27 **“(b) Judgment rendered shall bear interest at the rate provided in sub-**  
28 **section (5) of this section.**

29 **“(5) Interest on any amount liable to be repaid under this section shall**  
30 **be paid and collected at the same time repayment of benefits is made by the**

1 individual, at the rate of one percent per month or fraction of a month, be-  
2 ginning on the first day of the month following 60 days after the finality of  
3 the administrative decision establishing the overpayment.

4 “(6)(a) Deductions from unemployment insurance benefits pursuant to  
5 subsection [(1)(b)] **(1)(a)(B)** of this section shall be applied solely to the  
6 amount of the benefits liable to be repaid under this section.

7 “(b) All other payments shall be applied first to court costs, then to pen-  
8 alties, then to interest, then to the amount liable to be repaid.

9 “(7)(a) The following amounts collected under this section shall be paid  
10 into the Unemployment Compensation Trust Fund:

11 “(A) Amounts in repayment of benefits; and

12 “(B) The portion of penalties imposed under subsection (2) of this section  
13 that is 15 percent of the amount of benefits received.

14 “(b) The following amounts collected under this section shall be paid into  
15 the Employment Department Special Fraud Control Fund in accordance with  
16 the provisions of ORS 657.400:

17 “(A) Interest other than interest described in paragraph (c) of this sub-  
18 section; and

19 “(B) The portion of penalties imposed under subsection (2) of this section  
20 that remains after subtraction of the portion of penalties described in para-  
21 graph (a)(B) of this subsection.

22 “(c) Interest payable on any portion of benefits that were funded by the  
23 federal government shall be paid to the United States Department of Labor.

24 “(8) The director shall adopt rules establishing standards and procedures  
25 for the repayment of benefits and payment of penalties and interest under  
26 this section.

27 **“SECTION 2.** ORS 657.315 is amended to read:

28 “657.315. (1)(a) If the Director of the Employment Department decides  
29 that an individual has been paid benefits to which the individual is not en-  
30 titled because of an error not due to the individual providing a false state-

1 ment or misrepresentation of a material fact or not disclosing a material  
2 fact, or because an initial decision to pay benefits is subsequently reversed  
3 by a decision finding the individual is not eligible for the benefits, the indi-  
4 vidual is liable to have the amount deducted from any future benefits oth-  
5 erwise payable to the individual under this chapter or the equivalent law of  
6 another state for any week or weeks within five years following the week in  
7 which the decision establishing the erroneous payment became final.

8 **“(b) For purposes of paragraph (a) of this subsection, the director**  
9 **may deduct all or any part of the individual’s future weekly benefits.**

10 **“(c) Any notice provided to an individual of the individual’s liability**  
11 **for recovery of benefits under this section must include a description**  
12 **of:**

13 **“(A) The basis for the director’s decision that benefits have been**  
14 **overpaid; and**

15 **“(B) The consequences of the overpayment, including recovery of**  
16 **the overpaid amount and the possibility of waiver under ORS 657.317.**

17 **“(2) Subject to ORS 657.269 and 657.270,** a decision of the director under  
18 this section does not authorize the recovery of the amount of any benefits  
19 paid to an individual until the decision is final [*and the decision specifies*  
20 *that the individual is liable to have the amount deducted from any future*  
21 *benefits otherwise payable under this chapter or the equivalent law of another*  
22 *state for any week or weeks within five years following the week in which the*  
23 *decision establishing the erroneous payment became final*].

24 **“(3) The director may bring a civil action against an individual to**  
25 **recover** amounts paid to [*an*] **the** individual in excess of the maximum ben-  
26 efits allowable pursuant to this chapter [*may be recovered in a civil action*  
27 *brought in the name of the director for such purpose*].

28 **“SECTION 3.** ORS 657.317 is amended to read:

29 **“657.317. (1) The Director of the Employment Department shall waive re-**  
30 **covery of **overpaid** benefits under ORS 657.315 if the director finds that the**

1 benefits are recoverable due to a change in federal or state law, the appli-  
2 cation of which has caused the disqualification of benefits previously paid.

3 “(2)(a) **Except as provided in paragraph (b) of this subsection**, the  
4 director may waive recovery of **all or any part of overpaid benefits subject**  
5 **to repayment or deduction** under ORS [657.315] **657.310 (1) or 657.315 (1)**  
6 if the director finds that recovery of **the** benefits would be against equity  
7 and good conscience.

8 “(b) **The director may not waive recovery under this subsection of**  
9 **overpaid benefits that are liable for the penalty imposed under ORS**  
10 **657.310 (2).**

11 “[3] *If the United States Secretary of Labor serves notice that the pro-*  
12 *visions of subsection (1) or (2) of this section fail to meet the requirements of*  
13 *the Social Security Act or the Federal Unemployment Tax Act, the noncon-*  
14 *forming subsection is no longer of any force or effect.]*

15 “[4] (3) The director may waive establishment and recovery of overpaid  
16 benefits when no decision has been issued under ORS 657.310 or 657.315 and  
17 the amount of the overpayment is less than one-half of the maximum weekly  
18 benefit amount in effect at the time the overpayment is discovered.

19 “(4) **Any waiver granted under this section extinguishes all liability**  
20 **of the debtor for the waived amounts.**

21 “**SECTION 4. The amendments to ORS 657.310, 657.315 and 657.317**  
22 **by sections 1 to 3 of this 2021 Act apply to benefits determined on or**  
23 **after the effective date of this 2021 Act to have been overpaid.**

24 “**SECTION 5.** ORS 657.150, as amended by section 1, chapter 1, Oregon  
25 Laws 2020 (second special session), is amended to read:

26 “657.150. (1) An individual shall be paid benefits for weeks during the  
27 benefit year in an amount [*which*] **that** is to be determined by taking into  
28 account the individual’s work in subject employment in the base year as  
29 provided in this section.

30 “(2)(a) To qualify for benefits an individual must have:

1       “(A) Worked in subject employment in the base year with total base year  
2 wages of \$1,000 or more and have total base year wages equal to or in excess  
3 of one and one-half times the wages in the highest quarter of the base year;  
4 and

5       “(B) Have earned wages in subject employment equal to six times the  
6 individual’s weekly benefit amount in employment for service performed  
7 subsequent to the beginning of a preceding benefit year if benefits were paid  
8 to the individual for any week in the preceding benefit year.

9       “(b) If the individual does not meet the requirements of paragraph (a)(A)  
10 of this subsection, the individual may qualify for benefits if the individual  
11 has worked a minimum of 500 hours in employment subject to this chapter  
12 during the base year.

13       “(3) If the wages paid to an individual are not based upon a fixed period  
14 of time or if wages are paid at irregular intervals or in such manner as not  
15 to extend regularly over the period of employment, for the purposes of sub-  
16 sections (2) to (5) of this section, the individual’s wages shall be allocated  
17 in accordance with rules prescribed by the Director of the Employment De-  
18 partment. Such rules shall, insofar as possible, produce results the same as  
19 those [*which*] **that** would exist if the individual had been paid wages at  
20 regular intervals. The director may adopt rules to attribute hours of work  
21 to an individual if the individual is not paid on an hourly basis or if the  
22 employer does not report the number of hours worked.

23       “(4)(a) An eligible individual’s weekly benefit amount shall be 1.25 per-  
24 cent of the total wages paid in the individual’s base year. However, such  
25 amount shall not be less than the minimum, nor more than the maximum  
26 weekly benefit amount.

27       “[(a)] (b) The minimum weekly benefit amount shall be 15 percent (0.1500)  
28 of the state average weekly covered wage for the preceding calendar year,  
29 effective for any benefit year commencing on and after the week [*which*] **that**  
30 includes July 4, 1975, and the week that includes each July 4 thereafter.

1       “[(b)] (c) The maximum weekly benefit amount shall be:

2       “(A) Fifty-five percent (0.5500) of the state average weekly covered wage  
3 for calendar year 1979, effective for any benefit year commencing with and  
4 after the week [which] **that** includes July 4, 1980, and through any benefit  
5 year commencing with the week [which] **that** includes June 27, 1981.

6       “(B) Fifty-five percent (0.5500) of the state average weekly covered wage  
7 for calendar year 1980, effective for any benefit year commencing with and  
8 after the week [which] **that** includes July 4, 1981, through any benefit year  
9 commencing with the week [which] **that** includes September 27, 1981.

10       “(C) Fifty-eight percent (0.5800) of the state average weekly covered wage  
11 for calendar year 1980, effective for any benefit year commencing with and  
12 after the week [which] **that** includes October 4, 1981, through any benefit  
13 year commencing with the week [which] **that** includes June 27, 1982.

14       “(D) Sixty percent (0.6000) of the state average weekly covered wage for  
15 calendar year 1981, effective for any benefit year commencing with and after  
16 the week [which] **that** includes July 4, 1982, through any benefit year com-  
17 mencing with the week [which] **that** includes June 27, 1983.

18       “(E) Sixty-four percent (0.6400) of the state average covered weekly wage  
19 for the preceding calendar year, effective for any benefit year commencing  
20 with and after the week [which] **that** includes July 4, 1983, and the week  
21 [which] **that** includes each July 4 thereafter.

22       “[(c)] (d) All weekly benefit amounts, if not a multiple of \$1, shall be  
23 computed to the next lower multiple of \$1.

24       “[(d)] (e) For the purposes of this subsection, the state average weekly  
25 covered wage means an amount determined by the Employment Department  
26 by dividing the total wages paid by subject employers during the year by 52  
27 times the average monthly employment reported by subject employers for the  
28 year.

29       “(5) Benefits paid to an eligible individual in a benefit year shall not ex-  
30 ceed 26 times the individual’s weekly benefit amount, or one-third of the base

1 year's wages paid, whichever is the lesser. If such amount is not a multiple  
2 of \$1, it shall be computed to the next lower multiple of \$1.

3 “(6) An eligible unemployed individual who has employment in any week  
4 shall have the individual's weekly benefit amount reduced, but not below  
5 zero, by the amount of earnings paid or payable that exceeds the greater of:

6 “(a) \$300; or

7 “(b) One-third of the individual's weekly benefit amount.

8 “(7) Payment [*which*] **that** has been, is or will be paid to an individual  
9 for a holiday or vacation shall be considered as earnings in the determi-  
10 nation of the amount of benefits payable with respect to the week in which  
11 the holiday or vacation falls in the same manner as provided in subsection  
12 (6) of this section. However, if payment for the holiday or vacation is paid  
13 more than 45 days prior to the holiday or vacation or is delayed more than  
14 45 days following the end of the week in which the holiday or vacation falls,  
15 the provisions of this section do not apply and previously reduced benefits  
16 shall be adjusted accordingly.

17 “(8) **Payment that has been or is paid to an individual as back pay**  
18 **shall be considered as earnings in the determination of the amount**  
19 **of benefits payable with respect to the period for which the back pay**  
20 **has been or is paid.**

21 “[8] (9) Payment that has been, or will be, made to an individual as a  
22 member of a reserve component of the Armed Forces of the United States,  
23 including the organized militia of the State of Oregon, for the performance  
24 of inactive duty training shall not be considered as earnings in the determi-  
25 nation of the amount of benefits payable.

26 “**SECTION 6.** ORS 657.150, as amended by sections 1 and 3, chapter 1,  
27 Oregon Laws 2020 (second special session), is amended to read:

28 “657.150. (1) An individual shall be paid benefits for weeks during the  
29 benefit year in an amount [*which*] **that** is to be determined by taking into  
30 account the individual's work in subject employment in the base year as



1 provided in this section.

2 “(2)(a) To qualify for benefits an individual must have:

3 “(A) Worked in subject employment in the base year with total base year  
4 wages of \$1,000 or more and have total base year wages equal to or in excess  
5 of one and one-half times the wages in the highest quarter of the base year;  
6 and

7 “(B) Have earned wages in subject employment equal to six times the  
8 individual’s weekly benefit amount in employment for service performed  
9 subsequent to the beginning of a preceding benefit year if benefits were paid  
10 to the individual for any week in the preceding benefit year.

11 “(b) If the individual does not meet the requirements of paragraph (a)(A)  
12 of this subsection, the individual may qualify for benefits if the individual  
13 has worked a minimum of 500 hours in employment subject to this chapter  
14 during the base year.

15 “(3) If the wages paid to an individual are not based upon a fixed period  
16 of time or if wages are paid at irregular intervals or in such manner as not  
17 to extend regularly over the period of employment, for the purposes of sub-  
18 sections (2) to (5) of this section, the individual’s wages shall be allocated  
19 in accordance with rules prescribed by the Director of the Employment De-  
20 partment. Such rules shall, insofar as possible, produce results the same as  
21 those [*which*] **that** would exist if the individual had been paid wages at  
22 regular intervals. The director may adopt rules to attribute hours of work  
23 to an individual if the individual is not paid on an hourly basis or if the  
24 employer does not report the number of hours worked.

25 “(4)(a) An eligible individual’s weekly benefit amount shall be 1.25 per-  
26 cent of the total wages paid in the individual’s base year. However, such  
27 amount shall not be less than the minimum, nor more than the maximum  
28 weekly benefit amount.

29 “[*a*] (b) The minimum weekly benefit amount shall be 15 percent (0.1500)  
30 of the state average weekly covered wage for the preceding calendar year,

1 effective for any benefit year commencing on and after the week [*which*] **that**  
2 includes July 4, 1975, and the week that includes each July 4 thereafter.

3 “[*b*] (c) The maximum weekly benefit amount shall be:

4 “(A) Fifty-five percent (0.5500) of the state average weekly covered wage  
5 for calendar year 1979, effective for any benefit year commencing with and  
6 after the week [*which*] **that** includes July 4, 1980, and through any benefit  
7 year commencing with the week [*which*] **that** includes June 27, 1981.

8 “(B) Fifty-five percent (0.5500) of the state average weekly covered wage  
9 for calendar year 1980, effective for any benefit year commencing with and  
10 after the week [*which*] **that** includes July 4, 1981, through any benefit year  
11 commencing with the week [*which*] **that** includes September 27, 1981.

12 “(C) Fifty-eight percent (0.5800) of the state average weekly covered wage  
13 for calendar year 1980, effective for any benefit year commencing with and  
14 after the week [*which*] **that** includes October 4, 1981, through any benefit  
15 year commencing with the week [*which*] **that** includes June 27, 1982.

16 “(D) Sixty percent (0.6000) of the state average weekly covered wage for  
17 calendar year 1981, effective for any benefit year commencing with and after  
18 the week [*which*] **that** includes July 4, 1982, through any benefit year com-  
19 mencing with the week [*which*] **that** includes June 27, 1983.

20 “(E) Sixty-four percent (0.6400) of the state average covered weekly wage  
21 for the preceding calendar year, effective for any benefit year commencing  
22 with and after the week [*which*] **that** includes July 4, 1983, and the week  
23 [*which*] **that** includes each July 4 thereafter.

24 “[*c*] (d) All weekly benefit amounts, if not a multiple of \$1, shall be  
25 computed to the next lower multiple of \$1.

26 “[*d*] (e) For the purposes of this subsection, the state average weekly  
27 covered wage means an amount determined by the Employment Department  
28 by dividing the total wages paid by subject employers during the year by 52  
29 times the average monthly employment reported by subject employers for the  
30 year.

1 “(5) Benefits paid to an eligible individual in a benefit year shall not ex-  
2 ceed 26 times the individual’s weekly benefit amount, or one-third of the base  
3 year’s wages paid, whichever is the lesser. If such amount is not a multiple  
4 of \$1, it shall be computed to the next lower multiple of \$1.

5 “(6) An eligible unemployed individual who has employment in any week  
6 shall have the individual’s weekly benefit amount reduced, but not below  
7 zero, by the amount of earnings paid or payable that exceeds the greater of:

8 “(a) Ten times the minimum hourly wage established by the laws of this  
9 state; or

10 “(b) One-third of the individual’s weekly benefit amount.

11 “(7) Payment [*which*] **that** has been, is or will be paid to an individual  
12 for a holiday or vacation shall be considered as earnings in the determi-  
13 nation of the amount of benefits payable with respect to the week in which  
14 the holiday or vacation falls in the same manner as provided in subsection  
15 (6) of this section. However, if payment for the holiday or vacation is paid  
16 more than 45 days prior to the holiday or vacation or is delayed more than  
17 45 days following the end of the week in which the holiday or vacation falls,  
18 the provisions of this section do not apply and previously reduced benefits  
19 shall be adjusted accordingly.

20 “(8) **Payment that has been or is paid to an individual as back pay**  
21 **shall be considered as earnings in the determination of the amount**  
22 **of benefits payable with respect to the period for which the back pay**  
23 **has been or is paid.**

24 “[8] (9) Payment that has been, or will be, made to an individual as a  
25 member of a reserve component of the Armed Forces of the United States,  
26 including the organized militia of the State of Oregon, for the performance  
27 of inactive duty training shall not be considered as earnings in the determi-  
28 nation of the amount of benefits payable.

29 “**SECTION 7. Section 8 of this 2021 Act is added to and made a part**  
30 **of ORS chapter 657.**

1       **“SECTION 8. The amount of back pay paid by an employer, or**  
2 **awarded by a judge or arbitrator, to an individual may not be reduced**  
3 **to reflect the amount of benefits that the individual received during**  
4 **the period for which the back pay was paid or awarded.**

5       **“SECTION 9. Section 8 of this 2021 Act and the amendments to ORS**  
6 **657.150 by sections 5 and 6 of this 2021 Act apply to back pay paid or**  
7 **awarded on or after the effective date of this 2021 Act.**

8       **“SECTION 10. ORS 657B.010 is amended to read:**

9       “657B.010. As used in this chapter:

10       “(1) ‘Alternate base year’ means the last four completed calendar quarters  
11 preceding the benefit year.

12       “(2) ‘Average weekly wage’ means the amount calculated by the Employ-  
13 ment Department as the state average weekly covered wage under ORS  
14 657.150 [(4)(d)] (4)(e) as determined not more than once per year.

15       “(3) ‘Base year’ means the first four of the last five completed calendar  
16 quarters preceding the benefit year.

17       “(4) ‘Benefits’ means family and medical leave insurance benefits.

18       “(5) ‘Benefit year’ means the 12-month period as determined by the Di-  
19 rector of the Employment Department by rule under ORS 657B.340.

20       “(6) ‘Child’ means:

21       “(a) A biological child, adopted child, stepchild or foster child of a cov-  
22 ered individual or of the covered individual’s spouse or domestic partner;

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

25       “(c) A person who is or was in a relationship of in loco parentis with a  
26 covered individual or with the covered individual’s spouse or domestic part-  
27 ner.

28       “(7) ‘Contribution’ or ‘contributions’ means the money payments made by  
29 any of the following under ORS 657B.150:

30       “(a) An employer;

1       “(b) An eligible employee;  
2       “(c) A self-employed individual;  
3       “(d) A tribal government; or  
4       “(e) An employee of a tribal government.  
5       “(8) ‘Covered individual’ means any one of the following who qualifies to  
6 receive family and medical leave insurance benefits:  
7       “(a) An eligible employee;  
8       “(b) A self-employed individual; or  
9       “(c) An employee of a tribal government.  
10       “(9) ‘Domestic partner’ means an individual joined in a domestic part-  
11 nership.  
12       “(10) ‘Domestic partnership’ has the meaning given that term in ORS  
13 106.310.  
14       “(11) ‘Eligible employee’ means:  
15       “(a)(A) An employee who has earned at least \$1,000 in wages during the  
16 base year; or  
17       “(B) If an employee has not earned at least \$1,000 in wages during the  
18 base year, an employee who has earned at least \$1,000 in wages during the  
19 alternate base year; and  
20       “(b) Who may apply for paid family and medical leave insurance benefits  
21 under ORS 657B.015.  
22       “(12) ‘Eligible employee’s average weekly wage’ means an amount calcu-  
23 lated by the Director of the Employment Department by dividing the total  
24 wages earned by an eligible employee during the base year by the number  
25 of weeks in the base year.  
26       “(13)(a) ‘Employee’ means:  
27       “(A) An individual performing services for an employer for remuneration  
28 or under any contract of hire, written or oral, express or implied.  
29       “(B) A home care worker as defined in ORS 410.600.  
30       “(b) ‘Employee’ does not include:

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

2       “(B) A participant in a work training program administered under a state  
3 or federal assistance program.

4       “(C) A participant in a work-study program that provides students in  
5 secondary or postsecondary educational institutions with employment op-  
6 portunities for financial assistance or vocational training.

7       “(D) A railroad worker exempted under the federal Railroad Unemploy-  
8 ment Insurance Act.

9       “(E) A volunteer.

10       “(14)(a) ‘Employer’ means any person that employs one or more employees  
11 working anywhere in this state or any agent or employee of such person to  
12 whom the duties of the person under this chapter have been delegated.

13       “(b) ‘Employer’ includes:

14       “(A) A political subdivision of this state or any county, city, district,  
15 authority or public corporation, or any instrumentality of a county, city,  
16 district, authority or public corporation, organized and existing under law  
17 or charter;

18       “(B) An individual;

19       “(C) Any type of organization, corporation, partnership, limited liability  
20 company, association, trust, estate, joint stock company or insurance com-  
21 pany;

22       “(D) Any successor in interest to an entity described in subparagraph (C)  
23 of this paragraph;

24       “(E) A trustee, trustee in bankruptcy or receiver; or

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

26       “(c) ‘Employer’ does not include the federal government or a tribal gov-  
27 ernment.

28       “(15) ‘Employment agency’ has the meaning given that term in ORS  
29 658.005.

30       “(16) ‘Family and medical leave insurance benefits’ means the wage re-

1 placement benefits that are available to a covered individual under ORS  
2 657B.050 or under the terms of an employer plan approved under ORS  
3 657B.210, for family leave, medical leave or safe leave.

4 “(17)(a) ‘Family leave’ means leave from work taken by a covered indi-  
5 vidual:

6 “(A) To care for and bond with a child during the first year after the  
7 child’s birth or during the first year after the placement of the child through  
8 foster care or adoption; or

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

10 “(b) ‘Family leave’ does not mean:

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

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

13 “(C) Leave authorized under ORS 659A.093.

14 “(18) ‘Family member’ means:

15 “(a) The spouse of a covered individual;

16 “(b) A child of a covered individual or the child’s spouse or domestic  
17 partner;

18 “(c) A parent of a covered individual or the parent’s spouse or domestic  
19 partner;

20 “(d) A sibling or stepsibling of a covered individual or the sibling’s or  
21 stepsibling’s spouse or domestic partner;

22 “(e) A grandparent of a covered individual or the grandparent’s spouse  
23 or domestic partner;

24 “(f) A grandchild of a covered individual or the grandchild’s spouse or  
25 domestic partner;

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

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

29 “(19) ‘Medical leave’ means leave from work taken by a covered individual  
30 that is made necessary by the individual’s own serious health condition.

1 “(20) ‘Parent’ means:

2 “(a) A biological parent, adoptive parent, stepparent or foster parent of  
3 a covered individual;

4 “(b) A person who was a foster parent of a covered individual when the  
5 covered individual was a minor;

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

8 “(d) A person with whom a covered individual was or is in a relationship  
9 of in loco parentis; or

10 “(e) A parent of a covered individual’s spouse or domestic partner who  
11 meets a description under paragraphs (a) to (d) of this subsection.

12 “(21) ‘Safe leave’ means leave taken for any purpose described in 659A.272.

13 “(22) ‘Self-employed individual’ means:

14 “(a) An individual who has self-employment income as defined in section  
15 1402(b) of the Internal Revenue Code as amended and in effect on December  
16 31, 2018; or

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

18 “(23) ‘Serious health condition’ has the meaning given that term in ORS  
19 659A.150.

20 “(24) ‘Third party administrator’ means a third party that enters into an  
21 agreement with the Director of the Employment Department to implement  
22 and administer the paid family and medical leave program established under  
23 this chapter.

24 “(25) ‘Tribal government’ has the meaning given that term in ORS  
25 181A.680.

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

27 **“SECTION 11.** ORS 657.176 is amended to read:

28 “657.176. (1) An authorized representative designated by the Director of  
29 the Employment Department shall promptly examine each claim to determine  
30 whether an individual is subject to disqualification as a result of a sepa-



1 ration, termination, leaving, resignation, or disciplinary suspension from  
2 work or as a result of failure to apply for or accept work and shall promptly  
3 enter a director's decision if required by ORS 657.267. The authorized repre-  
4 sentative may address issues raised by information before the authorized  
5 representative, including but not limited to the nature of the separation,  
6 notwithstanding the way the parties characterize those issues.

7 “(2) An individual shall be disqualified from the receipt of benefits until  
8 the individual has performed service in employment subject to this chapter  
9 or the equivalent law of another state or Canada or as defined in ORS  
10 657.030 (2) or as an employee of the federal government, for which  
11 remuneration is received that equals or exceeds four times the individual's  
12 weekly benefit amount subsequent to the week in which the act causing the  
13 disqualification occurred, if the authorized representative designated by the  
14 director finds that the individual:

15 “(a) Has been discharged for misconduct connected with work;

16 “(b) Has been suspended from work for misconduct connected with work;

17 “(c) Voluntarily left work without good cause;

18 “(d) Failed without good cause to apply for available suitable work when  
19 referred by the employment office or the director;

20 “(e) Failed without good cause to accept suitable work when offered;

21 “(f) Has been discharged or suspended for being absent or tardy in re-  
22 porting to work and the absence or tardiness occurred as a result of the  
23 unlawful use of any drug unless the person was participating in a recognized  
24 drug rehabilitation program at the time of the absence or tardiness, or is so  
25 participating within 10 days after the date of the discharge or suspension,  
26 and the person provides to the Employment Department documentation of  
27 program participation. As used in this paragraph, ‘unlawful use’ does not  
28 include the use of a drug taken under the supervision of a licensed health  
29 care professional and in accordance with the prescribed directions for con-  
30 sumption, or other uses authorized by the laws of this state;

1 “(g) Has been discharged or suspended for being absent or tardy in re-  
2 porting to work and the absence or tardiness occurred as the result of the  
3 use of alcohol or cannabis on a second or any subsequent occasion within a  
4 period of 12 months unless the person was participating in a recognized al-  
5 cohol or cannabis rehabilitation program at the time of the absence or  
6 tardiness, or is so participating within 10 days after the date of the discharge  
7 or suspension, and the person provides to the department documentation of  
8 program participation; or

9 “(h) Has committed a disqualifying act described in subsection (9) or (10)  
10 of this section.

11 “(3) If the authorized representative designated by the director finds that  
12 an individual was discharged for misconduct because of the individual’s  
13 commission of a felony or theft in connection with the individual’s work, all  
14 benefit rights based on wages earned prior to the date of the discharge shall  
15 be canceled if the individual’s employer notifies the director of the discharge  
16 within 10 days following issuance of the notice provided for in ORS 657.265  
17 or 30 days following issuance of the notice provided for in ORS 657.266, and:

18 “(a) The individual has admitted commission of the felony or theft to an  
19 authorized representative of the director;

20 “(b) The individual has signed a written admission of the felony or theft  
21 and the written admission has been presented to an authorized representative  
22 of the director; or

23 “(c) The felony or theft has resulted in a conviction by a court of com-  
24 petent jurisdiction.

25 “(4) An individual disqualified under subsection (2) of this section shall  
26 have the individual’s maximum benefit amount reduced by eight times the  
27 individual’s weekly benefit amount. However, in no event shall the  
28 individual’s maximum benefit amount be reduced to less than the individual’s  
29 weekly benefit amount unless the individual has previously received benefits  
30 during the individual’s benefit year.

1 “(5) An individual may not be disqualified from receiving benefits under  
2 subsection (2)(c) or (e) of this section or under ORS 657.200 if the individual  
3 ceases work or fails to accept work when a collective bargaining agreement  
4 between the individual’s bargaining unit and the individual’s employer is in  
5 effect and the employer unilaterally modifies the amount of wages payable  
6 under the agreement, in breach of the agreement.

7 “(6) For purposes of applying subsection (2) of this section, when an in-  
8 dividual has notified an employer that the individual will leave work on a  
9 specific date and it is determined that:

10 “(a) The separation would be for reasons that constitute good cause;

11 “(b) The individual voluntarily left work without good cause prior to the  
12 date of the impending good cause voluntary leaving date; and

13 “(c) The actual voluntary leaving of work occurred no more than 15 days  
14 prior to the planned date of voluntary leaving,

15

16 then the separation from work shall be adjudicated as if the actual voluntary  
17 leaving had not occurred and the planned voluntary leaving had occurred.  
18 However, the individual shall be ineligible for benefits for the period in-  
19 cluding the week in which the actual voluntary leaving occurred through the  
20 week prior to the week of the planned good cause voluntary leaving date.

21 “(7) For purposes of applying subsection (2) of this section, when an em-  
22 ployer has notified an individual that the individual will be discharged on  
23 a specific date and it is determined that:

24 “(a) The discharge would not be for reasons that constitute misconduct  
25 connected with the work;

26 “(b) The individual voluntarily left work without good cause prior to the  
27 date of the impending discharge; and

28 “(c) The voluntary leaving of work occurred no more than 15 days prior  
29 to the date of the impending discharge,

30

1 then the separation from work shall be adjudicated as if the voluntary  
2 leaving had not occurred and the discharge had occurred. However, the in-  
3 dividual shall be ineligible for benefits for the period including the week in  
4 which the voluntary leaving occurred through the week prior to the week in  
5 which the individual would have been discharged.

6 “(8) For purposes of applying subsection (2) of this section, when an in-  
7 dividual has notified an employer that the individual will leave work on a  
8 specific date and it is determined that:

9 “(a) The voluntary leaving would be for reasons that do not constitute  
10 good cause;

11 “(b) The employer discharged the individual, but not for misconduct con-  
12 nected with work, prior to the date of the planned voluntary leaving; and

13 “(c) The actual discharge occurred no more than 15 days prior to the  
14 planned voluntary leaving,

15

16 then the separation from work shall be adjudicated as if the discharge had  
17 not occurred and the planned voluntary leaving had occurred. However, the  
18 individual shall be eligible for benefits for the period including the week in  
19 which the actual discharge occurred through the week prior to the week of  
20 the planned voluntary leaving date.

21 “(9)(a) For the purposes of subsection (2) of this section, an individual is  
22 considered to have committed a disqualifying act when the individual:

23 “(A) Fails to comply with the terms and conditions of a reasonable writ-  
24 ten policy established by the employer or through collective bargaining,  
25 which may include blanket, random, periodic and probable cause testing, that  
26 governs the use, sale, possession or effects of drugs, cannabis or alcohol in  
27 the workplace;

28 “(B) Fails or refuses to take a drug, cannabis or alcohol test as required  
29 by the employer’s reasonable written policy;

30 “(C) Refuses to cooperate with or subverts or attempts to subvert a drug,

1 cannabis or alcohol testing process in any employment-related test required  
2 by the employer's reasonable written policy, including but not limited to:

3 “(i) Refusal or failure to complete proper documentation that authorizes  
4 the test;

5 “(ii) Refusal or failure to sign a chain of custody form;

6 “(iii) Presentation of false identification;

7 “(iv) Placement of an adulterant in the individual's specimen for testing,  
8 when the adulterant is identified by a testing facility; or

9 “(v) Interference with the accuracy of the test results by conduct that  
10 includes dilution or adulteration of a test specimen;

11 “(D) Is under the influence of intoxicants while performing services for  
12 the employer;

13 “(E) Possesses cannabis or a drug unlawfully or in violation of the  
14 employer's reasonable written policy during work;

15 “(F) Tests positive for alcohol, cannabis or an unlawful drug in con-  
16 nection with employment; or

17 “(G) Refuses to enter into or violates the terms of a last chance agree-  
18 ment with the employer.

19 “(b)(A) Except as provided in subparagraph (B) of this paragraph, an in-  
20 dividual is not considered to have committed a disqualifying act under this  
21 subsection if the individual, on the date of separation or within 10 days after  
22 the date of separation, is participating in a recognized drug, cannabis or al-  
23 cohol rehabilitation program and provides documentation of participation in  
24 the program to the department.

25 “(B) This paragraph does not apply to an individual who has refused to  
26 enter into or has violated the terms of a last chance agreement with the  
27 employer.

28 “(c) It is no defense or excuse under this section that the individual's  
29 separation resulted from alcohol use, cannabis use, unlawful drug use,  
30 alcoholism or addiction to cannabis or drugs.

1 “(d) The department shall adopt rules to carry out the provisions of this  
2 subsection.

3 “(10) For the purposes of subsection (2) of this section, an individual is  
4 considered to have committed a disqualifying act when the individual vol-  
5 untarily leaves work, fails to apply for available suitable work when referred  
6 by the employment office or the director or fails to accept suitable work  
7 when offered:

8 “(a) Because the employer has or introduces a reasonable written  
9 cannabis-free or drug-free workplace policy that is consistent with subsection  
10 (9)(a)(A) of this section;

11 “(b) Because the employer requires the employee to consent to present or  
12 future drug, cannabis or alcohol tests under a reasonable written policy that  
13 is consistent with subsection (9)(a)(A) of this section;

14 “(c) To avoid taking a drug, cannabis or alcohol test under a reasonable  
15 written policy that is consistent with subsection (9)(a)(A) of this section; or

16 “(d) To avoid meeting the requirements of a last chance agreement.

17 “(11) An individual may not be disqualified from receiving benefits under  
18 subsection (2)(c) of this section and shall be deemed laid off if the individual:

19 “(a) Works under a collective bargaining agreement;

20 “(b) Elects to be laid off when the employer has decided to lay off em-  
21 ployees; and

22 “(c) Is placed on the referral list under the collective bargaining agree-  
23 ment.

24 “(12) An individual may not be disqualified from receiving benefits under  
25 subsection (2)(c), (d) or (e) of this section or be considered unavailable for  
26 purposes of ORS 657.155 if:

27 “(a) The individual or a member of the individual’s immediate family is  
28 a victim of domestic violence, stalking, sexual assault or [*intimidation*] a  
29 **bias crime**, or the individual believes that the individual or a member of the  
30 individual’s immediate family could become a victim of domestic violence,

1 stalking, sexual assault or [*intimidation*] **a bias crime**; and

2 “(b) The individual leaves work, fails to apply for available suitable work  
3 or fails to accept suitable work when offered in order to protect the indi-  
4 vidual or a member of the individual’s immediate family from domestic vi-  
5 olence, stalking, sexual assault or [*intimidation*] **a bias crime** that the  
6 individual reasonably believes will occur as a result of the individual’s con-  
7 tinued employment or acceptance of work.

8 “(13) For purposes of this section:

9 “(a) ‘Adulterant’ means a substance that does not occur naturally in  
10 urine, or that occurs naturally in urine but not at the concentrations de-  
11 tected. ‘Adulterant’ includes but is not limited to glutaraldehyde, nitrite  
12 concentrations above physiological levels, hypochlorite or soap.

13 “(b) **‘Bias crime’ means:**

14 “(A) **Conduct that, in the determination of the director, more likely**  
15 **than not constitutes a bias crime in the first degree described in ORS**  
16 **166.165 or a bias crime in the second degree described in ORS 166.155;**  
17 **or**

18 “(B) **Similar conduct, as defined by the director by rule.**

19 “[*b*] (c) ‘Drug’ means a controlled substance as defined in ORS 475.005.

20 “[*c*] *‘Intimidation’ means:*]

21 “[*A*] *Conduct that, in the determination of the director, more likely than*  
22 *not constitutes the crime of intimidation in the first degree described in ORS*  
23 *166.165 (2017 Edition) or the crime of intimidation in the second degree de-*  
24 *scribed in ORS 166.155 (2017 Edition); or]*

25 “[*B*] *Similar conduct, as defined by the director by rule.*]

26 “(d) ‘Last chance agreement’ means a reasonable agreement:

27 “(A) Between an employer and an employee who has violated the  
28 employer’s reasonable written policy, has engaged in drug, cannabis or al-  
29 colhol use connected with work or has admitted to alcohol abuse, cannabis  
30 abuse or unlawful drug use; and

1       “(B) That permits the employee to return to work under conditions that  
2 may require the employee to:

3       “(i) Abstain from alcohol use, cannabis use and unlawful drug use; and

4       “(ii) Attend and comply with the requirements of a rehabilitation or ed-  
5 ucation program acceptable to the employer.

6       “(e) ‘Under the influence of intoxicants’ means the level of alcohol,  
7 cannabis or unlawful drugs present in an individual’s body exceeds the  
8 amount prescribed in a collective bargaining agreement or the amount pre-  
9 scribed in the employer’s reasonable written policy if there is no applicable  
10 collective bargaining agreement provision.

11       **“SECTION 12. This 2021 Act being necessary for the immediate  
12 preservation of the public peace, health and safety, an emergency is  
13 declared to exist, and this 2021 Act takes effect on its passage.”.**

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