

# Memorandum

PREPARED FOR: Senator Taylor  
DATE: January 4, 2024  
BY: Whitney Perez, LPRO Analyst  
RE: Summary of Pending Committee Draft Requests



**LPRO**  
LEGISLATIVE POLICY  
AND RESEARCH OFFICE

You requested a summary of the three bill drafts that were requested by the Senate Interim Committee on Labor and Business for the 2024 legislative session. This memorandum provides a summary, including comparison to existing law, of the pending bill drafts based on drafting requests sent to Legislative Counsel on November 9, 2023, plus updates after that date. It is possible that the legislative concepts returned by Legislative Counsel may differ from the summaries contained herein.

## **Legislative Concept Draft #1**

The Senate Interim Committee on Labor and Business's first legislative concept (LC) has three components pertaining to the Oregon Family Leave Act (OFLA) and Paid Leave Oregon: technical fixes to Paid Leave Oregon, administration and oversight of the two programs, and concurrence and alignment of the two programs.

## **Technical Fixes to Paid Leave Oregon**

The LC will address several technical issues within Paid Leave Oregon:

- [ORS 657B.030\(3\) \(2021\)](#) disqualifies an employee from receiving Paid Leave Oregon benefits if the employee is eligible for workers' compensation or unemployment benefits. The LC will specify that employees who are only receiving *non-wage-replacement* workers' compensation benefits are still eligible for Paid Leave Oregon benefits.
- [ORS 653.436 \(2021\)](#) requires certain employers to provide employees with their work schedule in writing at least 14 calendar days before the first day of work. The LC will exempt employers from this predictive scheduling requirement when an employee is returning from leave under the Paid Leave Oregon program.
- [Section 11, Chapter 292, Oregon Laws 2023](#) excludes tribal government from the definition of "employer" within Paid Leave Oregon. The LC will amend this exclusion to apply to all federally recognized tribes.
- The LC will direct healthcare providers to complete medical certification forms for Paid Leave Oregon within 14 days of receiving a request to complete the form, and the form must be completed at no expense to the person requesting leave. The person's insurance provider may be billed.
- The LC will prohibit garnishment of Paid Leave Oregon benefits except for child support, spousal maintenance, and restitution on criminal convictions.
- The LC will have an emergency clause, but operative dates have not been decided.

## Administration and Oversight

Currently, employers administer OFLA and the Oregon Military Family Leave Act (OMFLA) on behalf of their employees. The Oregon Bureau of Labor and Industries (BOLI) investigates employee complaints for violations of OFLA and OMFLA. The LC will require that OED and BOLI collaborate to identify any statutory changes that are necessary to reflect that: 1) BOLI is responsible for processing and investigating complaints related to OFLA, OMFLA, and Paid Leave Oregon; and 2) OED will be responsible for any administrative functions of OFLA, OMFLA, and Paid Leave Oregon, including public outreach for the two programs. OED will submit a report to the Legislative Assembly with recommendations for such statutory changes by September 15, 2024. OED will also be directed to report to the Legislative Assembly by September 15, 2024 on the usage of the Paid Leave Oregon program by seasonal employees and persons employed through Hiring Halls.

## Paid Leave Oregon and Oregon Family Leave Act Concurrence (OFLA) and Alignment

The Paid Leave Oregon program is contained in [ORS chapter 657B](#) and was enacted by the Legislative Assembly in 2019. This program allows eligible Oregon employees to take paid leave for specified family, medical, or safety-related reasons. The program requires employers with 25 or more employees to contribute to the program's fund. An employer may offer employees an equivalent plan approved by OED in lieu of participating in Paid Leave Oregon. Self-employed persons and independent contractors can elect to participate in the program.

OFLA applies to employers with 25 or more employees. OFLA permits employees to take protected, unpaid leave for several qualifying reasons, including: parental leave, an employee's serious health condition, a family member's serious health condition, bereavement, pregnancy disability, and sick child leave.

### Current Law

Existing law establishes the maximum leave lengths for OFLA and Paid Leave Oregon during a benefit year. Maximum leave lengths may vary by leave type and combination of leave type within each program.

Paid Leave Oregon has the following caps on the leave length:

- A maximum leave duration of 12 weeks per benefit year for any qualifying leave reason, in any combination. [ORS 657B.020\(1\) \(2021\)](#).
- An employee is allowed an *additional* two weeks, for a total of 14 weeks per benefit year, for pregnancy or childbirth related conditions. [ORS 657B.020\(3\) \(2021\)](#).



The OFLA program has the following caps on the leave length:

- A maximum leave duration of 12 weeks within a benefit year for any of the qualifying leave reasons, in any combination.
- An employee may be entitled to *additional* leave under the sick child/public health emergency qualifying purpose. OFLA leave is available here when an employee needs 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 or who requires home care due to the closure of the child’s school or child care provider as a result of a public health emergency.” [ORS 659A.159\(1\)\(d\) \(2021\)](#). Generally, the leave length for this sick child leave is limited to the total of 12 weeks of leave within a benefit year for any qualifying reason, in any combination. However, [ORS 659A.162\(3\)\(b\) \(2021\)](#) allows an employee to take an *additional* 12 weeks of leave for this purpose, in the same benefit year, when the employee has already taken 12 weeks of family leave to care for an infant, newly adopted child, or newly placed foster child.
- An employee is allowed to take an *additional* 12 weeks of OFLA leave for “an illness, injury, or condition related to the employee’s own pregnancy or childbirth that disables the employee from performing any available job duties offered by the covered employer.” [ORS 659A.162\(3\)\(a\) \(2021\)](#).
- Bereavement leave is allowed within OFLA to “deal with the death of a family member.” [ORS 659A.159\(1\)\(e\) \(2021\)](#). However, bereavement leave is limited to two weeks for each death of a family member up to a maximum of 12 weeks per benefit year according to [ORS 659A.162\(2\)\(a\)-\(b\)](#). Additionally, all bereavement leave taken counts toward the total 12 weeks of leave an employee is generally allowed to take per benefit year under OFLA. [ORS 659A.162\(2\)\(d\)](#).

There is an additional limitation on benefit leave duration within OFLA and Paid Leave Oregon. Once an employee takes Paid Leave, [ORS 657B.020\(2\) \(2021\)](#) limits the total amount of leave a person may take under both programs for that benefit year to 16 weeks (up to 12 of which may be taken as Paid Leave). An employee may take an *additional* two weeks of Paid Leave for pregnancy or childbirth related conditions, bringing the total leave available for that benefit year up to 18 weeks. Administration and enforcement of this 16 (or 18) week maximum remains contingent on a person choosing to utilize Paid Leave Oregon benefits.

### **Proposed Changes:**

The LC seeks to align OFLA and Paid Leave Oregon by:

- removing the 16 (or 18) week cap contained in [ORS 657B.020\(2\) \(2021\)](#);
- eliminating OFLA leave types that overlap with Paid Leave Oregon leave types;



- changing bereavement leave to two weeks per qualifying event up to a maximum of four weeks in a benefit year;
- amending the sick child/public health emergency leave type in OFLA to include all injuries, illnesses, or conditions that require home care of the employee's child; and
- eliminating the *additional* sick child/public health emergency leave contained in OFLA at [ORS 659A.162\(3\)\(b\) \(2021\)](#).

The LC keeps the existing maximum leave durations for Paid Leave Oregon of 12 weeks, or 14 weeks when there is a pregnancy or childbirth related condition. Leave weeks within OFLA may be taken in addition to leave weeks within Paid Leave Oregon.

The tables below capture existing law and the changes expected within the pending LC. Table 1 shows a comparison of leave duration and qualifying purposes for leave under existing law for OFLA, Paid Leave Oregon, the Family and Medical Leave Act (FMLA), and the Oregon Military Family Leave Act (OMFLA). Table 2 contains a comparison of leave duration and qualifying purposes for leave under existing law and the pending LC for the same programs. Please note: the LC does not make any changes to FMLA or OMFLA. The tables include this information for convenience and comparison.



**Table 1: Comparison of Leave Duration in Weeks (except where marked) Per Benefit Year<sup>1</sup> and Qualifying Purposes for Oregon Family Leave Act (OFLA), Paid Leave Oregon, Family and Medical Leave Act (FMLA), and Oregon Military Family Leave Act (OMFLA) Under Current Law**

Leave Category	OFLA	Paid Leave	FMLA	OMFLA
<b>Family Leave:</b>				
Birth, adoption, or foster placement	12	12	12	No
Family member's serious health condition	12	12	12	No
<b>Medical Leave:</b>				
Employee's own serious health condition	12	12	12	No
<b>Safe Leave:</b>				
Domestic violence, sexual assault, harassment, or stalking	No	12	No	No
<b>Other Leave Types:</b>				
Extended leave for pregnancy: Pregnancy or childbirth related condition	No	2	No	No
Extended leave for pregnancy: Pregnancy disability	12	No	No	No
Sick child leave/Public health emergency	12	No	No	No
Additional sick child/Public health emergency	12	No	No	No
Bereavement	2 per event/ max 12	No	No	No
Military leave: Deployment	No	No	No	14 days per event
Military leave: Qualifying exigency	No	No	12	No
Military leave: Caregiver	No	No	26	No

Source: Legislative Policy and Research Office (LPRO)

Data: OFLA Current Law: ORS 659A; Paid Leave Oregon Current Law: ORS 657B; OMFLA Current Law: ORS 659A; FMLA Current Law: 29 USC Ch. 28

1: Benefit year is defined in Paid Leave Oregon at [Section 29, Chapter 171, Oregon Laws 2023](#), and in OFLA, a benefit year is defined as a "one-year period" at [Section 2, Chapter 203, Oregon Laws 2023](#).



**Table 2: Comparison of Leave Duration in Weeks (except where marked) Per Benefit Year<sup>1</sup> and Qualifying Purposes for Oregon Family Leave Act (OFLA), Paid Leave Oregon, Family and Medical Leave Act (FMLA), and Oregon Military Family Leave Act (OMFLA) Under Current Law and Pending LC #1**

Leave Category	OFLA		Paid Leave		FMLA		OMFLA	
	Current	LC #1	Current	LC #1	Current	LC#1	Current	LC #1
<b>Family Leave:</b>								
Birth, adoption, or foster placement	12	No	12	12	12	12	No	No
Family member's serious health condition	12	No	12	12	12	12	No	No
<b>Medical Leave:</b>								
Employee's own serious health condition	12	No	12	12	12	12	No	No
<b>Safe Leave:</b>								
Domestic violence, sexual assault, harassment, or stalking	No	No	12	12	No	No	No	No
<b>Other Leave Types:</b>								
Extended leave for pregnancy: Pregnancy or childbirth related condition	No	No	2	2	No	No	No	No
Extended leave for pregnancy: Pregnancy disability	12	12	No	No	No	No	No	No
<b>Sick child/Public health emergency<sup>2</sup></b>	12	12	No	No	No	No	No	No
Additional sick child/Public health emergency	12	No	No	No	No	No	No	No
Bereavement	<b>2 per event/ max 12</b>	<b>2 per event/ max 4</b>	No	No	No	No	No	No
Military leave: Deployment	No	No	No	No	No	No	14 days per event	14 days per event
Military leave: Qualifying exigency	No	No	No	No	12	12	No	No



Military leave: Caregiver	No	No	No	No	26	26	No	No
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Source: Legislative Policy and Research Office (LPRO)

Data: OFLA Current Law: ORS 659A; Paid Leave Oregon Current Law: ORS 657B; OMFLA Current Law: ORS 659A; FMLA Current Law: 29 U.S.C Ch. 28

Notes: Durations and qualifying purposes that will be amended by LC #1 are marked in bold and italics

1: Benefit year is defined in Paid Leave Oregon at [Section 29, Chapter 171, Oregon Laws 2023](#) and in OFLA a benefit year is defined as a "one-year period" at [Sections 2-3, Chapter 203, Oregon Laws 2023](#).

2: The LC will amend the sick child/ public health emergency leave type in OFLA to include all injuries, illnesses, or conditions that require home care of the employee's child.



# Memorandum

PREPARED FOR: Senator Taylor  
DATE: January 4, 2024  
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## **Use of Accrued Leave and Family and Medical Leave Act (FMLA)**

Currently, an employee can elect to use their accrued vacation, sick, personal business, or other paid leave while under unpaid OFLA leave. [ORS 659A.285 \(2021\)](#). In contrast, under [Section 14, Chapter 292, Oregon Laws 2023](#), an employee's ability to use accrued sick, vacation, or other paid leave in conjunction with Paid Leave Oregon benefits is at the employer's discretion. The LC will amend this provision to mirror OFLA by allowing an employee to utilize paid accrued time.

The LC will also allow an employer to deny OFLA leave to an employee if the employee does not take FMLA leave concurrently with OFLA leave when the employee is eligible for both FMLA and OFLA leave.

## **Legislative Concept Draft #2**

### **Sustainability of the Paid Leave Oregon Fund**

The second Senate Interim Committee on Labor and Business's legislative concept (LC) addresses the sustainability of the Paid Family and Medical Leave Insurance Fund (fund), which is the fund that sustains the Paid Leave Oregon program. The fund consists of contributions made to the program by employers and employees and from penalties, fees, revenues, and any other money deposited or credited to the fund. [ORS 657B.430\(2\) \(2021\)](#). [ORS 657B.150 \(2021\)](#), as amended by [Section 6, Chapter 292, Oregon Laws 2023](#), sets forth the contributions that employers and employees must make to the fund. The total rate of contributions is determined by the Director of the Oregon Employment Department (OED) and may not exceed one percent of the employee's wages, up to a maximum amount in wages that is equivalent to the Social Security contribution and benefit base limit established by the United States Social Security Administration. Employers and employees began making contributions in January 2023. The Paid Leave Oregon program began providing benefits to employees and assistance grants to employers in September 2023.

Existing law has a few measures in place to address issues that may arise regarding sustainability of the Paid Leave Oregon Fund.

- [ORS 657B.050\(4\) \(2021\)](#) provides that benefits are only payable to the extent that moneys are available in the fund and that the state is not liable for any amount exceeding this limit.
- [ORS 657B.150\(8\) \(2021\)](#) requires the Director to set contribution rates in a manner that both minimizes volatility of the contribution rate and ensures that the fund balance contains an amount not less than six months' worth of projected expenditures.



- [Senate Bill 31 \(2023\)](#) required the Director to determine whether the fund was solvent to provide anticipated benefits and anticipated grant moneys to be awarded on or after September 3, 2023. SB 31 established procedures to be taken if the Director determined that the fund was not solvent. If the Director determined the fund was solvent, payments would begin. Payments began in September of 2023. SB 31 does not provide further direction as to sustainability of the fund and sunsets on September 3, 2026.

This LC will allow the Director of OED to make changes to the Paid Leave Oregon program if the Director determines that the fund balance does not contain money sufficient for six months of anticipated expenditures. If this determination is made by the Director, OED will provide public notice. OED will then make changes to the Paid Leave Oregon program to address the sustainability of the fund. Program changes will go into effect the following fiscal quarter. Employees who have already applied for benefits prior to the effective program changes will remain eligible for the original program benefits for the remainder of their benefit year.

**Table 3: Legislative Concept #2 Proposed program changes that the Director of OED may implement in any combination, in the following order:**

Existing Benefit	Proposed Change	Limitation
Maximum weekly benefit amount of 120% of average weekly wage. <a href="#">ORS 657B.050(2)(a) (2021)</a> .	Change maximum weekly benefit amount to 100%.	N/A
Wage replacement benefit for average weekly wages greater than 65% of the average weekly wage is the sum of 65% of average weekly wage and 50% of employee’s average weekly wage in excess of 65% of average weekly wage. <a href="#">ORS 657B.050(1)(b) (2021)</a> .	Change wage replacement benefit for wages earned in excess of 65% of the average weekly wage to 40%.	N/A
12 weeks of paid leave for the following purposes: Family leave, Medical leave, or Safe leave. Plus, an additional two weeks of leave benefits for limitations related to pregnancy, childbirth, or a related	Change weeks of paid leave to a maximum of 10 weeks for all leave types except bonding leave. See <a href="#">Section 11, Chapter 292, Oregon Laws 2023</a> . Bonding leave remains at 12 weeks. Retain additional two	OED may only use this option if forecasting determines that the first two program change options are not sufficient.



medical condition. <a href="#">ORS 657B.020(1) and (3) (2021)</a> .	weeks of benefits for pregnancy or childbirth related condition.	
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If OED uses any of the above program changes to address sustainability, the program change(s) will remain effective for up to five years. Once the program change has elapsed, the original applicable benefit to the Paid Leave Oregon program applies.

Starting July 1, 2023, OED is required to report to the Legislative Assembly once a biennia for three consecutive biennia. [Section 51, Chapter 700, Oregon Laws 2019](#). This LC will extend the current reporting requirement to five consecutive biennia. The LC will also add to the current reporting requirement that OED include information on its sustainability forecasting and any program changes. Finally, the LC will have an emergency clause.

**Legislative Concept Draft #3**

**Placeholder**

The final Senate Interim Committee on Labor and Business’s legislative concept is a placeholder with a relating to clause that can encompass any issues that may need to be addressed during the 2024 session pertaining to Paid Leave Oregon, Oregon Family Leave Act (OFLA), Family and Medical Leave Act (FMLA), and the Oregon Military Family Leave Act (OMFLA).

