

DRAFT

SUMMARY

Digest: The Act makes changes to state law to clarify the meaning of an individual’s performance of services. The Act takes effect 91 days after session ends. (Flesch Readability Score: 63.4).

Clarifies when an employee is employed by employing unit or employer for a single hour of work for purposes of unemployment insurance and paid family and medical leave programs.

Requires the Director of the Employment Department to issue a refund to a paying entity that paid the employer contribution amounts on behalf of an employer with respect to employees for hours of work in which the employees did not perform services for the paying entity.

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to an individual’s performance of services for an employer; creating
3 new provisions; amending ORS 657.020, 657B.010 and 657B.175; and pre-
4 scribing an effective date.

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

6 **SECTION 1.** ORS 657.020 is amended to read:

7 657.020. (1) As used in this chapter, unless the context requires otherwise,
8 “employing unit” means:

9 (a) Any individual or type of organization, including any partnership, as-
10 sociation, limited liability company, limited liability partnership, trust, es-
11 tate, joint stock company, insurance company or corporation, whether
12 domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or suc-
13 cessor thereof, or the legal representative of a deceased person, [*who*] **that**
14 has or had in its employ one or more individuals performing services for it
15 within this state.

1 (b) This state, including every state officer, board, commission, depart-
2 ment, institution, branch and agency of the state government.

3 (c) Any people's utility district.

4 (d) Any political subdivision.

5 (e) Any Indian tribe or subdivision, subsidiary or business enterprise
6 wholly owned by an Indian tribe.

7 (2) All individuals performing services within this state for any employing
8 unit that maintains two or more separate establishments within this state
9 are deemed to be employed by a single employing unit for all [*the*] purposes
10 of this chapter, except that for the purposes of this chapter each of the var-
11 ious agencies, boards, commissions, departments, institutions and political
12 subdivisions of this state shall be deemed separate employing units.

13 **(3) For all purposes of this chapter, for any hour of work, an indi-
14 vidual:**

15 **(a) Shall be considered to be employed solely by the employing unit:**

16 **(A) For which the individual performs services; and**

17 **(B) That has the right to direct and control the individual's per-
18 formance of the services; and**

19 **(b) May not be considered to be employed by more than one em-
20 ploying unit.**

21 **SECTION 2.** ORS 657B.010 is amended to read:

22 657B.010. As used in this chapter:

23 (1) "Alternate base year" means the last four completed calendar quarters
24 preceding the benefit year.

25 (2) "Average weekly wage" means the amount calculated by the Employ-
26 ment Department as the state average weekly covered wage under ORS
27 657.150 (4)(e) as determined not more than once per year.

28 (3) "Base year" means the first four of the last five completed calendar
29 quarters preceding the benefit year.

30 (4) "Benefits" means family and medical leave insurance benefits.

31 (5)(a) "Benefit year" means, except as provided in paragraph (b) of this

1 subsection, a period of 52 consecutive weeks beginning on the Sunday im-
2 mediately preceding the date on which family leave, medical leave or safe
3 leave commences.

4 (b) “Benefit year” means, in the event that the 52-week period described
5 in paragraph (a) of this subsection would result in an overlap of any quarter
6 of the base year of a previously filed valid claim, a period of 53 consecutive
7 weeks beginning on the Sunday immediately preceding the date on which
8 family leave, medical leave or safe leave commences.

9 (6) “Child” means:

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

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

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

17 (7) “Claimant” means an individual who has submitted an application or
18 established a claim for benefits.

19 (8) “Contribution” or “contributions” means the money payments made
20 by any of the following under ORS 657B.150:

21 (a) An employer;

22 (b) An employee;

23 (c) A self-employed individual;

24 (d) A tribal government; or

25 (e) An employee of a tribal government.

26 (9) “Covered individual” means any one of the following who qualifies
27 under ORS 657B.015 to receive family and medical leave insurance benefits:

28 (a) An eligible employee;

29 (b) A self-employed individual; or

30 (c) An employee of a tribal government.

31 (10) “Domestic partner” means an individual joined in a domestic part-

1 nership.

2 (11) “Domestic partnership” has the meaning given that term in ORS
3 106.310.

4 (12) “Eligible employee” means:

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

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

10 (b) An employee to whom paid family and medical leave insurance bene-
11 fits may be available under ORS 657B.015.

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

16 (14)(a) “Employee” means:

17 (A) An individual performing services for an employer for remuneration
18 or under any contract of hire, written or oral, express or implied, **under the**
19 **employer’s direction and control.**

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

21 (b) “Employee” does not include:

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

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

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

28 (D) A railroad worker exempted under the federal Railroad Unemployment
29 Insurance Act.

30 (E) A volunteer.

31 (F) A judge as defined in ORS 260.005.

1 (G) A member of the Legislative Assembly.

2 (H) A holder of public office as defined in ORS 260.005.

3 (15)(a) "Employer" means any person that employs one or more employees
4 working anywhere in this state or any agent or employee of such person to
5 whom the duties of the person under this chapter have been delegated.

6 (b) "Employer" includes:

7 (A) A political subdivision of this state or any county, city, district, au-
8 thority or public corporation, or any instrumentality of a county, city, dis-
9 trict, authority or public corporation, organized and existing under law or
10 charter;

11 (B) An individual;

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

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

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

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

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

21 (16) "Employment agency" has the meaning given that term in ORS
22 658.005.

23 (17) "Family and medical leave insurance benefits" means the wage re-
24 placement benefits that are available to a covered individual under ORS
25 657B.050 or under the terms of an employer plan approved under ORS
26 657B.210, for family leave, medical leave or safe leave.

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

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

- 1 (B) To care for a family member with a serious health condition.
- 2 (b) “Family leave” does not mean:
- 3 (A) Leave described in ORS 659A.159 (1)(d);
- 4 (B) Leave described in ORS 659A.159 (1)(e); or
- 5 (C) Leave authorized under ORS 659A.093.
- 6 (19) “Family member” means:
- 7 (a) The spouse of a covered individual;
- 8 (b) A child of a covered individual or the child’s spouse or domestic
- 9 partner;
- 10 (c) A parent of a covered individual or the parent’s spouse or domestic
- 11 partner;
- 12 (d) A sibling or stepsibling of a covered individual or the sibling’s or
- 13 stepsibling’s spouse or domestic partner;
- 14 (e) A grandparent of a covered individual or the grandparent’s spouse or
- 15 domestic partner;
- 16 (f) A grandchild of a covered individual or the grandchild’s spouse or
- 17 domestic partner;
- 18 (g) The domestic partner of a covered individual; or
- 19 (h) Any individual related by blood or affinity whose close association
- 20 with a covered individual is the equivalent of a family relationship.
- 21 (20) “Medical leave” means leave from work taken by a covered individual
- 22 that is made necessary by the individual’s own serious health condition.
- 23 (21) “Parent” means:
- 24 (a) A biological parent, adoptive parent, stepparent or foster parent of a
- 25 covered individual;
- 26 (b) A person who was a foster parent of a covered individual when the
- 27 covered individual was a minor;
- 28 (c) A person designated as the legal guardian of a covered individual at
- 29 the time the covered individual was a minor or required a legal guardian;
- 30 (d) A person with whom a covered individual was or is in a relationship
- 31 of in loco parentis; or

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

3 (22) “Safe leave” means leave taken for any purpose described in ORS
4 659A.272.

5 (23) “Self-employed individual” means:

6 (a) An individual who has self-employment income as defined in section
7 1402(b) of the Internal Revenue Code as amended and in effect on December
8 31, 2022; or

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

10 (24) “Serious health condition” has the meaning given that term in ORS
11 659A.150.

12 (25) “Third party administrator” means a third party that enters into an
13 agreement with the Director of the Employment Department to implement
14 and administer the paid family and medical leave program established under
15 this chapter.

16 (26) “Tribal government” has the meaning given that term in ORS
17 181A.940.

18 (27)(a) “Wages” has the meaning given that term in ORS 657.105.

19 (b) “Wages” does not mean contribution amounts paid to the Paid Family
20 and Medical Leave Insurance Fund by an employer on behalf of an employee
21 under ORS 657B.150 (5).

22 **SECTION 3.** ORS 657B.175 is amended to read:

23 657B.175. (1) An employee’s wages shall be used to make determinations
24 under this chapter if the wages are earned for service that is:

25 (a) Localized within this state; or

26 (b) Not localized within any state, but some of the service is performed
27 within this state and:

28 (A) The base of operations is in this state or, if there is no base of oper-
29 ations, the place from which the service is directed or controlled is in this
30 state; or

31 (B) The base of operations or place from which the service is directed or

1 controlled is not in any state in which some part of the service is performed,
2 but the individual's residence is in this state.

3 (2) Service is localized within this state if it is:

4 (a) Performed entirely within this state; or

5 (b) Performed both within and outside this state, but the service per-
6 formed outside this state is incidental to the employee's service within this
7 state.

8 **(3) For all purposes of this chapter, for any hour of work, an em-
9 ployee may not be considered to be employed by more than one em-
10 ployer.**

11 **SECTION 4. (1)(a) If employer contribution amounts were paid on
12 behalf of an employer described in ORS 657B.150 (4) with respect to
13 employees for hours of work in which the employees did not perform
14 services for the paying entity, the paying entity may seek a refund for
15 the amounts paid in the manner prescribed under paragraph (b) of this
16 subsection.**

17 **(b) The paying entity may amend a combined quarterly report filed
18 with the Department of Revenue under ORS 657B.150 detailing any
19 employer contribution amounts paid by the entity on or after January
20 1, 2023.**

21 **(2)(a) If the department determines pursuant to an amended com-
22 bined quarterly report submitted under subsection (1)(b) of this section
23 that a refund is due to a paying entity for employer contribution
24 amounts paid on or after January 1, 2023, the Director of the Em-
25 ployment Department shall issue a refund to the entity.**

26 **(b) The Director of the Employment Department may not allow or
27 make a refund to a paying entity after three years from the date on
28 which the entity paid the contribution amount.**

29 **SECTION 5. (1) Section 4 of this 2024 Act and the amendments to
30 ORS 657.020, 657B.010 and 657B.175 by sections 1 to 3 of this 2024 Act
31 become operative on January 1, 2024.**

