A-Engrossed

Senate Bill 881

Ordered by the Senate April 3
Including Senate Amendments dated April 3

Sponsored by Senator KNOPP; Senators ANDERSON, BONHAM, FINDLEY, HANSELL, LINTHICUM, SMITH DB, THATCHER, WEBER

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.

[Provides that client company that is furnished workers by worker leasing company is responsible for employer duties under paid family and medical leave insurance program with respect to workers leased to client company.]

Directs Director of [Employment Department] Department of Revenue to reimburse worker leasing company for any employer contribution payments made by worker leasing company [on behalf of client company that meets certain criteria] if Department of Revenue determines pursuant to amended combined quarterly report that refund is due. Applies to payments of contributions by worker leasing company on behalf of client employer on or after January 1, 2023 [made before effective date of Act].

Provides that worker leasing company is not responsible for paying employer contribution amounts on behalf of client employers that employ fewer than 25 employees. Establishes method by which Employment Department shall determine number of employees employed by employer for purposes of determining liability for such contributions.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to obligations of worker leasing companies under the paid family and medical leave insurance program; creating new provisions; and amending ORS 657B.010, 657B.150 and 657B.360.

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

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 657B.

SECTION 2. (1) A worker leasing company may amend a combined quarterly report filed with the Department of Revenue under ORS 657B.150 detailing any employer contribution amounts paid by the worker leasing company on behalf of a client employer on or after January 1, 2023.

(2)(a) If the department determines pursuant to an amended combined quarterly report submitted under subsection (1) of this section that a refund is due to a worker leasing company for employer contribution amounts required under ORS 657B.150 and paid on behalf of a client employer on or after January 1, 2023, the Director of the Department of Revenue shall issue a refund to the worker leasing company.

(b) The department may not allow or make a refund to a worker leasing company after three years from the date on which the worker leasing company paid an employer contribution amount due under ORS 657B.150 on behalf of a client employer.

SECTION 3. ORS 657B.010, as amended by section 1, chapter 24, Oregon Laws 2022, and section 29, chapter 83, Oregon Laws 2022, is amended to read:

657B.010. As used in this chapter:

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.

LC 4025
(1) “Alternate base year” means the last four completed calendar quarters preceding the benefit year.

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

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

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

(5)(a) “Benefit year” means, except as provided in paragraph (b) of this subsection, a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave, medical leave or safe leave commences.

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

(6) “Child” means:

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

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

(c) A person who is or was in a relationship of in loco parentis with a covered individual or with the covered individual's spouse or domestic partner.

(7) “Client employer” means an employer that enters into a contractual agreement with a worker leasing company.

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

(a) An employer;

(b) An eligible employee;

(c) A self-employed individual;

(d) A tribal government; or

(e) An employee of a tribal government.

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

(a) An eligible employee;

(b) A self-employed individual; or

(c) An employee of a tribal government.

(10) “Domestic partner” means an individual joined in a domestic partnership.

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

(12) “Eligible employee” means:

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

(B) If an employee has not earned at least $1,000 in wages during the base year, an employee who has earned at least $1,000 in wages during the alternate base year; and

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

(13) “Eligible employee's average weekly wage” means an amount calculated by the Director of the Employment Department by dividing the total wages earned by an eligible employee...
during the base year by the number of weeks in the base year.

[(13)(a)] (14)(a) “Employee” means:

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

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

(b) “Employee” does not include:

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

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

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

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

(E) A volunteer.

[(14)(a)] (15)(a) “Employer” means any person that employs one or more employees working anywhere in this state or any agent or employee of such person to whom the duties of the person under this chapter have been delegated.

(b) “Employer” includes:

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

(B) An individual;

(C) Any type of organization, corporation, partnership, limited liability company, association, trust, estate, joint stock company or insurance company;

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

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

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

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

[(15)] (16) “Employment agency” has the meaning given that term in ORS 658.005.

[(16)] (17) “Family and medical leave insurance benefits” means the wage replacement benefits that are available to a covered individual under ORS 657B.050 or under the terms of an employer plan approved under ORS 657B.210, for family leave, medical leave or safe leave.

[(17)(a)] (18)(a) “Family leave” means leave from work taken by a covered individual:

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

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

(b) “Family leave” does not mean:

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

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

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

[(18)] (19) “Family member” means:

(a) The spouse of a covered individual;

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

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

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

(e) A grandparent of a covered individual or the grandparent's spouse or domestic partner;
(f) A grandchild of a covered individual or the grandchild's spouse or domestic partner;
(g) The domestic partner of a covered individual; or
(h) Any individual related by blood or affinity whose close association with a covered individual
is the equivalent of a family relationship.

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

(20) “Parent” means:
(a) A biological parent, adoptive parent, stepparent or foster parent of a covered individual;
(b) A person who was a foster parent of a covered individual when the covered individual was
a minor;
(c) A person designated as the legal guardian of a covered individual at the time the covered
individual was a minor or required a legal guardian;
(d) A person with whom a covered individual was or is in a relationship of in loco parentis; or
(e) A parent of a covered individual’s spouse or domestic partner who meets a description under
paragraphs (a) to (d) of this subsection.

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

(22) “Self-employed individual” means:
(a) An individual who has self-employment income as defined in section 1402(b) of the Internal
Revenue Code as amended and in effect on December 31, 2021; or
(b) An independent contractor as defined in ORS 670.600.

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

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

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

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

(27) “Worker leasing company” means a worker leasing company licensed under to ORS
656.855 that:
(a) Pursuant to a contractual agreement and for a fee, furnishes workers to a client
employer; and
(b) Reports wages and pays contributions due under ORS 657B.150 on behalf of a client
employer.

SECTION 4. ORS 657B.150 is amended to read:
657B.150. (1)(a) Except as otherwise provided in subsections (3) [and (4)], (4) and (5) of this
section, all employers and eligible employees shall contribute to the Paid Family and Medical Leave
Insurance Fund established under ORS 657B.430.
(b) Contributions shall be paid by employers and employees as a percentage of a total rate de-
termined by the Director of the Employment Department.
(c) The total rate may not exceed one percent of employee wages, up to a maximum of $132,900
in wages.
(2)(a) Employer contributions shall be paid in an amount that is equal to 40 percent of the total
rate determined by the director.
(b) An employer shall deduct employee contributions from the wages of each employee in an
amount that is equal to 60 percent of the total rate determined by the director.

(3) When an employment agency is acting as an employer, the employer contributions required under this section shall be the responsibility of the employment agency.

(4) A worker leasing company is not responsible for paying the employer contribution amounts required under this section on behalf of a client employer that employs fewer than 25 employees.

[(4)(a)] (5)(a) Employers that employ fewer than 25 employees are not required to pay the employer contributions under subsection (1) of this section.

(b) If an employer that employs fewer than 25 employees elects to pay the employer contributions under subsection (1) of this section, the employer may apply to receive a grant under ORS 657B.200.

[(5)] (6) Notwithstanding subsection (1) of this section, an employer may elect to pay the required employee contributions, in whole or in part, as an employer-offered benefit.

[(6)] (7) Subject to ORS 657B.130 (2) and (3), a self-employed individual who has elected coverage under ORS 657B.130 (1) shall contribute to the fund, at a rate that may not exceed one percent of the individual's taxable income as determined by the director by rule, for a period of not less than three years from the date that the election becomes effective.

[(7)] (8) A tribal government that elects coverage under ORS 657B.130 and employees of the tribal government shall contribute to the fund in contribution amounts and at a rate that may not exceed one percent of employee wages, up to a maximum of $132,900 in wages, as determined by the director by rule, for a period of not less than three years from the date that the election becomes effective.

[(8)] (9) The director shall set rates for the collection of payroll contributions consistent with subsection (1) of this section and in a manner such that:

(a) At the end of the period for which the rates are effective, the balance of moneys in the fund is an amount not less than six months' worth of projected expenditures from the fund for performance of the functions and duties of the director under this chapter; and

(b) The volatility of the contribution rates is minimized.

[(9)] (10) For purposes of subsections (1)(c) and [(7)] (8) of this section, the director shall annually adjust the maximum amount of employee wages by the percentage increase, if any, in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor, since the date of the previous determination made under this subsection.

[(10)] (11) The director shall determine on an annual basis the amount of payroll contributions, timing of payroll contributions and maximum employee contributions sufficient to finance the costs related to the provisions of this chapter.

[(11)] (12) An employer shall hold any moneys collected under this section in trust for the State of Oregon and for the payment thereof to the Department of Revenue in the manner described in subsection [(12)] (13) of this section.

[(12)(a)] (13)(a) An employer shall make and file a combined quarterly report of wages earned and contributions paid under this section on a form prescribed by the Department of Revenue.

(b) The report shall be filed with the Department of Revenue on or before the last day of the month following the quarter to which the report relates and shall be deemed received on the date of mailing.

(c) The report shall be accompanied by payment of any contributions due under this section in
a manner determined by the Department of Revenue by rule.

[13] (14) Moneys collected under this section shall be deposited in the Paid Family and Medical Leave Insurance Fund established under ORS 657B.430.

[(14)(a) (15)(a) If an employer ceases or discontinues operations or business, or sells out, exchanges or otherwise disposes of the business or stock of goods, any payroll contribution payable under this section is immediately due and payable, and the employer shall, within 10 calendar days, pay the payroll contribution due. Any person who becomes a successor in interest to the business is liable for the full amount of the unpaid payroll contribution.

(b) The director shall adopt rules for compliance with this chapter with regard to contributions from an employer’s successor in interest.

[(15)] (16) Benefits may not be denied to a covered individual solely because an employer failed to collect or remit the contributions required under this section.

SECTION 5. ORS 657B.360 is amended to read:

657B.360. (1) Subject to subsection (2) of this section, for purposes of ORS 657B.060 and 657B.150, the Director of the Employment Department shall establish by rule a method to determine on an annual basis the number of employees employed by an employer. The method shall require that the determination be based on the average number of employees employed by the employer in the 12-month period immediately preceding the date on which the determination is made.

(2) A replacement worker who is hired to temporarily replace an eligible employee during a period of family leave, medical leave or safe leave shall not be counted as an employee for purposes of determining the number of employees employed by an employer.

(3) For purposes of determining liability for employer contributions described under ORS 657B.150, with respect to a worker leasing company, the Employment Department shall apply the method for making such a determination under subsection (1) of this section, based on the number of employees employed separately by each respective client employer with which the worker leasing company contracts.

SECTION 6. The amendments to ORS 657B.010, 657B.150 and 657B.360 by sections 3, 4, and 5 of this 2023 Act apply to employer contribution amounts paid by a worker leasing company on behalf of a client employer on or after January 1, 2023.

SECTION 7. (1) Section 2 of this 2023 Act and the amendments to ORS 657B.010, 657B.150 and 657B.360 by sections 3, 4 and 5 of this 2023 Act become operative on July 1, 2024.

(2) The Employment Department may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the department by section 2 of this 2023 Act and the amendments to ORS 657B.010, 657B.150 and 657B.360 by sections 3, 4 and 5 of this 2023 Act.