

Senate Bill 481

Sponsored by Senator BONHAM (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

- Modifies requirements for employee to be eligible to take unpaid family and medical leave.
- Expands definition of "family member" for purposes of unpaid family and medical leave benefits.
- Makes changes regarding duration of unpaid leave taken by covered individual to care for sick child.
- Clarifies employer obligations with respect to job protection continuation of benefits during and after period of protected paid or unpaid leave.
- Adds bereavement as qualifying purpose for which covered individual may take paid family leave. Establishes duration of leave taken for such purpose.
- Clarifies provisions related to coordination of leave taken under provisions related to paid family and medical leave program and provisions related to unpaid family and medical leave.
- Makes conforming amendments.

A BILL FOR AN ACT

1
2 Relating to employee leave benefits; creating new provisions; and amending ORS 653.601, 653.626,
3 657B.010, 657B.020, 657B.025, 657B.040, 657B.060, 659A.043, 659A.046, 659A.147, 659A.150,
4 659A.153, 659A.156, 659A.159, 659A.162, 659A.165, 659A.168, 659A.171, 659A.177, 659A.183 and
5 659A.186.

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

OREGON FAMILY LEAVE ACT

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8
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10 **SECTION 1.** ORS 659A.150 is amended to read:

11 659A.150. As used in ORS 659A.150 to 659A.186:

12 (1) "Covered employer" means an employer described in ORS 659A.153.

13 (2) [*Eligible employee*] "**Covered individual**" means any employee of a covered employer other
14 than those employees exempted under the provisions of ORS 659A.156.

15 (3) "Family **and medical** leave" means a leave of absence described in ORS 659A.159, except
16 that "family **and medical** leave" does not include leave taken by [*an eligible employee*] a **covered**
17 **individual** who is unable to work because of a disabling compensable injury, as defined in ORS
18 656.005, under ORS chapter 656.

19 (4) "Family member" means [*the spouse of an employee, the biological, adoptive or foster parent*
20 *or child of the employee, the grandparent or grandchild of the employee, a parent-in-law of the employee*
21 *or a person with whom the employee was or is in a relationship of in loco parentis.*]:

22 (a) **The spouse of a covered individual;**

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

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

25 (d) **A sibling or stepsibling of a covered individual or the sibling's or stepsibling's spouse**
26 **or domestic partner;**

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.

1 (e) A grandparent of a covered individual or the grandparent’s spouse or domestic part-
 2 ner;

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

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

5 (h) Any individual related by blood or affinity whose close association with a covered in-
 6 dividual is the equivalent of a family relationship.

7 (5) “Health care provider” means:

8 (a) A person who is primarily responsible for providing health care to [*an eligible employee*] a
 9 covered individual or a family member of [*an eligible employee*] a covered individual, who is per-
 10 forming within the scope of the person’s professional license or certificate and who is:

11 (A) A physician licensed under ORS chapter 677;

12 (B) A physician assistant licensed under ORS 677.505 to 677.525;

13 (C) A dentist licensed under ORS 679.090;

14 (D) A psychologist licensed under ORS 675.030;

15 (E) An optometrist licensed under ORS 683.070;

16 (F) A naturopath licensed under ORS 685.080;

17 (G) A registered nurse licensed under ORS 678.050;

18 (H) A nurse practitioner licensed under ORS 678.375;

19 (I) A direct entry midwife licensed under ORS 687.420;

20 (J) A licensed registered nurse licensed by the Oregon State Board of Nursing as a nurse prac-
 21 titioner specializing in nurse midwifery;

22 (K) A regulated social worker authorized to practice regulated social work under ORS 675.510
 23 to 675.600; or

24 (L) A chiropractic physician licensed under ORS 684.054, but only to the extent the chiropractic
 25 physician provides treatment consisting of manual manipulation of the spine to correct a subluxation
 26 demonstrated to exist by X-rays.

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

30 (6) “Public health emergency” means:

31 (a) A public health emergency declared under ORS 433.441.

32 (b) An emergency declared under ORS 401.165 if related to a public health emergency as defined
 33 in ORS 433.442.

34 (7) “Serious health condition” means:

35 (a) An illness, injury, impairment or physical or mental condition that requires inpatient care
 36 in a hospital, hospice or residential medical care facility;

37 (b) An illness, disease or condition that in the medical judgment of the treating health care
 38 provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility
 39 of death in the near future, or requires constant care;

40 (c) Any period of disability due to pregnancy, or period of absence for prenatal care; or

41 (d) Any period of absence for the donation of a body part, organ or tissue, including preoperative
 42 or diagnostic services, surgery, post-operative treatment and recovery.

43 **SECTION 2.** ORS 659A.153 is amended to read:

44 659A.153. (1) The requirements of ORS 659A.150 to 659A.186 apply only to employers who em-
 45 ploy 25 or more persons in the State of Oregon for each working day during each of 20 or more

1 calendar workweeks in the year in which the leave is to be taken or in the year immediately pre-
 2 ceding the year in which the leave is to be taken.

3 (2) The requirements of ORS 659A.150 to 659A.186 do not apply to any employer who offers to
 4 [an eligible employee] a **covered individual** a nondiscriminatory cafeteria plan, as defined by section
 5 125 of the Internal Revenue Code of 1986, providing, as one of its options, employee leave at least
 6 as generous as the leave required by ORS 659A.150 to 659A.186.

7 **SECTION 3.** ORS 659A.156 is amended to read:

8 659A.156. (1) All employees of a covered employer are eligible to take leave for one of the pur-
 9 poses specified in ORS 659A.159 (1)(b) to [(e)] (f) except:

10 (a) An employee who was employed by the covered employer for fewer than [180] **90** days im-
 11 mediately before the date on which the family **and medical** leave would commence.

12 (b) An employee who worked an average of fewer than 25 hours per week for the covered em-
 13 ployer during the [180] **90** days immediately preceding the date on which the family **and medical**
 14 leave would commence.

15 (2) All employees of a covered employer are eligible to take leave for the purpose specified in
 16 ORS 659A.159 (1)(a) except an employee who was employed by the covered employer for fewer than
 17 180 days immediately before the date on which the family **and medical** leave would commence.

18 (3) Notwithstanding subsections (1) and (2) of this section, all employees of a covered employer
 19 are eligible to take leave for one of the purposes specified in ORS 659A.159 (1)(a) to [(e)] (f) during
 20 a period of time covered by a public health emergency except:

21 (a) An employee who worked for the covered employer for fewer than 30 days immediately be-
 22 fore the date on which the family **and medical** leave would commence; or

23 (b) An employee who worked for the covered employer for an average of fewer than 25 hours
 24 per week in the 30 days immediately before the date on which the family **and medical** leave would
 25 commence.

26 (4)(a) Notwithstanding subsections (1) and (2) of this section, an employee of a covered employer
 27 is eligible to take leave for one of the purposes specified in ORS 659A.159 (1)(b) to [(e)] (f) or for the
 28 purpose specified in ORS 659A.159 (1)(a), if the employee:

29 (A)(i) Separates from employment with the covered employer, irrespective of any reason;

30 (ii) Is eligible to take leave under subsection (1) or (2) of this section at the time the employee
 31 separates; and

32 (iii) Is reemployed by the covered employer within 180 days of separation from employment; or

33 (B)(i) Is eligible to take leave under subsection (1) or (2) of this section at the beginning of a
 34 temporary cessation of scheduled hours of [180] **90** days or less; and

35 (ii) Returns to work at the end of the temporary cessation of scheduled hours of [180] **90** days
 36 or less.

37 (b) Any family **and medical** leave taken by the employee within any one-year period continues
 38 to count against the length of time of family **and medical** leave the employee is entitled under ORS
 39 659A.162.

40 (c) The amount of time that an employee is deemed to have worked for a covered employer prior
 41 to a break in service due to a separation from employment or a temporary cessation of scheduled
 42 hours shall be restored to the employee when the employee is reemployed by the employer within
 43 [180] **90** days of separation from employment or when the employee returns to work at the end of
 44 the temporary cessation of scheduled hours of [180] **90** days or less.

45 **SECTION 4.** ORS 659A.159 is amended to read:

1 659A.159. (1) Family **and medical** leave under ORS 659A.150 to 659A.186 may be taken by [*an*
2 *eligible employee*] **a covered individual** for any of the following purposes:

3 (a) To care for an infant or newly adopted child under 18 years of age, or for a newly placed
4 foster child under 18 years of age, or for an adopted or foster child older than 18 years of age if the
5 child is incapable of self-care because of a mental or physical disability.

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

7 (c) To recover from or seek treatment for a serious health condition of the [*employee*] **individual**
8 that renders the [*employee*] **individual** unable to perform at least one of the essential functions of
9 the [*employee's*] **individual's** regular position.

10 (d) To care for a child of the [*employee*] **covered individual** who is suffering from [*an*] **a chronic**
11 [*illness, injury or*] **health** condition [*that is not a serious health condition but*] that **results in a pe-**
12 **riod of incapacity or** requires **periodic visits to a health care provider for treatment or** home
13 care, or who requires home care due to the closure of the child's school or child care provider as
14 a result of a public health emergency.

15 **(e) To care for a child of the covered individual who is suffering from an illness, injury**
16 **or health condition, other than a chronic health condition described in paragraph (d) of this**
17 **subsection, that requires home care.**

18 [*e*] (f) To deal with the death of a family member by:

19 (A) Attending the funeral or alternative to a funeral of the family member;

20 (B) Making arrangements necessitated by the death of the family member; or

21 (C) Grieving the death of the family member.

22 (2)(a) Leave under subsection (1)(a) of this section must be completed within 12 months after
23 birth or placement of the child, and [*an eligible employee*] **a covered individual** is not entitled to
24 any period of family **and medical** leave under subsection (1)(a) of this section after the expiration
25 of 12 months after birth or placement of the child.

26 (b) Leave under subsection [(1)(e)] (1)(f) of this section must be completed within 60 days of the
27 date on which the [*eligible employee*] **covered individual** receives notice of the death of a family
28 member.

29 **SECTION 5.** ORS 659A.162 is amended to read:

30 659A.162. (1) Except as specifically provided by ORS 659A.150 to 659A.186, [*an eligible*
31 *employee*] **a covered individual** is entitled to up to a total of 12 weeks of family **and medical** leave
32 within any one-year period.

33 (2)(a) Except as provided by paragraph (b) of this subsection, [*an eligible employee*] **a covered**
34 **individual** is entitled to a total of two weeks of family **and medical** leave for the purposes described
35 in ORS 659A.159 [(1)(e)] (1)(f).

36 (b) [*An eligible employee*] **A covered individual** is entitled to the period of leave described in
37 paragraph (a) of this subsection upon the death of each family member of the [*employee*] **covered**
38 **individual** within any one-year period, except that leave taken as provided by this subsection may
39 not exceed the total period of family **and medical** leave authorized by subsection (1) of this section.

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

43 (d) All leave taken for the purposes described in ORS 659A.159 [(1)(e)] (1)(f) shall be counted
44 toward the total period of family **and medical** leave authorized by subsection (1) of this section.

45 **(3) A covered individual is entitled to a total of two weeks of family and medical leave for**

1 **the purposes described in ORS 659A.159 (1)(e).**

2 [(3)(a)] (4)(a) In addition to the 12 weeks of family **and medical** leave authorized by subsection
3 (1) of this section, [an eligible employee] **a covered individual** may take a total of 12 weeks of leave
4 within any one-year period for an illness, injury or condition related to the [eligible employee's]
5 **covered individual's** own pregnancy or childbirth that disables the [eligible employee] **covered in-**
6 **dividual** from performing any available job duties offered by the covered employer.

7 (b)(A) [An eligible employee] **A covered individual** who takes 12 weeks of family **and medical**
8 leave within a one-year period for the purpose specified in ORS 659A.159 (1)(a) may take up to **a**
9 **total of** an additional 12 weeks of leave within the one-year period [for the purpose specified in ORS
10 659A.159 (1)(d).] **as follows:**

11 (i) **Up to 12 weeks of leave for a purpose specified in ORS 659A.159 (1)(d).**

12 (ii) **Up to two weeks of leave for a purpose specified in ORS 659A.159 (1)(e).**

13 **(B) All leave taken under subparagraph (A)(ii) of this paragraph shall be counted toward**
14 **the total amount of additional leave authorized under subparagraph (A)(i) of this paragraph.**

15 [(4)] (5) When two or more family members work for the same covered employer, the [eligible
16 employees] **covered individuals** may not take concurrent family **and medical** leave unless:

17 (a) One [employee] **covered individual** needs to care for another [employee] **covered individual**
18 who is a family member and who is suffering from a serious health condition;

19 (b) One [employee] **covered individual** needs to care for a child who has a serious health con-
20 dition while another [employee] **covered individual** who is a family member is also suffering from
21 a serious health condition; or

22 (c) The [employees] **covered individuals** are taking leave described in ORS 659A.159 [(1)(e)]
23 **(1)(f).**

24 [(5)] (6) [An eligible employee] **A covered individual** may take family **and medical** leave for the
25 purpose specified in ORS 659A.159 (1)(a) in two or more nonconsecutive periods of leave only with
26 the approval of the employer.

27 [(6)] (7) Leave need not be provided to [an eligible employee] **a covered individual** by a covered
28 employer for the purpose specified in ORS 659A.159 (1)(d) **or (e)** if another family member is avail-
29 able to care for the child.

30 [(7)] (8) A covered employer may not reduce the amount of family **and medical** leave available
31 to [an eligible employee] **a covered individual** under this section by any period the [employee] **cov-**
32 **ered individual** is unable to work because of a disabling compensable injury.

33 [(8)(a)] (9)(a) The Commissioner of the Bureau of Labor and Industries shall adopt rules gov-
34 erning when family **and medical** leave for a serious health condition of [an eligible employee] **a**
35 **covered individual** or a family member of the [eligible employee] **covered individual** may be taken
36 intermittently or by working a reduced workweek. Rules adopted by the commissioner under this
37 paragraph shall allow taking of family **and medical** leave on an intermittent basis or by use of a
38 reduced workweek to the extent permitted by federal law and to the extent that taking family **and**
39 **medical** leave on an intermittent basis or by use of a reduced workweek does not result in the loss
40 of [an eligible employee's] **a covered individual's** exempt status under the federal Fair Labor Stan-
41 dards Act.

42 (b) The commissioner shall adopt rules governing when family **and medical** leave for the pur-
43 poses described in ORS 659A.159 [(1)(e)] **(1)(f)** may be taken to the extent permitted by federal law
44 and to the extent that taking family **and medical** leave on an intermittent basis does not result in
45 the loss of [an eligible employee's] **a covered individual's** exempt status under the federal Fair La-

bor Standards Act.

SECTION 6. ORS 659A.162, as amended by section 56, chapter 700, Oregon Laws 2019, and section 5, chapter 182, Oregon Laws 2021, is amended to read:

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

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

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

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

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

(3) A covered individual is entitled to a total of two weeks of family and medical leave for the purposes described in ORS 659A.159 (1)(e).

[(3)(a)] **(4)(a)** In addition to the 12 weeks of family **and medical** leave authorized by subsection (1) of this section, [*an eligible employee*] **a covered individual** may take a total of 12 weeks of leave within any one-year period for an illness, injury or condition related to the [*eligible employee's*] **covered individual's** own pregnancy or childbirth that disables the [*eligible employee*] **covered individual** from performing any available job duties offered by the covered employer.

(b)(A) [*An eligible employee*] **A covered individual** who takes 12 weeks of family **and medical** leave within a one-year period for the purpose specified in ORS 659A.159 (1)(a) may take up to a **total of** an additional 12 weeks of leave within the one-year period [*for the purpose specified in ORS 659A.159 (1)(d).*]**as follows:**

(i) **Up to 12 weeks of leave for a purpose specified in ORS 659A.159 (1)(d).**

(ii) **Up to two weeks of leave for a purpose specified in ORS 659A.159 (1)(e).**

(B) All leave taken under subparagraph (A)(ii) of this paragraph shall be counted toward the total amount of additional leave authorized under subparagraph (A)(i) of this paragraph.

[(4)] **(5)** When two or more family members work for the same covered employer, the [*eligible employees*] **covered individuals** may not take concurrent family **and medical** leave unless:

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

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

(c) The [*employees*] **covered individuals** are taking leave described in ORS 659A.159 [(1)(e)] **(1)(f)**.

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

1 [(6)] (7) Leave need not be provided to [*an eligible employee*] **a covered individual** by a covered
 2 employer for the purpose specified in ORS 659A.159 (1)(d) **or (e)** if another family member is avail-
 3 able to care for the child.

4 [(7)] (8) A covered employer may not reduce the amount of family **and medical** leave available
 5 to [*an eligible employee*] **a covered individual** under this section by any period the [*employee*] **cov-**
 6 **ered individual** is unable to work because of a disabling compensable injury.

7 [(8)(a)] (9)(a) The Commissioner of the Bureau of Labor and Industries shall adopt rules gov-
 8 erning when family **and medical** leave for a serious health condition of [*an eligible employee*] **a**
 9 **covered individual** or a family member of the [*eligible employee*] **covered individual** may be taken
 10 intermittently or by working a reduced workweek. Rules adopted by the commissioner under this
 11 paragraph shall allow taking of family **and medical** leave on an intermittent basis or by use of a
 12 reduced workweek to the extent permitted by federal law and to the extent that taking family **and**
 13 **medical** leave on an intermittent basis or by use of a reduced workweek does not result in the loss
 14 of [*an eligible employee's*] **a covered individual's** exempt status under the federal Fair Labor Stan-
 15 dards Act.

16 (b) The commissioner shall adopt rules governing when family **and medical** leave for the pur-
 17 poses described in ORS 659A.159 [(1)(e)] (1)(f) may be taken to the extent permitted by federal law
 18 and to the extent that taking family **and medical** leave on an intermittent basis does not result in
 19 the loss of [*an eligible employee's*] **a covered individual's** exempt status under the federal Fair La-
 20 bor Standards Act.

21 **SECTION 7.** ORS 659A.165 is amended to read:

22 659A.165. (1) Except as provided in subsection (2) of this section, a covered employer may re-
 23 quire [*an eligible employee*] **a covered individual** to give the employer written notice at least 30
 24 days before commencing family **and medical** leave. The employer may require the [*employee*] **cov-**
 25 **ered individual** to include an explanation of the need for the leave in the notice.

26 (2) [*An eligible employee*] **A covered individual** may commence taking family **and medical** leave
 27 without prior notice under the following circumstances:

28 (a) An unexpected serious health condition of [*an employee*] **a covered individual** or family
 29 member of [*an employee*] **a covered individual**;

30 (b) An unexpected illness, injury or condition of a child of the [*employee*] **covered individual**
 31 that requires home care;

32 (c) A premature birth, unexpected adoption or unexpected foster placement; or

33 (d) The death of a family member.

34 (3) If [*an employee*] **a covered individual** commences leave without prior notice under subsection
 35 (2) of this section, the [*employee*] **covered individual** must give oral notice to the employer within
 36 24 hours of the commencement of the leave, and must provide the written notice required by sub-
 37 section (1) of this section within three days after the [*employee*] **covered individual** returns to work.
 38 The oral notice required by this subsection may be given by any other person on behalf of the [*em-*
 39 *ployee*] **covered individual** taking the leave.

40 (4) Except as provided in this subsection, if the [*employee*] **covered individual** fails to give no-
 41 tice as required by subsections (1) and (3) of this section, the employer may reduce the total period
 42 of family **and medical** leave authorized by ORS 659A.162 by three weeks, and the [*employee*] **cov-**
 43 **ered individual** may be subject to disciplinary action under a uniformly applied policy or practice
 44 of the employer. A reduction of family **and medical** leave under this subsection may not limit leave
 45 described in ORS 659A.159 (1)(e) **and (f)**.

1 **SECTION 8.** ORS 659A.168 is amended to read:

2 659A.168. (1) Except as provided in subsection (2) of this section, a covered employer may re-
 3 quire medical verification from a health care provider of the need for the leave if the leave is for
 4 a purpose described in ORS 659A.159 (1)(b) to [(d)] (e) other than to care for a child who requires
 5 home care due to the closure of the child's school or child care provider as a result of a public
 6 health emergency. If [an employee] a **covered individual** is required to give notice under ORS
 7 659A.165 (1), the employer may require that medical verification be provided by the [employee]
 8 **covered individual** before the leave period commences. If the [employee] **covered individual** com-
 9 mences family **and medical** leave without prior notice pursuant to ORS 659A.165 (2), the medical
 10 verification must be provided by the [employee] **covered individual** within 15 days after the em-
 11 ployer requests the medical verification. The employer may require [an employee] a **covered indi-**
 12 **vidual** to obtain the opinion of a second health care provider designated by the employer, at the
 13 employer's expense. If the opinion of the second health care provider conflicts with the medical
 14 verification provided by the [employee] **covered individual**, the employer may require the two health
 15 care providers to designate a third health care provider to provide an opinion at the employer's
 16 expense. The opinion of the third health care provider shall be final and binding on the employer
 17 and [employee] **covered individual**. In addition to the medical verifications provided for in this
 18 subsection, an employer may require subsequent medical verification on a reasonable basis.

19 (2) A covered employer may require medical verification for leave taken for the purpose de-
 20 scribed in ORS 659A.159 (1)(d) **and (e)**, other than to care for a child who requires home care due
 21 to the closure of the child's school or child care provider as a result of a public health emergency,
 22 only after [an employee] a **covered individual** has taken more than three days of leave under ORS
 23 659A.159 (1)(d) **or (e)** during any one-year period. Any medical verification required under this sub-
 24 section must be paid for by the covered employer. An employer may not require [an employee] a
 25 **covered individual** to obtain the opinion of a second health care provider for the purpose of medical
 26 verification required under this subsection.

27 (3) A covered employer may request verification for the need for leave for the purpose in ORS
 28 659A.159 (1)(d) to care for a child who requires home care due to the closure of the child's school
 29 or child care provider as a result of a public health emergency. A request for verification may in-
 30 clude a request for:

31 (a) The name of the child requiring home care;

32 (b) The name of the school or child care provider that is subject to closure;

33 (c) A statement from the [employee] **covered individual** that no other family member of the child
 34 is willing and able to care for the child; and

35 (d) A statement that special circumstances exist that require the [employee] **covered individual**
 36 to provide home care for the child during the day, if the child is older than 14 years of age.

37 (4) Subject to the approval of the health care provider, the [employee] **covered individual** taking
 38 family **and medical** leave for a serious health condition of the [employee] **covered individual** or a
 39 family member of the [employee] **covered individual** shall make a reasonable effort to schedule
 40 medical treatment or supervision at times that will minimize disruption of the employer's operations.

41 **SECTION 9.** ORS 659A.171 is amended to read:

42 659A.171. (1) After returning to work after taking family **and medical** leave under the provisions
 43 of ORS 659A.150 to 659A.186, [an eligible employee] a **covered individual** is entitled to be restored
 44 to the position of employment held by the [employee] **covered individual** when the leave commenced
 45 if that position still exists, without regard to whether the employer filled the position with a re-

1 placement worker during the period of family **and medical** leave. If the position held by the [*em-*
2 *ployee*] **covered individual** at the time family **and medical** leave commenced no longer exists, the
3 [*employee*] **covered individual** is entitled to be restored to any available equivalent position with
4 equivalent employment benefits, pay and other terms and conditions of employment. If an equivalent
5 position is not available at the job site of the [*employee's*] **covered individual's** former position, the
6 [*employee*] **covered individual** may be offered an equivalent position at a job site located within 20
7 miles of the job site of the [*employee's*] **covered individual's** former position.

8 (2) Except for employee benefits used during the period of leave, the taking of family **and**
9 **medical** leave under ORS 659A.150 to 659A.186 shall not result in the loss of any employment ben-
10 efit accrued before the date on which the leave commenced.

11 (3) This section does not entitle any [*employee*] **covered individual** to:

12 (a) Any accrual of seniority or employment benefits during a period of family **and medical** leave;
13 or

14 (b) Any right, benefit or position of employment other than the rights, benefits and position that
15 the [*employee*] **covered individual** would have been entitled to had the [*employee*] **covered individ-**
16 **ual** not taken the family **and medical** leave.

17 (4)(a) Before restoring [*an employee*] **a covered individual** to a position under subsection (1) of
18 this section, an employer may require that the [*employee*] **covered individual** receive certification
19 from the [*employee's*] **covered individual's** health care provider that the [*employee*] **covered indi-**
20 **vidual** is able to resume work. Certification under this subsection may only be required pursuant
21 to a uniformly applied practice or policy of the employer.

22 (b) This subsection does not affect the ability of an employer to require [*an employee*] **a covered**
23 **individual** during a period of family **and medical** leave to report periodically to the employer on
24 the [*employee's*] **covered individual's** status and on the [*employee's*] **covered individual's** intention
25 to return to work.

26 (5)(a) Except as provided in paragraph (b) of this subsection, benefits are not required to con-
27 tinue to accrue during a period of family **and medical** leave unless continuation or accrual is re-
28 quired under an agreement of the employer and the [*employee*] **covered individual**, a collective
29 bargaining agreement or an employer policy.

30 (b) If the [*employee*] **covered individual** is provided group health insurance, the [*employee*]
31 **covered individual** is entitled to the continuation of group health insurance coverage during the
32 period of family **and medical** leave on the same terms as if the [*employee*] **covered individual** had
33 continued to work. If family member coverage is provided to the [*employee*] **covered individual**,
34 family member coverage must be maintained during the period of family **and medical** leave. The
35 [*employee*] **covered individual** must continue to make any regular contributions to the cost of the
36 health insurance premiums.

37 (c) Notwithstanding ORS 652.610 (3) and except as provided in paragraph (b) of this subsection,
38 if the employer is required or elects to pay any part of the costs of providing disability, life or other
39 insurance coverage for [*an employee*] **a covered individual** during the period of family **and medical**
40 leave that should have been paid by the [*employee*] **covered individual**, the employer may deduct
41 from the [*employee's*] **covered individual's** pay such amounts upon the [*employee's*] **covered**
42 **individual's** return to work until the amount the employer advanced toward the payments is paid.
43 In no event may the total amount deducted for insurance under the provisions of this subsection
44 exceed 10 percent of the [*employee's*] **covered individual's** gross pay each pay period.

45 (6) Notwithstanding ORS 652.610 (3), if the employer pays any part of the costs of health, disa-

bility, life or other insurance coverage for [*an employee*] a **covered individual** under the provisions of subsection (5) of this section, and the [*employee*] **covered individual** does not return to employment with the employer after taking family **and medical** leave, the employer may deduct amounts paid by the employer from any amounts owed by the employer to the [*employee*] **covered individual**, or may seek to recover those amounts by any other legal means, unless the [*employee*] **covered individual** fails to return to work because of:

(a) A continuation, reoccurrence or onset of a serious health condition that would entitle the [*employee*] **covered individual** to leave for one of the purposes specified by ORS 659A.159 (1)(b) or (c); or

(b) Other circumstances beyond the control of the [*employee*] **covered individual**.

(7) Nothing in this section shall be construed to require an employer to provide a covered individual with any of the protections described under this section beyond what the covered individual is entitled to under ORS 659A.150 to 659A.186.

SECTION 10. ORS 659A.177 is amended to read:

659A.177. (1) Notwithstanding any other provision of ORS 659A.150 to 659A.186, if a teacher requests leave for one of the purposes specified in ORS 659A.159 (1)(b) or (c), the need for the leave is foreseeable, and the employee will be on leave for more than 20 percent of the total number of working days in the period during which the leave would extend, the employer of the teacher may require that the employee elect one of the two following options:

(a) The employee may elect to take leave for a period or periods of a particular duration, not to exceed the duration of the anticipated medical treatment; or

(b) The employee may elect to transfer temporarily to an available alternative position that better accommodates recurring periods of leave than the regular position of the employee. The teacher must be qualified for the alternative position, and the position must have pay and benefits that are equivalent to the pay and benefits of the employee's regular position.

(2) Notwithstanding any other provision of ORS 659A.150 to 659A.186, if a teacher commences a period of family **and medical** leave for the purpose specified in ORS 659A.159 (1)(c) more than five weeks before the end of an academic term, the employer of the teacher may require that the employee continue on family **and medical** leave until the end of the term if:

(a) The leave is of at least three weeks' duration; and

(b) The employee's return to employment would occur during the three-week period before the end of the term.

(3) Notwithstanding any other provision of ORS 659A.150 to 659A.186, if a teacher commences a period of family **and medical** leave for one of the purposes specified in ORS 659A.159 (1)(a) or (b) during the five weeks before the end of an academic term, the employer of the teacher may require that the employee continue on family **and medical** leave until the end of the term if:

(a) The leave is of at least two weeks' duration; and

(b) The employee's return to employment would occur during the two-week period before the end of the term.

(4) Notwithstanding any other provision of ORS 659A.150 to 659A.186, if a teacher commences a period of family **and medical** leave for one of the purposes specified in ORS 659A.159 (1)(a), (b) or [(e)] (f) during the three-week period before the end of the term, and the duration of the leave is greater than five working days, the employer of the teacher may require that the employee continue on family **and medical** leave until the end of the term.

(5) The provisions of this section apply only to an employee who is employed principally in an

1 instructional capacity by a public kindergarten, elementary school, secondary school or education
 2 service district.

3 **SECTION 11.** ORS 659A.183 is amended to read:

4 659A.183. It is an unlawful practice for a covered employer to:

5 (1) Deny family **and medical** leave to which [*an eligible employee*] **a covered individual** is en-
 6 titled under ORS 659A.150 to 659A.186; or

7 (2)(a) Retaliate or in any way discriminate against an individual with respect to hire or tenure
 8 or any other term or condition of employment because the individual has inquired about the pro-
 9 visions of ORS 659A.150 to 659A.186, submitted a request for family **and medical** leave or invoked
 10 any provision of ORS 659A.150 to 659A.186.

11 **(b) It is not retaliation under this subsection for an employer to deny the job protections**
 12 **or continuation of employment benefits described under ORS 659A.171 beyond the period of**
 13 **family and medical leave to which the covered individual is entitled under ORS 659A.150 to**
 14 **659A.186.**

15 **SECTION 12.** ORS 659A.186 is amended to read:

16 659A.186. (1) ORS 659A.150 to 659A.186 do not limit any right of an employee to any leave that
 17 is similar to the leave described in ORS 659A.159 (1) and to which the employee may be entitled
 18 under any agreement between the employer and the employee, collective bargaining agreement or
 19 employer policy.

20 (2) ORS 659A.150 to 659A.186 shall be construed to the extent possible in a manner that is
 21 consistent with any similar provisions of the federal Family and Medical Leave Act of 1993. [*Family*
 22 *leave*] **If family and medical leave taken under ORS 659A.150 to 659A.186 qualifies as protected**
 23 **leave pursuant to the federal Family and Medical Leave Act of 1993 (P.L. 103-3) or qualifies**
 24 **as family leave or medical leave taken pursuant to ORS chapter 657B, family and medical**
 25 **leave taken under ORS 659A.150 to 659A.186 must be taken concurrently with, and not in addi-**
 26 **tion to, any leave taken under the federal Family and Medical Leave Act of 1993 (P.L. 103-3) and**
 27 **under ORS chapter 657B.**

28
 29 **PAID FAMILY AND MEDICAL LEAVE**

30
 31 **SECTION 13.** ORS 657B.010, as amended by section 1, chapter 24, Oregon Laws 2022, and sec-
 32 tion 29, chapter 83, Oregon Laws 2022, is amended to read:

33 657B.010. As used in this chapter:

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

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

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

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

42 (5)(a) “Benefit year” means, except as provided in paragraph (b) of this subsection, a period of
 43 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family
 44 leave, medical leave or safe leave commences.

45 (b) “Benefit year” means, in the event that the 52-week period described in paragraph (a) of this

1 subsection would result in an overlap of any quarter of the base year of a previously filed valid
2 claim, a period of 53 consecutive weeks beginning on the Sunday immediately preceding the date
3 on which family leave, medical leave or safe leave commences.

4 (6) "Child" means:

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

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

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

11 (7) "Contribution" or "contributions" means the money payments made by any of the following
12 under ORS 657B.150:

13 (a) An employer;

14 (b) An eligible employee;

15 (c) A self-employed individual;

16 (d) A tribal government; or

17 (e) An employee of a tribal government.

18 (8) "Covered individual" means any one of the following who qualifies to receive family and
19 medical leave insurance benefits:

20 (a) An eligible employee;

21 (b) A self-employed individual; or

22 (c) An employee of a tribal government.

23 (9) "Domestic partner" means an individual joined in a domestic partnership.

24 (10) "Domestic partnership" has the meaning given that term in ORS 106.310.

25 (11) "Eligible employee" means:

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

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

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

30 (12) "Eligible employee's average weekly wage" means an amount calculated by the Director of
31 the Employment Department by dividing the total wages earned by an eligible employee during the
32 base year by the number of weeks in the base year.

33 (13)(a) "Employee" means:

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

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

37 (b) "Employee" does not include:

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

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

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

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

45 (E) A volunteer.

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

4 (b) "Employer" includes:

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

8 (B) An individual;

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

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

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

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

14 (c) "Employer" does not include the federal government or a tribal government.

15 (15) "Employment agency" has the meaning given that term in ORS 658.005.

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

19 (17)(a) "Family leave" means leave from work taken by a covered individual:

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

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

23 **(C) To deal with the death of a family member by:**

24 **(i) Attending the funeral or alternative to a funeral of the family member;**

25 **(ii) Making arrangements necessitated by the death of the family member; or**

26 **(iii) Grieving the death of the family member.**

27 (b) "Family leave" does not mean:

28 *[(A) Leave described in ORS 659A.159 (1)(d);]*

29 *[(B)] (A) Leave described in ORS 659A.159 (1)(e); or*

30 *[(C)] (B) Leave authorized under ORS 659A.093.*

31 (18) "Family member" means:

32 (a) The spouse of a covered individual;

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

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

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

37 (e) A grandparent of a covered individual or the grandparent's spouse or domestic partner;

38 (f) A grandchild of a covered individual or the grandchild's spouse or domestic partner;

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

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

42 (19) "Medical leave" means leave from work taken by a covered individual that is made neces-
 43 sary by the individual's own serious health condition.

44 (20) "Parent" means:

45 (a) A biological parent, adoptive parent, stepparent or foster parent of a covered individual;

1 (b) A person who was a foster parent of a covered individual when the covered individual was
2 a minor;

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

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

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

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

9 (22) "Self-employed individual" means:

10 (a) An individual who has self-employment income as defined in section 1402(b) of the Internal
11 Revenue Code as amended and in effect on December 31, 2021; or

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

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

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

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

18 (26) "Wages" has the meaning given that term in ORS 657.105.

19 **SECTION 14.** ORS 657B.020 is amended to read:

20 657B.020. (1) **Except as otherwise specifically provided in this section,** a covered individual
21 may qualify for up to 12 weeks of family and medical leave insurance benefits per benefit year for
22 leave taken for any of the following purposes, in any combination:

23 (a) Family leave;

24 (b) Medical leave; or

25 (c) Safe leave.

26 (2) Notwithstanding ORS 657B.025 and except as provided under subsection [(3)] (4) of this sec-
27 tion, a covered individual who has taken any amount of paid leave available under subsection (1)
28 of this section may take a total of 16 weeks of leave in the benefit year in any combination of the
29 paid leave available under subsection (1) of this section, not to exceed 12 weeks, and unpaid leave
30 under ORS [659A.159] **659A.162** for which the covered individual is eligible under ORS 659A.156.
31 The leave may be taken for any purpose for which leave is allowable under the respective leave
32 programs.

33 **(3)(a) Except as provided by paragraph (b) of this subsection, a covered individual may**
34 **take a total of two weeks of family leave for the purpose described in ORS 657B.010 (17)(a)(C).**

35 **(b) A covered individual is entitled to the period of leave described in paragraph (a) of**
36 **this subsection upon the death of each family member of the covered individual per benefit**
37 **year, except that leave taken as provided by this subsection may not exceed the total period**
38 **of family leave authorized by subsection (1) of this section.**

39 **(c) An employer may not require a covered individual to take multiple periods of family**
40 **leave for the purpose described in ORS 657B.010 (17)(a)(C) concurrently if more than one**
41 **family member of the covered individual dies during the benefit year.**

42 **(d) All leave taken under this subsection shall count toward the total period of family**
43 **leave authorized by subsection (1) of this section.**

44 [(3)] (4) In addition to the leave available under subsections (1) and (2) of this section, a covered
45 individual may qualify for up to two additional weeks of benefits for limitations related to preg-

1 nancy, childbirth or a related medical condition, including but not limited to lactation, for a total
 2 amount of leave under this subsection and subsections (1) and (2) of this section, not to exceed 18
 3 weeks per benefit year.

4 **SECTION 15.** ORS 657B.025 is amended to read:

5 657B.025. **If any family leave or medical leave taken under this chapter qualifies as protected**
 6 **leave pursuant to the federal Family and Medical Leave Act of 1993 (P.L. 103-3) or qualifies**
 7 **as family leave or medical leave taken pursuant to ORS 659A.150 to 659A.186, family and**
 8 **medical leave taken under this chapter must be taken concurrently with, and not in addition**
 9 **to, any leave taken by an eligible employee under ORS 659A.150 to 659A.186 or under the federal**
 10 **Family and Medical Leave Act of 1993 (P.L. 103-3) [for the same purposes].**

11 **SECTION 16.** ORS 657B.040 is amended to read:

12 657B.040. (1) Except as provided in subsection (2) of this section, an employer may require an
 13 eligible employee to give the employer written notice at least 30 days before commencing a period
 14 of family leave, medical leave or safe leave. The employer may require the employee to include in
 15 the notice an explanation of the need for the leave.

16 (2) An eligible employee may commence leave without 30 days' advance notice if the leave is
 17 not foreseeable, as in circumstances including but not limited to:

18 (a) An unexpected serious health condition of the employee or a family member of the employee;

19 (b) A premature birth, unexpected adoption or unexpected foster placement by or with the em-
 20 ployee; [or]

21 (c) Safe leave[.]; **or**

22 **(d) The death of a family member.**

23 (3)(a) Except as provided in subsection (5) of this section, if an eligible employee commences
 24 leave without prior notice under subsection (2) of this section, the employee must give oral notice
 25 to the employer within 24 hours of the commencement of the leave and must provide the written
 26 notice required under subsection (1) of this section within three days after the commencement of
 27 leave.

28 (b) The oral notice required by this subsection may be given by any other person on behalf of
 29 the eligible employee taking leave.

30 (c) The person named as the eligible employee's emergency contact person, or any other person
 31 otherwise designated by the eligible employee, as reflected in the employer's records, may provide
 32 the written notice required under subsection (1) of this section.

33 (4)(a) If an eligible employee fails to give notice as required under subsections (2) and (3) of this
 34 section, the Director of the Employment Department may reduce the first weekly benefit amount
 35 payable to the employee under ORS 657B.090 by up to 25 percent.

36 (b) An employer shall notify the director of the employee's failure to provide the required notice,
 37 in the manner prescribed by the director by rule.

38 **(c) This subsection does not apply to family leave taken for a purpose described in ORS**
 39 **657B.010 (17)(a)(C).**

40 (5) An eligible employee who takes safe leave shall give the employer reasonable advance notice
 41 of the individual's intention to take safe leave, unless giving the advance notice is not feasible.

42 **SECTION 17.** ORS 657B.060 is amended to read:

43 657B.060. (1)(a) Except as provided in paragraph (b) of this subsection, after returning to work
 44 after a period of family leave, medical leave or safe leave, an eligible employee is entitled to be re-
 45 stored to the position of employment held by the employee when the leave commenced, if that posi-

tion still exists, without regard to whether the employer filled the position with a replacement worker during the period of leave. If the position held by the employee at the time leave commenced no longer exists, the employee is entitled to be restored to any available equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

(b) For employers that employ fewer than 25 employees, if the position held by an eligible employee when the employee's leave commenced no longer exists, an employer may, at the employer's discretion based on business necessity, restore the eligible employee to a different position with similar job duties and with the same employment benefits and pay.

(2) During a period in which an eligible employee takes leave described under subsection (1) of this section, the employer shall maintain any health care benefits the employee had prior to taking such leave for the duration of the leave, as if the employee had continued in employment continuously during the period of leave.

(3) An eligible employee who has taken leave described under subsection (1) of this section does not lose any employment benefits, including seniority or pension rights, accrued before the date on which the leave commenced.

(4) It is an unlawful employment practice to discriminate against an eligible employee who has invoked any provision of this chapter.

(5) Nothing in this section entitles an eligible employee to accrue employment benefits during a period of leave or to a right, benefit or position of employment other than a right, benefit or position to which the employee would have been entitled had the employee not taken leave.

(6)(a) Nothing in this section requires an employer to retain a temporary worker who was hired to replace an eligible employee taking family leave, medical leave or safe leave after the eligible employee has returned to work.

(b) A civil action may not be brought against an employer for taking any of the following actions necessary to restore an eligible employee to the position of employment held by the employee as required under subsection (1) of this section:

(A) Terminating the employment of a worker who was hired solely to temporarily replace an eligible employee during a period of leave; or

(B) Removing an employee from a position to which the employee was transferred to temporarily replace an eligible employee while the eligible employee was on leave, and returning the employee to the position originally held by the employee prior to the transfer at the salary or rate of pay and benefits associated with the position.

(c) An employer shall, either at the time of hire or before reassignment, inform a temporary worker or an employee who is reassigned to a position to temporarily replace an eligible employee during a period of leave of the information provided under this subsection.

(7) The protections provided under this section apply only to an eligible employee who:

(a) Was employed by the employer for at least 90 days before taking leave described under subsection (1) of this section[.]; **and**

(b) **Has fully complied with the notice requirements under ORS 657B.040.**

CONFORMING AMENDMENTS

SECTION 18. ORS 653.601 is amended to read:

653.601. As used in ORS 653.601 to 653.661:

(1)(a) "Employee" means an individual who renders personal services at a fixed rate to an em-

1 ployer if the employer either pays or agrees to pay for personal services or permits the individual
2 to perform personal services.

3 (b) "Employee" includes, but is not limited to:

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

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

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

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

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

10 (c) "Employee" does not include:

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

12 (B) An independent contractor;

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

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

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

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

20 (2)(a) "Employer" means any person that employs one or more employees working anywhere in
21 this state, a political subdivision of the state and any county, city, district, authority, public corpo-
22 ration or entity, and any instrumentality of a county, city, district, authority, public corporation or
23 entity, organized and existing under law or charter.

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

25 (c) "Employer" does not include the federal government.

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

28 (b) "Employer located in a city with a population exceeding 500,000" does not include an em-
29 ployer that maintains only a seasonal farm stand or a trailer that is used temporarily on a con-
30 struction site for office purposes only.

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

35 (5)(a) "Front-load," except as provided in paragraph (b) of this subsection, means to assign and
36 make available a certain number of hours of sick time to an employee as soon as the employee be-
37 comes eligible to use sick time and on the first day of the immediately subsequent year without re-
38 gard to an accrual rate.

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

44 (6) "Paid sick time" means time off:

45 (a) That is provided to an employee by an employer that employs 10 or more employees;

1 (b) That may be used for the purposes specified in ORS 653.616; and

2 (c) That is compensated at the regular rate of pay and without reductions in benefits, including
 3 but not limited to health care benefits, that the employee earns from the employer at the time the
 4 employee uses the paid sick time.

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

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

11 **SECTION 19.** ORS 653.626 is amended to read:

12 653.626. (1)(a) If an employee takes more than three consecutive scheduled workdays of sick time
 13 for a purpose described in ORS 653.616 (1) to (4), an employer may require the employee to provide
 14 verification from a health care provider of the need for the sick time, or certification of the need
 15 for leave for purposes of ORS 659A.272 as provided in ORS 659A.280.

16 (b) If the need for sick time is foreseeable and is projected to last more than three scheduled
 17 workdays and an employee is required to provide notice under ORS 653.621, the employer may re-
 18 quire that verification or certification be provided before the sick time commences or as soon as
 19 otherwise practicable.

20 (c) If the employee commences sick time without providing prior notice required by the employer
 21 under ORS 653.621:

22 (A) Medical verification shall be provided to the employer within 15 calendar days after the
 23 employer requests the verification; or

24 (B) Certification provided as specified in ORS 659A.280 shall be provided to the employer within
 25 a reasonable time after the employee receives the request for certification.

26 (2) The employer shall pay any reasonable costs for providing medical verification or certifica-
 27 tion required under this section, including lost wages, that are not paid under a health benefit plan
 28 in which the employee is enrolled.

29 (3)(a) An employer may not require that the verification or certification required under this
 30 section explain the nature of the illness or details related to the domestic violence, sexual assault,
 31 harassment, or stalking that necessitates the use of sick time.

32 (b) If an employer suspects that an employee is abusing sick time, including engaging in a pat-
 33 tern of abuse, the employer may require verification from a health care provider of the need of the
 34 employee to use sick time, regardless of whether the employee has used sick time for more than
 35 three consecutive days. As used in this paragraph, “pattern of abuse” includes, but is not limited to,
 36 repeated use of unscheduled sick time on or adjacent to weekends, holidays, vacation days or pay-
 37 days.

38 (4) As used in this section, “health care provider” [*has the meaning given that term in ORS*
 39 *659A.150.*] **means:**

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

43 **(A) A physician licensed under ORS chapter 677;**

44 **(B) A physician assistant licensed under ORS 677.505 to 677.525;**

45 **(C) A dentist licensed under ORS 679.090;**

1 (D) A psychologist licensed under ORS 675.030;

2 (E) An optometrist licensed under ORS 683.070;

3 (F) A naturopath licensed under ORS 685.080;

4 (G) A registered nurse licensed under ORS 678.050;

5 (H) A nurse practitioner licensed under ORS 678.375;

6 (I) A direct entry midwife licensed under ORS 687.420;

7 (J) A licensed registered nurse licensed by the Oregon State Board of Nursing as a nurse
8 practitioner specializing in nurse midwifery;

9 (K) A regulated social worker authorized to practice regulated social work under ORS
10 675.510 to 675.600; or

11 (L) A chiropractic physician licensed under ORS 684.054, but only to the extent the
12 chiropractic physician provides treatment consisting of manual manipulation of the spine to
13 correct a subluxation demonstrated to exist by X-rays.

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

17 **SECTION 20.** ORS 659A.043 is amended to read:

18 659A.043. (1) A worker who has sustained a compensable injury shall be reinstated by the
19 worker's employer to the worker's former position of employment upon demand for such rein-
20 statement, if the position exists and is available and the worker is not disabled from performing the
21 duties of such position. A worker's former position is available even if that position has been filled
22 by a replacement while the injured worker was absent. If the former position is not available, the
23 worker shall be reinstated in any other existing position that is vacant and suitable. A certificate
24 by the attending physician or a nurse practitioner authorized to provide compensable medical ser-
25 vices under ORS 656.245 that the physician or nurse practitioner approves the worker's return to
26 the worker's regular employment or other suitable employment shall be prima facie evidence that
27 the worker is able to perform such duties.

28 (2) Such right of reemployment shall be subject to the provisions for seniority rights and other
29 employment restrictions contained in a valid collective bargaining agreement between the employer
30 and a representative of the employer's employees.

31 (3) Notwithstanding subsection (1) of this section:

32 (a) The right to reinstatement to the worker's former position under this section terminates
33 when whichever of the following events first occurs:

34 (A) A medical determination by the attending physician or, after an appeal of such determi-
35 nation to a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, has been made
36 that the worker cannot return to the former position of employment.

37 (B) The worker is eligible and participates in vocational assistance under ORS 656.340.

38 (C) The worker accepts suitable employment with another employer after becoming medically
39 stationary.

40 (D) The worker refuses a bona fide offer from the employer of light duty or modified employment
41 that is suitable prior to becoming medically stationary.

42 (E) Seven days elapse from the date that the worker is notified by the insurer or self-insured
43 employer by certified mail that the worker's attending physician or a nurse practitioner authorized
44 to provide compensable medical services under ORS 656.245 has released the worker for employment
45 unless the worker requests reinstatement within that time period.

1 (F) Three years elapse from the date of injury.

2 (b) The right to reinstatement under this section does not apply to:

3 (A) A worker hired on a temporary basis as a replacement for an injured worker.

4 (B) A seasonal worker employed to perform less than six months' work in a calendar year.

5 (C) A worker whose employment at the time of injury resulted from referral from a hiring hall
6 operating pursuant to a collective bargaining agreement.

7 (D) A worker whose employer employs 20 or fewer workers at the time of the worker's injury
8 and at the time of the worker's demand for reinstatement.

9 (4) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under sub-
10 section (3)(a)(D) of this section and who otherwise is entitled to family **and medical** leave under
11 ORS 659A.150 to 659A.186:

12 (a) Automatically commences a period of family **and medical** leave under ORS 659A.150 to
13 659A.186 upon refusing the offer of employment; and

14 (b) Need not give additional written or oral notice to the employer that the employee is com-
15 mencing a period of family **and medical** leave.

16 (5) Any violation of this section is an unlawful employment practice.

17 **SECTION 21.** ORS 659A.046 is amended to read:

18 659A.046. (1) A worker who has sustained a compensable injury and is disabled from performing
19 the duties of the worker's former regular employment shall, upon demand, be reemployed by the
20 worker's employer at employment which is available and suitable.

21 (2) A certificate of the worker's attending physician or a nurse practitioner authorized to pro-
22 vide compensable medical services under ORS 656.245 that the worker is able to perform described
23 types of work shall be prima facie evidence of such ability.

24 (3) Notwithstanding subsection (1) of this section, the right to reemployment under this section
25 terminates when whichever of the following events first occurs:

26 (a) The worker cannot return to reemployment at any position with the employer either by de-
27 termination of the attending physician or a nurse practitioner authorized to provide compensable
28 medical services under ORS 656.245 or upon appeal of that determination, by determination of a
29 medical arbiter or panel of medical arbiters pursuant to ORS chapter 656.

30 (b) The worker is eligible and participates in vocational assistance under ORS 656.340.

31 (c) The worker accepts suitable employment with another employer after becoming medically
32 stationary.

33 (d) The worker refuses a bona fide offer from the employer of light duty or modified employment
34 that is suitable prior to becoming medically stationary.

35 (e) Seven days elapse from the date that the worker is notified by the insurer or self-insured
36 employer by certified mail that the worker's attending physician or a nurse practitioner authorized
37 to provide compensable medical services under ORS 656.245 has released the worker for reemploy-
38 ment unless the worker requests reemployment within that time period.

39 (f) Three years elapse from the date of injury.

40 (4) Such right of reemployment shall be subject to the provisions for seniority rights and other
41 employment restrictions contained in a valid collective bargaining agreement between the employer
42 and a representative of the employer's employees.

43 (5) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under sub-
44 section (3)(d) of this section and who otherwise is entitled to family **and medical** leave under ORS
45 659A.150 to 659A.186:

1 (a) Automatically commences a period of family **and medical** leave under ORS 659A.150 to
2 659A.186 upon refusing the offer of employment; and

3 (b) Need not give additional written or oral notice to the employer that the employee is com-
4 mencing a period of family **and medical** leave.

5 (6) Any violation of this section is an unlawful employment practice.

6 (7) This section applies only to employers who employ six or more persons.

7 **SECTION 22.** ORS 659A.147 is amended to read:

8 659A.147. (1) It is an unlawful employment practice for an employer, because of known limita-
9 tions related to pregnancy, childbirth or a related medical condition, including but not limited to
10 lactation, of a job applicant or an employee, to:

11 (a) Deny employment opportunities to an applicant or employee if the denial is based on the
12 need of the employer to make reasonable accommodation to the known limitations.

13 (b) Fail or refuse to make reasonable accommodation to the known limitations, unless the em-
14 ployer can demonstrate that the accommodation would impose an undue hardship on the operation
15 of the business of the employer.

16 (c) Take an adverse employment action or in any manner discriminate or retaliate against an
17 applicant or an employee, with respect to hire or tenure, or any other term or condition of em-
18 ployment, because the applicant or employee has inquired about, requested or used a reasonable
19 accommodation under this section.

20 (d) Require an applicant or an employee to accept a reasonable accommodation that is unnec-
21 essary for the applicant or the employee to perform the essential duties of the job or to accept a
22 reasonable accommodation if the applicant or employee does not have a known limitation.

23 (e) Require an employee to take family **and medical** leave under ORS 659A.150 to 659A.186, or
24 any other leave, if the employer can make reasonable accommodation to the known limitations.

25 (2)(a) An employer shall post signs that provide notice informing employees of the employment
26 protections under this section, including the right to be free from discrimination because of preg-
27 nancy, childbirth and related medical conditions, and the right to reasonable accommodation under
28 this section.

29 (b) The employer shall post the signs in a conspicuous and accessible location in or about the
30 premises where employees work.

31 (c) In addition to posting the signs, the employer shall provide a written copy of the notice to:

32 (A) A new employee, at the time of hire;

33 (B) Existing employees, within 180 days after January 1, 2020; and

34 (C) An employee who informs the employer of the employee's pregnancy, within 10 days after
35 the employer receives the information.

36 (3) The Commissioner of the Bureau of Labor and Industries shall develop training and educa-
37 tion materials that the Bureau of Labor and Industries may use to train and educate employers and
38 employees regarding the obligations, rights and protections provided in ORS 659A.030 and under this
39 section.

40 (4)(a) For purposes of this section, a reasonable accommodation imposes an undue hardship on
41 the operation of the business of an employer if the reasonable accommodation requires significant
42 difficulty or expense.

43 (b) Whether a reasonable accommodation requires significant difficulty or expense shall be de-
44 termined by considering the factors provided in ORS 659A.121 (2).

45 (5) An employee who alleges a violation of this section may bring a civil action under ORS

1 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in
2 the manner provided by ORS 659A.820.

3 (6)(a) Nothing in this section shall be construed to preempt, limit, diminish or otherwise affect
4 any provision of state or federal law relating to discrimination because of sex.

5 (b) Nothing in this section shall be construed to limit the remedies or rights under federal or
6 state law that provide greater or equal protection for employees who are affected by pregnancy,
7 childbirth or a related medical condition.

8 **SECTION 23. The unit captions used in this 2023 Act are provided only for the conven-**
9 **ience of the reader and do not become part of the statutory law of this state or express any**
10 **legislative intent in the enactment of this 2023 Act.**

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