

# 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

1  
2 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.

3  
4 **Be It Enacted by the People of the State of Oregon:**

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

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

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

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

18 **SECTION 3. ORS 657B.010, as amended by section 1, chapter 24, Oregon Laws 2022, and section**  
19 **29, chapter 83, Oregon Laws 2022, is amended to read:**

20 **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.

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

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

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

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

9 (5)(a) "Benefit year" means, except as provided in paragraph (b) of this subsection, a period of  
10 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family  
11 leave, medical leave or safe leave commences.

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

16 (6) "Child" means:

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

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

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

23 **(7) "Client employer" means an employer that enters into a contractual agreement with  
24 a worker leasing company.**

25 [(7)] **(8) "Contribution" or "contributions" means the money payments made by any of the fol-  
26 lowing under ORS 657B.150:**

27 (a) An employer;

28 (b) An eligible employee;

29 (c) A self-employed individual;

30 (d) A tribal government; or

31 (e) An employee of a tribal government.

32 [(8)] **(9) "Covered individual" means any one of the following who qualifies to receive family and  
33 medical leave insurance benefits:**

34 (a) An eligible employee;

35 (b) A self-employed individual; or

36 (c) An employee of a tribal government.

37 [(9)] **(10) "Domestic partner" means an individual joined in a domestic partnership.**

38 [(10)] **(11) "Domestic partnership" has the meaning given that term in ORS 106.310.**

39 [(11)] **(12) "Eligible employee" means:**

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

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

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

44 [(12)] **(13) "Eligible employee's average weekly wage" means an amount calculated by the Di-  
45 rector of the Employment Department by dividing the total wages earned by an eligible employee**

1 during the base year by the number of weeks in the base year.

2 [(13)(a)] (14)(a) “Employee” means:

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

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

6 (b) “Employee” does not include:

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

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

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

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

14 (E) A volunteer.

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

18 (b) “Employer” includes:

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

22 (B) An individual;

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

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

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

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

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

29 [(15)] (16) “Employment agency” has the meaning given that term in ORS 658.005.

30 [(16)] (17) “Family and medical leave insurance benefits” means the wage replacement benefits  
31 that are available to a covered individual under ORS 657B.050 or under the terms of an employer  
32 plan approved under ORS 657B.210, for family leave, medical leave or safe leave.

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

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

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

37 (b) “Family leave” does not mean:

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

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

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

41 [(18)] (19) “Family member” means:

42 (a) The spouse of a covered individual;

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

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

45 (d) A sibling or stepsibling of a covered individual or the sibling’s or stepsibling’s spouse or

1 domestic partner;

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

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 individual  
6 is the equivalent of a family relationship.

7 [(19)] (20) "Medical leave" means leave from work taken by a covered individual that is made  
8 necessary by the individual's own serious health condition.

9 [(20)] (21) "Parent" means:

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

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

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

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

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

18 [(21)] (22) "Safe leave" means leave taken for any purpose described in ORS 659A.272.

19 [(22)] (23) "Self-employed individual" means:

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

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

23 [(23)] (24) "Serious health condition" has the meaning given that term in ORS 659A.150.

24 [(24)] (25) "Third party administrator" means a third party that enters into an agreement with  
25 the Director of the Employment Department to implement and administer the paid family and med-  
26 ical leave program established under this chapter.

27 [(25)] (26) "Tribal government" has the meaning given that term in ORS 181A.940.

28 [(26)] (27) "Wages" has the meaning given that term in ORS 657.105.

29 (28) "Worker leasing company" means a worker leasing company licensed under to ORS  
30 656.855 that:

31 (a) Pursuant to a contractual agreement and for a fee, furnishes workers to a client  
32 employer; and

33 (b) Reports wages and pays contributions due under ORS 657B.150 on behalf of a client  
34 employer.

35 **SECTION 4.** ORS 657B.150 is amended to read:

36 657B.150. (1)(a) Except as otherwise provided in subsections (3) [*and (4)*], (4) and (5) of this  
37 section, all employers and eligible employees shall contribute to the Paid Family and Medical Leave  
38 Insurance Fund established under ORS 657B.430.

39 (b) Contributions shall be paid by employers and employees as a percentage of a total rate de-  
40 termined by the Director of the Employment Department.

41 (c) The total rate may not exceed one percent of employee wages, up to a maximum of \$132,900  
42 in wages.

43 (2)(a) Employer contributions shall be paid in an amount that is equal to 40 percent of the total  
44 rate determined by the director.

45 (b) An employer shall deduct employee contributions from the wages of each employee in an

1 amount that is equal to 60 percent of the total rate determined by the director.

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

4 **(4) A worker leasing company is not responsible for paying the employer contribution**  
5 **amounts required under this section on behalf of a client employer that employs fewer than**  
6 **25 employees.**

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

9 (b) If an employer that employs fewer than 25 employees elects to pay the employer contribu-  
10 tions under subsection (1) of this section, the employer may apply to receive a grant under ORS  
11 657B.200.

12 [(5)] **(6)** Notwithstanding subsection (1) of this section, an employer may elect to pay the re-  
13 quired employee contributions, in whole or in part, as an employer-offered benefit.

14 [(6)] **(7)** Subject to ORS 657B.130 (2) and (3), a self-employed individual who has elected coverage  
15 under ORS 657B.130 (1) shall contribute to the fund, at a rate that may not exceed one percent of  
16 the individual's taxable income as determined by the director by rule, for a period of not less than  
17 three years from the date that the election becomes effective.

18 [(7)] **(8)** A tribal government that elects coverage under ORS 657B.130 and employees of the  
19 tribal government shall contribute to the fund in contribution amounts and at a rate that may not  
20 exceed one percent of employee wages, up to a maximum of \$132,900 in wages, as determined by the  
21 director by rule, for a period of not less than three years from the date that the election becomes  
22 effective.

23 [(8)] **(9)** The director shall set rates for the collection of payroll contributions consistent with  
24 subsection (1) of this section and in a manner such that:

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

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

29 [(9)] **(10)** For purposes of subsections (1)(c) and [(7)] **(8)** of this section, the director shall annu-  
30 ally adjust the maximum amount of employee wages by the percentage increase, if any, in the Con-  
31 sumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau  
32 of Labor Statistics of the United States Department of Labor, since the date of the previous deter-  
33 mination made under this subsection.

34 [(10)] **(11)** The director shall determine on an annual basis the amount of payroll contributions,  
35 timing of payroll contributions and maximum employee contributions sufficient to finance the costs  
36 related to the provisions of this chapter.

37 [(11)] **(12)** An employer shall hold any moneys collected under this section in trust for the State  
38 of Oregon and for the payment thereof to the Department of Revenue in the manner described in  
39 subsection [(12)] **(13)** of this section.

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

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

45 (c) The report shall be accompanied by payment of any contributions due under this section in

1 a manner determined by the Department of Revenue by rule.

2 [(13)] (14) Moneys collected under this section shall be deposited in the Paid Family and Medical  
3 Leave Insurance Fund established under ORS 657B.430.

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

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

11 [(15)] (16) Benefits may not be denied to a covered individual solely because an employer failed  
12 to collect or remit the contributions required under this section.

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

14 657B.360. (1) Subject to subsection (2) of this section, for purposes of ORS 657B.060 and  
15 657B.150, the Director of the Employment Department shall establish by rule a method to determine  
16 on an annual basis the number of employees employed by an employer. The method shall require  
17 that the determination be based on the average number of employees employed by the employer in  
18 the 12-month period immediately preceding the date on which the determination is made.

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

22 (3) **For purposes of determining liability for employer contributions described under ORS**  
23 **657B.150, with respect to a worker leasing company, the Employment Department shall apply**  
24 **the method for making such a determination under subsection (1) of this section, based on**  
25 **the number of employees employed separately by each respective client employer with which**  
26 **the worker leasing company contracts.**

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

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

32 (2) **The Employment Department may take any action before the operative date specified**  
33 **in subsection (1) of this section that is necessary to enable the department to exercise, on**  
34 **and after the operative date specified in subsection (1) of this section, all the duties, func-**  
35 **tions and powers conferred on the department by section 2 of this 2023 Act and the amend-**  
36 **ments to ORS 657B.010, 657B.150 and 657B.360 by sections 3, 4 and 5 of this 2023 Act.**

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