

SENATE AMENDMENTS TO SENATE BILL 881

By COMMITTEE ON LABOR AND BUSINESS

April 3

1 On page 1 of the printed bill, line 3, after “provisions;” delete the rest of the line.

2 Delete line 4 and insert “and amending ORS 657B.010, 657B.150 and 657B.360.”

3 Delete lines 6 through 28 and delete pages 2 through 6 and insert:

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

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

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

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

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

19 “657B.010. As used in this chapter:

20 “(1) ‘Alternate base year’ means the last four completed calendar quarters preceding the benefit
21 year.

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

25 “(3) ‘Base year’ means the first four of the last five completed calendar quarters preceding the
26 benefit year.

27 “(4) ‘Benefits’ means family and medical leave insurance benefits.

28 “(5)(a) ‘Benefit year’ means, except as provided in paragraph (b) of this subsection, a period of
29 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family
30 leave, medical leave or safe leave commences.

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

35 “(6) ‘Child’ means:

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

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

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

7 “(7) **‘Client employer’ means an employer that enters into a contractual agreement with
8 a worker leasing company.**

9 “[7] (8) ‘Contribution’ or ‘contributions’ means the money payments made by any of the fol-
10 lowing under ORS 657B.150:

11 “(a) An employer;

12 “(b) An eligible employee;

13 “(c) A self-employed individual;

14 “(d) A tribal government; or

15 “(e) An employee of a tribal government.

16 “[8] (9) ‘Covered individual’ means any one of the following who qualifies to receive family and
17 medical leave insurance benefits:

18 “(a) An eligible employee;

19 “(b) A self-employed individual; or

20 “(c) An employee of a tribal government.

21 “[9] (10) ‘Domestic partner’ means an individual joined in a domestic partnership.

22 “[10] (11) ‘Domestic partnership’ has the meaning given that term in ORS 106.310.

23 “[11] (12) ‘Eligible employee’ means:

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

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

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

28 “[12] (13) ‘Eligible employee’s average weekly wage’ means an amount calculated by the Di-
29 rector of the Employment Department by dividing the total wages earned by an eligible employee
30 during the base year by the number of weeks in the base year.

31 “[13](a) (14)(a) ‘Employee’ means:

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

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

35 “(b) ‘Employee’ does not include:

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

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

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

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

43 “(E) A volunteer.

44 “[14](a) (15)(a) ‘Employer’ means any person that employs one or more employees working
45 anywhere in this state or any agent or employee of such person to whom the duties of the person

1 under this chapter have been delegated.

2 “(b) ‘Employer’ includes:

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

6 “(B) An individual;

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

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

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

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

12 “(c) ‘Employer’ does not include the federal government or a tribal government.

13 “[15] (16) ‘Employment agency’ has the meaning given that term in ORS 658.005.

14 “[16] (17) ‘Family and medical leave insurance benefits’ means the wage replacement benefits
15 that are available to a covered individual under ORS 657B.050 or under the terms of an employer
16 plan approved under ORS 657B.210, for family leave, medical leave or safe leave.

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

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

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

21 “(b) ‘Family leave’ does not mean:

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

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

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

25 “[18] (19) ‘Family member’ means:

26 “(a) The spouse of a covered individual;

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

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

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

31 “(e) A grandparent of a covered individual or the grandparent’s spouse or domestic partner;

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

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

34 “(h) Any individual related by blood or affinity whose close association with a covered individ-
35 ual is the equivalent of a family relationship.

36 “[19] (20) ‘Medical leave’ means leave from work taken by a covered individual that is made
37 necessary by the individual’s own serious health condition.

38 “[20] (21) ‘Parent’ means:

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

40 “(b) A person who was a foster parent of a covered individual when the covered individual was
41 a minor;

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

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

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

3 “[21] **(22)** ‘Safe leave’ means leave taken for any purpose described in ORS 659A.272.

4 “[22] **(23)** ‘Self-employed individual’ means:

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

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

8 “[23] **(24)** ‘Serious health condition’ has the meaning given that term in ORS 659A.150.

9 “[24] **(25)** ‘Third party administrator’ means a third party that enters into an agreement with
10 the Director of the Employment Department to implement and administer the paid family and med-
11 ical leave program established under this chapter.

12 “[25] **(26)** ‘Tribal government’ has the meaning given that term in ORS 181A.940.

13 “[26] **(27)** ‘Wages’ has the meaning given that term in ORS 657.105.

14 “**(28) ‘Worker leasing company’ means a worker leasing company licensed under to ORS**
15 **656.855 that:**

16 “**(a) Pursuant to a contractual agreement and for a fee, furnishes workers to a client**
17 **employer; and**

18 “**(b) Reports wages and pays contributions due under ORS 657B.150 on behalf of a client**
19 **employer.**

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

21 “657B.150. (1)(a) Except as otherwise provided in subsections (3) [*and (4)*], **(4) and (5)** of this
22 section, all employers and eligible employees shall contribute to the Paid Family and Medical Leave
23 Insurance Fund established under ORS 657B.430.

24 “(b) Contributions shall be paid by employers and employees as a percentage of a total rate
25 determined by the Director of the Employment Department.

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

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

30 “(b) An employer shall deduct employee contributions from the wages of each employee in an
31 amount that is equal to 60 percent of the total rate determined by the director.

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

34 “**(4) A worker leasing company is not responsible for paying the employer contribution**
35 **amounts required under this section on behalf of a client employer that employs fewer than**
36 **25 employees.**

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

39 “(b) If an employer that employs fewer than 25 employees elects to pay the employer contribu-
40 tions under subsection (1) of this section, the employer may apply to receive a grant under ORS
41 657B.200.

42 “[5] **(6)** Notwithstanding subsection (1) of this section, an employer may elect to pay the re-
43 quired employee contributions, in whole or in part, as an employer-offered benefit.

44 “[6] **(7)** Subject to ORS 657B.130 (2) and (3), a self-employed individual who has elected cover-
45 age under ORS 657B.130 (1) shall contribute to the fund, at a rate that may not exceed one percent

1 of the individual's taxable income as determined by the director by rule, for a period of not less than
2 three years from the date that the election becomes effective.

3 “[7] (8) A tribal government that elects coverage under ORS 657B.130 and employees of the
4 tribal government shall contribute to the fund in contribution amounts and at a rate that may not
5 exceed one percent of employee wages, up to a maximum of \$132,900 in wages, as determined by the
6 director by rule, for a period of not less than three years from the date that the election becomes
7 effective.

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

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

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

14 “[9] (10) For purposes of subsections (1)(c) and [7] (8) of this section, the director shall an-
15 nually adjust the maximum amount of employee wages by the percentage increase, if any, in the
16 Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bu-
17 reau of Labor Statistics of the United States Department of Labor, since the date of the previous
18 determination made under this subsection.

19 “[10] (11) The director shall determine on an annual basis the amount of payroll contributions,
20 timing of payroll contributions and maximum employee contributions sufficient to finance the costs
21 related to the provisions of this chapter.

22 “[11] (12) An employer shall hold any moneys collected under this section in trust for the State
23 of Oregon and for the payment thereof to the Department of Revenue in the manner described in
24 subsection [(12)] (13) of this section.

25 “[12](a) (13)(a) An employer shall make and file a combined quarterly report of wages earned
26 and contributions paid under this section on a form prescribed by the Department of Revenue.

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

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

32 “[13] (14) Moneys collected under this section shall be deposited in the Paid Family and Med-
33 ical Leave Insurance Fund established under ORS 657B.430.

34 “[14](a) (15)(a) If an employer ceases or discontinues operations or business, or sells out, ex-
35 changes or otherwise disposes of the business or stock of goods, any payroll contribution payable
36 under this section is immediately due and payable, and the employer shall, within 10 calendar days,
37 pay the payroll contribution due. Any person who becomes a successor in interest to the business
38 is liable for the full amount of the unpaid payroll contribution.

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

41 “[15] (16) Benefits may not be denied to a covered individual solely because an employer failed
42 to collect or remit the contributions required under this section.

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

44 “657B.360. (1) Subject to subsection (2) of this section, for purposes of ORS 657B.060 and
45 657B.150, the Director of the Employment Department shall establish by rule a method to determine

1 on an annual basis the number of employees employed by an employer. The method shall require
2 that the determination be based on the average number of employees employed by the employer in
3 the 12-month period immediately preceding the date on which the determination is made.

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

7 “(3) **For purposes of determining liability for employer contributions described under ORS**
8 **657B.150, with respect to a worker leasing company, the Employment Department shall apply**
9 **the method for making such a determination under subsection (1) of this section, based on**
10 **the number of employees employed separately by each respective client employer with which**
11 **the worker leasing company contracts.**

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

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

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

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