

# Senate Bill 912

Sponsored by COMMITTEE ON LABOR AND BUSINESS (at the request of Employment Department)

## 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**.

Authorizes Director of Employment Department to deduct amount from future weekly family and medical leave insurance benefits for overpayments due to individual's fault. Authorizes director to deduct amount from future weekly benefits for overpayments not due to individual's fault. Limits collection period to five years following week in which erroneous payment finally established, except in case of fraud. Specifies contents of notices of recovery. Authorizes director to waive recovery of overpaid benefits, except in case of fraud. Requires director to establish process by which covered individual may request hearing to obtain review of final determination of director regarding benefit deductions.

Provides that person is ineligible for benefits after person is convicted of fraud.

Authorizes director to cancel unrecoverable benefits paid as overpayments under certain circumstances.

Authorizes director to request offset of moneys owed to debtor by state against certain benefit overpayments.

Authorizes director to collect employer assistance grant repayments and contributions from self-employed individuals and tribal governments, including penalties and interest. Allows director to attach liens on real or personal property as result of failure to remit such repayments and contributions.

Authorizes director to assess penalties against employer that violates requirements applicable to employer-offered family and medical leave benefit plans. Requires director to establish process by which employer may request hearing to obtain review of penalty assessments.

Authorizes director to waive, reduce or compromise outstanding nonpayment contribution balances of \$10 or less. Authorizes director to retain overpayments of mandatory contributions for overpayments that do not exceed \$10.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to the family and medical leave insurance program; creating new provisions; amending ORS  
3 657B.120, 657B.280, 657B.320 and 657B.410; and prescribing an effective date.

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

5 **SECTION 1. Sections 2 to 8 of this 2023 Act are added to and made a part of ORS chapter**  
6 **657B.**

7 **SECTION 2. Deduction of benefits paid in error not due to recipient fault; director dis-**  
8 **cretion; civil action by director. (1)(a) If the Director of the Employment Department decides**  
9 **that a covered individual has been paid benefits to which the covered individual is not enti-**  
10 **tled because of an error not due to the covered individual providing a false statement or**  
11 **misrepresentation of a material fact or not disclosing a material fact, or because an initial**  
12 **decision to pay benefits is subsequently reversed by a decision finding that the covered indi-**  
13 **vidual is not eligible for the benefits, then the covered individual is liable to have the amount**  
14 **of any benefits paid in error deducted from any future benefits otherwise payable to the**  
15 **covered individual under this chapter for any week or weeks within five years following the**  
16 **week in which the decision establishing the erroneous payment became final.**

17 **(b) For purposes of paragraph (a) of this subsection, the director may deduct all or any**  
18 **part of the covered individual's future weekly benefits.**

**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 (c) Any notice provided to a covered individual of the individual's liability for recovery  
 2 of benefits under this section must include a description of:

3 (A) The basis for the director's decision that benefits have been overpaid; and

4 (B) The consequences of the overpayment, including recovery of the overpaid amount and  
 5 the possibility of waiver under section 3 of this 2023 Act.

6 (2) Subject to ORS 657B.410, a decision of the director under this section does not au-  
 7 thorize the recovery of the amount of any benefits paid to a covered individual until the de-  
 8 cision is final.

9 (3) The director may bring a civil action against a covered individual to recover amounts  
 10 paid to the individual in excess of the maximum benefits allowable pursuant to this chapter.

11 **SECTION 3. Waiver of recovery of overpaid benefits.** (1) The Director of the Employment  
 12 Department shall waive recovery of overpaid benefits under section 2 of this 2023 Act if the  
 13 director finds that the benefits are recoverable due to a change in state law, the application  
 14 of which has caused the disqualification of benefits previously paid.

15 (2) The director may not waive recovery under this section of overpaid benefits that are  
 16 subject to the penalty imposed under ORS 657B.120 (3).

17 (3) The director may waive establishment and recovery of overpaid benefits when no de-  
 18 cision has been issued under ORS 657B.120 or section 2 of this 2023 Act and the amount of  
 19 the overpayment is equal to or less than one-half of the maximum weekly benefit amount in  
 20 effect at the time the overpayment is discovered.

21 (4) Any waiver granted under this section extinguishes all liability of the debtor for the  
 22 waived amounts.

23 **SECTION 4. Ineligibility for benefits upon conviction of fraud in obtaining benefits.** (1)  
 24 If a person is convicted by a court of competent jurisdiction of willfully making a false  
 25 statement or misrepresentation, or willfully failing to report a material fact, to obtain any  
 26 benefits under this chapter, in addition to any penalties imposed by the court, the person  
 27 shall:

28 (a) Be ineligible for benefits based upon wages paid to the person in the calendar quarter  
 29 in which the person was convicted and in all prior calendar quarters; and

30 (b) Be ineligible for benefits after the conviction until the person has reimbursed the Paid  
 31 Family and Medical Leave Insurance Fund established under ORS 657B.430 for the full  
 32 amount received as a result of the false statement or misrepresentation or of the failure to  
 33 report a material fact.

34 (2) The provisions of this section are in addition and supplemental to the provisions of  
 35 ORS 657B.120.

36 **SECTION 5. Cancellation of unrecoverable benefits.** (1)(a) If any amount paid to a covered  
 37 individual as benefits, for which the covered individual has been found liable under the pro-  
 38 visions of ORS 657B.120 to repay or to have deducted from benefits payable, has been neither  
 39 repaid nor deducted within a period of five years following the date the decision establishing  
 40 the overpayment became final, and is equal to or less than one-half of the state maximum  
 41 weekly benefit amount in effect at the time the overpayment is discovered, or determined  
 42 by the Director of the Employment Department to be uncollectible, the overpayment, to-  
 43 gether with the record of the overpayment and the resulting shortage, may be canceled.

44 (b) Notwithstanding paragraph (a) of this subsection, the overpayment may not be can-  
 45 celed if the debt is being recovered by payments or deductions that were received within the

1 last three months or if repayment of the overpayment is required under section 4 of this 2023  
2 Act.

3 (2) If an amount paid to a covered individual as benefits, for which the covered individual  
4 has been found liable under the provisions of section 2 of this 2023 Act to have deducted from  
5 benefits payable, has not been waived under section 3 of this 2023 Act, paid or deducted from  
6 benefits otherwise payable to the individual for any week or weeks within five years following  
7 the week in which the decision establishing the overpayment became final, the overpayment,  
8 together with the record of the overpayment and the resulting shortage, shall be canceled.

9 (3) When in the judgment of the director the best interests of the Employment Depart-  
10 ment are served in an effort to settle accounts, the director may waive, reduce or compro-  
11 mise any part or all of the interest or penalty charged pursuant to ORS 657B.120. The  
12 director may determine that the amount of interest or penalty due and unpaid is uncollect-  
13 ible, and write off the amount. In making the determination that interest or a penalty is  
14 uncollectible, the director shall consider, among other factors:

15 (a) The administrative costs of continued collection efforts in relation to the amount due;

16 (b) The accessibility of the debtor for effective collection actions; and

17 (c) The debtor's financial condition and ability to pay the amount due, both current and  
18 projected.

19 **SECTION 6. Offset of moneys owed to debtor by state governments against certain ben-**  
20 **efit overpayments; fees.** (1) The Director of the Employment Department may request an  
21 offset against liquidated state debt under this section only if:

22 (a) The debt is legally enforceable;

23 (b) The debt is past due;

24 (c) The debt was caused by the debtor's:

25 (A) Willfully making a false statement or misrepresentation, or willfully failing to report  
26 a material fact, to obtain any benefits under this chapter;

27 (B) Failure to report earnings or to report earnings accurately; or

28 (C) Failure to make contributions required under ORS 657B.150 for which the state has  
29 determined the debtor to be liable and that remain uncollected;

30 (d) The debtor's appeal period for contesting the debt and the element of causation de-  
31 scribed in paragraph (c) of this subsection has expired; and

32 (e) The director has provided at least 60 days' advance written notice to the debtor that  
33 the debt will be offset pursuant to this section and that the debtor has the right to request  
34 administrative review under rules adopted by the director.

35 (2)(a) The director may pay a charge to the Department of Revenue pursuant to ORS  
36 293.250 for processing a request to offset against liquidated state debt a state tax refund  
37 owed to the debtor.

38 (b) The net amount received from the Department of Revenue after deduction of fees  
39 charged under paragraph (a) of this subsection shall be offset against the debt.

40 **SECTION 7. Penalties for employers with employer-offered benefit plans.** (1) If the Di-  
41 rector of the Employment Department determines that an employer that offers benefits  
42 pursuant to a plan approved under ORS 657B.210 has at any time violated any requirements  
43 applicable to plans approved under ORS 657B.210, the director may assess the following pen-  
44 alties against the employer:

45 (a) \$1,000 for the first violation.

1 (b) \$2,000 for the second and each subsequent violation.

2 (2) The director may waive collection of a penalty assessed under subsection (1) of this  
 3 section if the employer corrects the violation within 30 days of receiving a notice of the vi-  
 4 olation and the notice is for a first violation.

5 (3) The director may waive collection of any penalties if the director determines the vi-  
 6 olation to be an inadvertent error by the employer.

7 (4) Monetary penalties collected under this section shall be deposited in the Paid Family  
 8 and Medical Leave Insurance Fund established under ORS 657B.430.

9 (5) An employer may appeal the director's assessment of a penalty under this section as  
 10 provided in ORS 657B.410.

11 **SECTION 8. Authority of director to compromise or adjust debts or overpayments. When**  
 12 **in the judgment of the Director of the Employment Department the best interests of the**  
 13 **Employment Department are served, the director may:**

14 (1) Waive, reduce or compromise any balance of \$10 or less from a contribution due un-  
 15 der ORS 657B.150; or

16 (2) Retain any overpayment of \$10 or less from a contribution paid under ORS 657B.150.

17 **SECTION 9.** ORS 657B.120 is amended to read:

18 657B.120. (1) An employer may not willfully make or cause to be made false statements or  
 19 willfully fail to report a material fact regarding the claim of an eligible employee or regarding an  
 20 employee's eligibility for family and medical leave insurance benefits under this chapter.

21 (2) The Director of the Employment Department may assess a civil penalty in an amount not to  
 22 exceed \$1,000 against an employer for each occurrence that violates subsection (1) of this section.

23 (3) If the director determines that a covered individual willfully made a false statement or  
 24 willfully failed to report a material fact in order to obtain benefits under this chapter, the covered  
 25 individual is:

26 (a) Disqualified from claiming benefits for one year; and

27 (b) Liable for a penalty imposed at a rate prescribed by the director of at least 15 percent, but  
 28 not greater than 30 percent, of the amount of benefits the individual received to which the individual  
 29 was not entitled.

30 (4)(a) If the director determines that a covered individual has received benefits to which the  
 31 individual was not entitled, the director may:

32 [(a)] (A) Seek repayment of benefits from the covered individual in a manner prescribed by the  
 33 director by rule; [and] or

34 [(b)] (B) Have the amount of the benefits deducted from any future benefits otherwise payable  
 35 to the individual under ORS 657B.100.

36 (b) For purposes of paragraph (a)(B) of this subsection, the director may deduct all or  
 37 any part of the covered individual's future weekly benefits.

38 (c) Except as provided in paragraph (d) of this subsection, benefits described in paragraph  
 39 (a) of this subsection may be collected for any week or weeks within five years following the  
 40 week in which the decision establishing the erroneous payment became final.

41 (d) Notwithstanding paragraph (c) of this subsection, overpaid benefits subject to the  
 42 penalty imposed under subsection (3)(b) of this section may be collected at any time.

43 (e) Notice provided to a covered individual of the individual's liability for recovery of  
 44 benefits under this section must include a description of:

45 (A) The basis for the director's decision that benefits have been overpaid; and

1       **(B) The consequences of the overpayment, including the methods of recovery of the**  
 2 **overpaid amount, with interest and penalties, and the possibility of waiver under section 3**  
 3 **of this 2023 Act.**

4       (5) If benefits are paid because of an error that is not due to provision of a false statement,  
 5 nondisclosure of a material fact or misrepresentation by a covered individual, the director may  
 6 waive, in whole or in part, the amount of any such payments for which recovery under subsection  
 7 (4) of this section would be against equity, good conscience or administrative efficiency.

8       (6) A decision of the director under this section does not authorize the recovery of the amount  
 9 of any benefits paid to a covered individual until the decision is final and the decision specifies:

10       (a) That the covered individual, by reason of false statement, nondisclosure or misrepresentation,  
 11 is liable to repay the amount to the Paid Family and Medical Leave Insurance Fund established  
 12 under ORS 657B.430;

13       (b) The nature of the false statement, nondisclosure or misrepresentation;

14       (c) The week or weeks for which the benefits were paid; and

15       (d) That any amount subject to recovery and any penalty due under this section may be col-  
 16 lected by the director in a civil action against the employer or covered individual brought in the  
 17 name of the director.

18       **(7)(a) The director may bring a civil action against an individual to collect any amount**  
 19 **subject to recovery and any penalty due under this section.**

20       **(b) Any judgment rendered shall bear interest at the rate provided in subsection (8) of**  
 21 **this section.**

22       **(8) Interest on any amount liable to be repaid under this section shall be paid and col-**  
 23 **lected at the same time repayment of benefits is made by the individual, at the rate of one**  
 24 **percent per month. In computing the interest, a fraction of a month shall be counted as a**  
 25 **full month.**

26       **(9)(a) Deductions from paid family and medical leave insurance benefits pursuant to**  
 27 **subsection (4) of this section shall be applied solely to the amount of the benefits liable to**  
 28 **be repaid under this section.**

29       **(b) All other payments shall be applied first to court costs, then to penalties, then to**  
 30 **interest, then to the amount liable to be repaid.**

31       **(10) The following amounts collected under this section shall be paid into the Paid Family**  
 32 **and Medical Leave Insurance Fund established under ORS 657B.430:**

33       **(a) Amounts in repayment of benefits; and**

34       **(b) The penalties imposed under subsection (3)(b) of this section.**

35       [(7)] **(11) The director shall adopt rules establishing standards and procedures for the repayment**  
 36 **of benefits and payment of penalties and interest under this section.**

37       [(8)] **(12) An employer or covered individual may appeal a determination made under this section**  
 38 **as provided in ORS 657B.410.**

39       **SECTION 10. ORS 657B.280 is amended to read:**

40       657B.280. (1) This section applies to:

41       (a) An employer that fails to remit to the Department of Revenue any amount of contributions  
 42 due under ORS 657B.150;

43       (b) An individual liable to repay any amount of benefits paid under this chapter to which the  
 44 individual was not entitled; *[and]*

45       (c) A person liable under ORS 657B.330 for amounts due under this chapter[.];

1        **(d) A self-employed individual or tribal government that fails to remit to the Department**  
 2 **of Revenue any amount of contributions due under ORS 657B.130;**

3        **(e) An employer liable to repay any amount of grant moneys awarded under ORS 657B.200**  
 4 **for which the employer was not eligible; and**

5        **(f) An individual liable for any amounts due under this chapter.**

6        (2) If a judgment or final administrative order is rendered in favor of the Director of the Em-  
 7 ployment Department for amounts described in subsection (1) of this section, the amounts shall be  
 8 a lien in favor of the director upon all property, whether real or personal, belonging to the em-  
 9 ployer, individual or person.

10        (3) The lien shall be perfected and attach:

11        (a) To real and personal property located within the county, upon the recording of a warrant,  
 12 as provided in ORS 657B.300, with the clerk of the county in which the property is located.

13        (b) To personal property wherever located within the state, upon:

14        (A) The recording of a warrant, as provided in ORS 657B.300, with the clerk of any county; and

15        (B) The filing of a copy of the warrant with the Secretary of State as provided in ORS 657B.290.

16        (4) The lien created by this section may be foreclosed by a suit in the circuit court in the  
 17 manner provided by law for the foreclosure of other liens on real or personal property.

18        **SECTION 11.** ORS 657B.320 is amended to read:

19        657B.320. (1) If an employer defaults with respect to any amount of contributions required to  
 20 be made by the employer to the Paid Family and Medical Leave Insurance Fund established under  
 21 ORS 657B.430 **or with respect to the repayment of any grant moneys awarded to the employer**  
 22 **under ORS 657B.200 for which the employer was not eligible**, the unpaid amount, together with  
 23 interest and penalties, shall be collected by the Director of the Employment Department in a civil  
 24 action against the employer brought in the name of the director.

25        (2)(a) Judgment rendered on a civil action brought under subsection (1) of this section in favor  
 26 of the director shall bear interest at the rate provided in subsection (3) of this section.

27        (b) An employer's compliance with the requirements of ORS 657B.150 shall date from the time  
 28 that contributions were collected from the employer **or grants were received by the employer**.

29        (c) The amount of contributions **or any grant repayment described in subsection (1) of this**  
 30 **section** collected from an employer, together with interest and penalties, shall be paid into the fund.

31        (3)(a) Interest upon any amounts due from an employer shall be paid and collected at the rate  
 32 of one and one-half percent per month from the date prescribed for the payment to the fund. In  
 33 computing the interest, a fraction of a month shall be counted as a full month.

34        (b) Interest shall be paid at the same time contributions **or grant repayments** are required to  
 35 be paid by the employer to the fund.

36        (4) If an employer fails to pay contributions required by ORS 657B.150 at the time prescribed  
 37 by the director, the employer shall be in default.

38        **(5) If an employer is awarded grant moneys under ORS 657B.200 for which the employer**  
 39 **was not eligible and the employer fails to repay the moneys to the Employment Department**  
 40 **within 30 days after receiving notice from the department explaining the employer's obli-**  
 41 **gation to repay the moneys, the employer shall be in default.**

42        [(5)] **(6) If an employer that is in default with respect to payment of contributions or a grant**  
 43 **repayment fails to make payment within 10 days after written demand has been made by the di-**  
 44 **rector, the employer shall be subject to a penalty of 10 percent of the amount of the contributions**  
 45 **or the grant repayment.** A demand for payment shall be deemed to have been made when deposited

1 in the mail addressed to the employer at the employer's last known address of record with the di-  
2 rector.

3 [(6)] (7)(a) If any part of a deficiency is due to fraud with intent to avoid payment of contribu-  
4 tions to the fund, then 50 percent of the total amount of the deficiency, in addition to the deficiency,  
5 shall be assessed, collected and paid, in the same manner as if it were a deficiency, and deposited  
6 in the fund.

7 (b) **If an employer's award of grant moneys under ORS 657B.200 was obtained by fraud**  
8 **or misrepresentation by the employer, then 50 percent of the total amount of the grant**  
9 **award, in addition to the amount of the grant repayment due to the department, shall be**  
10 **assessed, collected and paid, in the same manner as if it were a deficiency, and deposited in**  
11 **the fund.**

12 [(7)] (8) Civil actions brought in the name of the director under this section to collect contri-  
13 butions, **grant repayments**, interest or penalties from an employer shall be entitled to preference  
14 upon the calendar over all civil cases that involve only private parties.

15 [(8)(a)] (9)(a) Notwithstanding the provisions of this section, the director may agree to accept  
16 from an employer or former employer with a delinquent account any amount the director finds rea-  
17 sonable under the circumstances as consideration in settlement of the full amount of contributions,  
18 **grant repayments**, interest or penalties due if the director finds that:

19 (A) The total interest collectible on the delinquent account is in excess of 25 percent of the  
20 principal;

21 (B) The employer or former employer no longer conducts an active business and has insufficient  
22 net assets to pay the full amount of all contributions, **grant repayments**, interest or penalties due;  
23 and

24 (C) The employer or former employer can pay some but not all of the delinquent amounts.

25 (b) Whenever a settlement agreement is made pursuant to paragraph (a) of this subsection, a  
26 written record signed by the director shall be maintained in the files of the director. Such records  
27 shall set forth:

28 (A) The name of the employer or former employer against whom the liability was assessed;

29 (B) The amount of the assessed liability;

30 (C) The amount of the liability paid;

31 (D) The amount of the liability canceled or waived; and

32 (E) A sworn statement of the employer or former employer setting forth the complete financial  
33 responsibility of the employer or former employer and containing a full disclosure of all matters  
34 bearing upon the ability of the employer or former employer to pay the full amount of the liability  
35 assessed.

36 [(9)] (10) The director shall file a full and true copy of the record of each settlement agreement  
37 with the Secretary of State as a public record.

38 [(10)] (11) Any amount agreed to in settlement of the director's claims on behalf of the fund  
39 pursuant to subsection [(8)(a)] (9)(a) of this section shall be first credited to the contributions **or**  
40 **grant repayments** due from the employer or former employer, **whichever is applicable**, until the  
41 principal amount of contributions **or grant repayments** due has been satisfied and shall be depos-  
42 ited in the fund.

43 **SECTION 12.** ORS 657B.410 is amended to read:

44 657B.410. (1) The Director of the Employment Department shall establish a process by which:

45 (a) An employer may request a hearing to obtain review of a final decision of the director re-

1 regarding **any of the following:**

2 (A) Approval or denial of an employer's application for approval of a plan under ORS  
3 657B.210[.];

4 (B) **The assessment of penalties under section 7 of this 2023 Act; or**

5 (C) **A determination made under ORS 657B.120.**

6 (b) A covered individual may request a hearing to obtain review of a final decision of the di-  
7 rector regarding **any of the following:**

8 (A) Approval or denial of a claim submitted to the director for payment of family and medical  
9 leave insurance benefits;

10 (B) The weekly benefit amount payable to a covered individual as determined under ORS  
11 657B.050; or

12 (C) Disqualification from the receipt of benefits including liability or repayment of benefits as  
13 determined under ORS 657B.120 **and section 2 of this 2023 Act.**

14 (2) Notwithstanding ORS 183.315, the process established by the director under this section shall  
15 comply with provisions for a contested case under ORS chapter 183 and is subject to judicial review  
16 as provided in ORS 183.482.

17 **SECTION 13. The section captions used in this 2023 Act are provided only for the con-**  
18 **venience of the reader and do not become part of the statutory law of this state or express**  
19 **any legislative intent in the enactment of this 2023 Act.**

20 **SECTION 14. This 2023 Act takes effect on the 91st day after the date on which the 2023**  
21 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

22