



April 4, 2023

TO: Senate Labor and Business Committee

FR: Angela Wilhelms, President & CEO, Oregon Business & Industry

RE: Testimony re the -3 Amendment to SB 999

Chair Taylor, Vice Chair Bonham, Members of the Committee:

Oregon Business & Industry (OBI) is a statewide association representing businesses from a wide variety of industries and from each of Oregon's 36 counties. In addition to being the statewide chamber of commerce, OBI is the state affiliate for the National Association of Manufacturers and the National Retail Federation. Our 1,600 member companies, more than 80% of which are small businesses, employ more than 250,000 Oregonians.

Thank you for the opportunity to submit comments in support of SB 999, particularly the -3 amendment. Given the last minute notification of a possible fiscal and resulting subsequent referral to Joint Ways and Means, we are not prepared to offer comments on that at this time. Comments below will focus on policy aspects of the -3 amendment.

As Oregon's Paid Family and Medical Leave Insurance program becomes fully operational, the -3 amendment to SB 999 takes a few first steps toward achieving greater alignment between Oregon's disparate leave laws, in particular PFMLI and the Oregon Family Leave Act, OFLA.

Alignment is important for many reasons. Not the least of these are that workers need to be able to understand what is available to them and how best to use available leave in the care of themselves and their families; and employers also need clarity, in large part because they are the ones responsible for administering OFLA and, where applicable, FMLA.

To be clear, SB 999 provides significant expansions to OFLA through the alignment of the definition of family. We look forward to the OED and BOLI rulemaking processes to ensure that agreed upon factors are promulgated as discussed¹.

¹ Language relating to factors that was agreed to during negotiations is: "Affinity" as used in ORS Chapter 657B.010(18)(h) is determined through the following two-part analysis:

- (a) A significant personal bond that is like a family relationship, and
- (b) A relationship that, in its totality, including, but not limited to, the following factors (with no single factor being dispositive) includes such ties as:
 - (i) Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills, or beneficiary designations;
 - (ii) Emergency contact designations;
 - (iii) The expectation of care created by the relationship and/or the prior provision of care;
 - (iv) Cohabitation and the duration and purpose thereof; and
 - (v) Geographical proximity.

We have significant concerns with the operative dates in the -3 amendment. First is the operative date of January 1, 2024, for the benefit year definition change in OFLA. After negotiations specific to this topic, we expected to see July 1, 2024, as the operative date. Currently, *every* employer covered by OFLA uses a definition of benefit year different than the new language. As a result, *every* employer will have a new definition to follow. While that in itself is helpful (though it should be noted that FMLA still carries a different definition), it must be recognized that employers are at varying places in that benefit year. Further, they not only need but want to provide ample notice to employees before switching and will need to decouple OFLA and FMLA policies and practices. None of that happens overnight. July 1 was intentional; it ensures that, regardless of where an employer is in their current benefit year, they have one full year to work through that and plan for the change.

We also have significant concerns with the overall operative date for the rest of the sections. The Employment Department was given years to implement PFMLI. Yet, employers will now have mere weeks to make *significant* changes to OFLA – a complicated, decades long benefit program that they administer. Again, there is much work to do. Policies need to be rewritten, handbooks updated, leave calendars modified, forms redesigned, software programs updated, etc. Making the bulk of provisions operative immediately puts enormous pressure on employers and would lead to greater confusion and high costs of implementation. Our sincere hope is that BOLI and OED will take proactive steps to ensure the timely notification and education of employers, particularly Oregon’s smaller businesses.

But that notification and assistance is not enough. The general operative date must be extended. At a minimum this needs to be September 3 but even that is just around the corner. Without that grace, these timelines set up a communications and compliance quagmire, particularly for small businesses affected by both leave programs—not to mention those small businesses also covered by FMLA. Many of these businesses do not have internal HR, compliance or legal offices; they are in the midst of workforce shortages which further strain owners, managers, and remaining employees; and they are facing extraordinary cost pressures this year, leaving little room for increased and quick-response support necessary for this operational timeline. This is a simple fix to the bill and can be done easily.

As noted earlier, however, SB 999 does take steps toward alignment, and the concurrence language added to OFLA is an important part of that. Much discussion remains about the types of leave offered under one program but not the other, about the need for a more reasonable and consolidated approach to maximum leave allowances and associated job protections, and about other provisions that remain complicated and differentiated.

An outline of the topics that need to be discussed will be submitted to the record from the employer representatives on the SB 999 negotiating group. As we had hoped to see during the last interim, we now encourage an interim workgroup so that this complicated policy discussion can unfold with plenty of runway to have a plan ready for the 2024 session on *true* concurrence between Oregon’s disparate leave laws, and we stand ready to be productive participants in such an effort.

We encourage you to support the -3 amendment to SB 999.

Thank you.

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