

# House Bill 4005

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor for Paul Holvey)

## 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**. The statement includes a measure digest written in compliance with applicable readability standards.

**Digest:** The Act makes changes to state law to clarify the meaning of an individual's performance of services. The Act takes effect 91 days after session ends. (Flesch Readability Score: 63.4).

Clarifies when an employee is employed by employing unit or employer for a single hour of work for purposes of unemployment insurance and paid family and medical leave programs.

Requires the Director of the Employment Department to issue a refund to a paying entity that paid the employer contribution amounts on behalf of an employer with respect to employees for hours of work in which the employees did not perform services for the paying entity.

Takes effect on the 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to an individual's performance of services for an employer; creating new provisions;  
3 amending ORS 657.020, 657B.010 and 657B.175; and prescribing an effective date.

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

5 **SECTION 1.** ORS 657.020 is amended to read:

6 657.020. (1) As used in this chapter, unless the context requires otherwise, "employing unit"  
7 means:

8 (a) Any individual or type of organization, including any partnership, association, limited liability  
9 company, limited liability partnership, trust, estate, joint stock company, insurance company or  
10 corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or suc-  
11 cessor thereof, or the legal representative of a deceased person, *[who]* **that** has or had in its employ  
12 one or more individuals performing services for it within this state.

13 (b) This state, including every state officer, board, commission, department, institution, branch  
14 and agency of the state government.

15 (c) Any people's utility district.

16 (d) Any political subdivision.

17 (e) Any Indian tribe or subdivision, subsidiary or business enterprise wholly owned by an Indian  
18 tribe.

19 (2) All individuals performing services within this state for any employing unit that maintains  
20 two or more separate establishments within this state are deemed to be employed by a single em-  
21 ploying unit for all *[the]* purposes of this chapter, except that for the purposes of this chapter each  
22 of the various agencies, boards, commissions, departments, institutions and political subdivisions of  
23 this state shall be deemed separate employing units.

24 **(3) For all purposes of this chapter, for any hour of work, an individual:**

25 **(a) Shall be considered to be employed solely by the employing unit:**

26 **(A) For which the individual performs services; and**

27 **(B) That has the right to direct and control the individual's performance of the services;**

**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 **and**

2 **(b) May not be considered to be employed by more than one employing unit.**

3 **SECTION 2.** ORS 657B.010 is amended to read:

4 657B.010. As used in this chapter:

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

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

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

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

13 (5)(a) "Benefit year" means, except as provided in paragraph (b) of this subsection, a period of  
14 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family  
15 leave, medical leave or safe leave commences.

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

20 (6) "Child" means:

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

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

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

27 (7) "Claimant" means an individual who has submitted an application or established a claim for  
28 benefits.

29 (8) "Contribution" or "contributions" means the money payments made by any of the following  
30 under ORS 657B.150:

31 (a) An employer;

32 (b) An employee;

33 (c) A self-employed individual;

34 (d) A tribal government; or

35 (e) An employee of a tribal government.

36 (9) "Covered individual" means any one of the following who qualifies under ORS 657B.015 to  
37 receive family and medical leave insurance benefits:

38 (a) An eligible employee;

39 (b) A self-employed individual; or

40 (c) An employee of a tribal government.

41 (10) "Domestic partner" means an individual joined in a domestic partnership.

42 (11) "Domestic partnership" has the meaning given that term in ORS 106.310.

43 (12) "Eligible employee" means:

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

45 (B) If an employee has not earned at least \$1,000 in wages during the base year, an employee

1 who has earned at least \$1,000 in wages during the alternate base year; and

2 (b) An employee to whom paid family and medical leave insurance benefits may be available  
3 under ORS 657B.015.

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

7 (14)(a) "Employee" means:

8 (A) An individual performing services for an employer for remuneration or under any contract  
9 of hire, written or oral, express or implied, **under the employer's direction and control.**

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

11 (b) "Employee" does not include:

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

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

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

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

19 (E) A volunteer.

20 (F) A judge as defined in ORS 260.005.

21 (G) A member of the Legislative Assembly.

22 (H) A holder of public office as defined in ORS 260.005.

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

26 (b) "Employer" includes:

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

30 (B) An individual;

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

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

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

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

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

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

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

41 (18)(a) "Family leave" means leave from work taken by a covered individual:

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

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

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

- 1 (A) Leave described in ORS 659A.159 (1)(d);  
2 (B) Leave described in ORS 659A.159 (1)(e); or  
3 (C) Leave authorized under ORS 659A.093.
- 4 (19) "Family member" means:  
5 (a) The spouse of a covered individual;  
6 (b) A child of a covered individual or the child's spouse or domestic partner;  
7 (c) A parent of a covered individual or the parent's spouse or domestic partner;  
8 (d) A sibling or stepsibling of a covered individual or the sibling's or stepsibling's spouse or  
9 domestic partner;  
10 (e) A grandparent of a covered individual or the grandparent's spouse or domestic partner;  
11 (f) A grandchild of a covered individual or the grandchild's spouse or domestic partner;  
12 (g) The domestic partner of a covered individual; or  
13 (h) Any individual related by blood or affinity whose close association with a covered individual  
14 is the equivalent of a family relationship.
- 15 (20) "Medical leave" means leave from work taken by a covered individual that is made neces-  
16 sary by the individual's own serious health condition.
- 17 (21) "Parent" means:  
18 (a) A biological parent, adoptive parent, stepparent or foster parent of a covered individual;  
19 (b) A person who was a foster parent of a covered individual when the covered individual was  
20 a minor;  
21 (c) A person designated as the legal guardian of a covered individual at the time the covered  
22 individual was a minor or required a legal guardian;  
23 (d) A person with whom a covered individual was or is in a relationship of in loco parentis; or  
24 (e) A parent of a covered individual's spouse or domestic partner who meets a description under  
25 paragraphs (a) to (d) of this subsection.
- 26 (22) "Safe leave" means leave taken for any purpose described in ORS 659A.272.
- 27 (23) "Self-employed individual" means:  
28 (a) An individual who has self-employment income as defined in section 1402(b) of the Internal  
29 Revenue Code as amended and in effect on December 31, 2022; or  
30 (b) An independent contractor as defined in ORS 670.600.
- 31 (24) "Serious health condition" has the meaning given that term in ORS 659A.150.
- 32 (25) "Third party administrator" means a third party that enters into an agreement with the  
33 Director of the Employment Department to implement and administer the paid family and medical  
34 leave program established under this chapter.
- 35 (26) "Tribal government" has the meaning given that term in ORS 181A.940.
- 36 (27)(a) "Wages" has the meaning given that term in ORS 657.105.  
37 (b) "Wages" does not mean contribution amounts paid to the Paid Family and Medical Leave  
38 Insurance Fund by an employer on behalf of an employee under ORS 657B.150 (5).
- 39 **SECTION 3.** ORS 657B.175 is amended to read:  
40 657B.175. (1) An employee's wages shall be used to make determinations under this chapter if  
41 the wages are earned for service that is:  
42 (a) Localized within this state; or  
43 (b) Not localized within any state, but some of the service is performed within this state and:  
44 (A) The base of operations is in this state or, if there is no base of operations, the place from  
45 which the service is directed or controlled is in this state; or

1 (B) The base of operations or place from which the service is directed or controlled is not in  
2 any state in which some part of the service is performed, but the individual's residence is in this  
3 state.

4 (2) Service is localized within this state if it is:

5 (a) Performed entirely within this state; or

6 (b) Performed both within and outside this state, but the service performed outside this state is  
7 incidental to the employee's service within this state.

8 **(3) For all purposes of this chapter, for any hour of work, an employee may not be con-**  
9 **sidered to be employed by more than one employer.**

10 **SECTION 4. (1)(a) If employer contribution amounts were paid on behalf of an employer**  
11 **described in ORS 657B.150 (4) with respect to employees for hours of work in which the em-**  
12 **ployees did not perform services for the paying entity, the paying entity may seek a refund**  
13 **for the amounts paid in the manner prescribed under paragraph (b) of this subsection.**

14 **(b) The paying entity may amend a combined quarterly report filed with the Department**  
15 **of Revenue under ORS 657B.150 detailing any employer contribution amounts paid by the**  
16 **entity on or after January 1, 2023.**

17 **(2)(a) If the department determines pursuant to an amended combined quarterly report**  
18 **submitted under subsection (1)(b) of this section that a refund is due to a paying entity for**  
19 **employer contribution amounts paid on or after January 1, 2023, the Director of the Em-**  
20 **ployment Department shall issue a refund to the entity.**

21 **(b) The Director of the Employment Department may not allow or make a refund to a**  
22 **paying entity after three years from the date on which the entity paid the contribution**  
23 **amount.**

24 **SECTION 5. (1) Section 4 of this 2024 Act and the amendments to ORS 657.020, 657B.010**  
25 **and 657B.175 by sections 1 to 3 of this 2024 Act become operative on January 1, 2024.**

26 **(2) The Employment Department may take any action before the operative date specified**  
27 **in subsection (1) of this section that is necessary to enable the department to implement the**  
28 **provisions of sections 1 to 4 of this 2024 Act on and after the operative date specified in**  
29 **subsection (1) of this section.**

30 **SECTION 6. This 2024 Act takes effect on the 91st day after the date on which the 2024**  
31 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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