

Meeting:	Advisory Committee						
Date/time:	2/2/2022 1:00 pm (Virtual)						
Location:	Advisory Committee meetings are open to the public with the ability to listen by audio via Zoom. If you have questions about the PFMLI program, please Email us Join ZoomGov Meeting https://www.zoomgov.com/j/1611695979?pwd=Zis5LzdNUDF5dVBNNs9zY1E0cElqQT09						
Attendees:	P (Present)	A (Absent)	C (Conference Caller)	F (Facilitator)			
F	Karen Humelbaugh (Chair)	P	Linda Herrera (Member)	P	Eva Rippeteau (Member)	P	David Gerstenfeld (Executive Sponsor)
A	Amanda Dalton (Member)	P	Eric Hunter (Member)	A	Paloma Sparks (Member)	P	Jeannine Beatrice (Executive Sponsor)
A	Jenny Dresler (Member)	P	Andrea Paluso (Member)	A	Jessica Giannettino Villatoro (Member)	P	Shannon Ball (Staff)
P	Kelley Otoni (Staff)	P	Ayesha Khalid (staff)	A	Sergey Kukharik (Staff)		

Agenda

Time	Docket #	Topic	Presenter
1:00 pm	1.0	Welcome	Karen Madden Humelbaugh & David Gerstenfeld
	1.1	Member Roundtable	
	1.2	Agency and Program Updates	
	1.3	Approval of December 1, 2021 Meeting Notes	

David Gerstenfeld provided agency updates. The Employment Department has been working hard on core performance metrics including how quickly they are able to provide first payments to claimants and how quickly they are able to resolve issues that need to be adjudicated. In relation to these core performance metrics, Oregon outperformed 29 states. There are a few legislative proposals related to the agency, including the Future Ready Oregon bill which looks at potential investments around the workforce system, in addition to a bill for essential worker pay and one around overtime for agricultural workers.

Karen Madden Humelbaugh shared program updates. The team is hiring for multiple positions including a support staff, a number of operations and policy analysts, and staff for outreach and DEI. Leadership from PFMLI, MOD and Contributions have been meeting with Subduction Consulting for DEI training. Subduction will soon begin listening sessions with PFMLI staff and has interest in doing the same with the Advisory Committee members.

The 35 Batch 1 administrative rules have been filed with the Secretary of State. On Tuesday afternoon, Karen and David will be testifying before the Ways and Means Subcommittee on Transportation and Economic Development on the budget note for HB 5007.

Karen informed members that the team will likely be requesting a second Advisory Committee meeting in March due to the large volume of content they are needing to cover.

The committee did not reach quorum and was unable to approve meeting notes at this time. January notes will be presented again at the March meeting for approval.

1:30 pm	2.0	Calculation of Benefit Amounts	Kelley Ofoni
<p>Kelley Ofoni walked the committee through the provided Calculation of Benefit Amounts presentation.</p> <p>Eva Rippeteau asked if benefits would be adjusted if the claimant owed child support. The team is still learning about these particularities, but David shared that for UI benefits there are federal prohibitions against most debts being able to intercept UI benefits. Child support, however, is an exception and it's that the child support is taken from UI benefits (up to a certain percentage).</p>			
2:00 pm	3.0	Contributions Rate	Ayesha Khalid
<p>Ayesha Khalid presented the provided Contribution Rate information.</p> <p>Andrea Paluso mentioned that she had always assumed for the first year or multiple years, the contribution rate would need to come in at the top of the range due to the need to pay back the startup costs, build up a reserve and prepare to pay benefits. According to the forecast, the rate could possibly go down the second year.</p>			
2:25 pm	4.0	Model Rules	Shannon Ball
<p>Shannon Ball shared with the committee the provided presentation on Model Rules.</p> <p>Andrea Paluso asked what the process will be for making decisions if we are not following the model rules? David explained that if PFMLI received an exemption from the Attorney General, the team would do rulemaking to determine the procedural rules.</p> <p>Eva Rippeteau commented that it can feel intimidating navigating government agencies and processes, and asked how it can be set up to allow people to make appeals without fear? David shared that the Office of Administrative Hearings has created videos and other tools to try and make it more accessible for people. The Oregon State Bar also has some self-help materials and would likely be a good partner to provide with information about PFMLI appeal processes so they can answer questions from constituents.</p>			
	5.0 5.1	Supplemental Information Communications Update	Sergey Kukharik

Action Items

Action	Assigned	Date Due	Completed
<i>Send equity framework documents to members once finalized</i>	<i>Karen Humelbaugh</i>		

PFMLI Advisory Committee Docket

Docket Item:

1.3 – December 1, 2021 Advisory Committee Meeting Notes

Docket Summary:

Karen Madden Humelbaugh asks committee members if they have any edits to the notes from the previous meeting. After feedback is addressed, the committee will vote on whether to approve the notes.

Docket Materials:

PDF – PFMLI Advisory Committee Notes 01-2022

Staff Recommendation:

Approve notes.

PFMLI Advisory Committee Docket

Docket Item:

2.0 – Calculation of Benefit Amounts

Docket Summary:

The presentation provides an overview of how benefit amounts will be calculated for claims, explaining how employees' wages and the state average weekly wage are used to calculate weekly benefit amounts and payments are pro-rated for leave take in work day increments.

Docket Materials:

PDF – PFMLI Calculation of Benefit Payments Policy Directions 20220119

Staff Recommendation:

None, this is an informational item only.

PFMLI Advisory Committee Docket

Docket Item:

3.0 – Contributions Rate

Docket Summary:

This is an initial proposal on the PFMLI contribution rate for 2023 for discussion and advice. The OED Director will set the contribution rate annually, and the rate cannot be more than one percent of employee wages up to a maximum of \$132,900, with 60 percent of the rate being paid by employees and 40 percent by employers (ORS 657B.150). The statute also requires that the contribution rate is set so that at the end of the period for which the rate is effective, the balance in the PFMLI trust fund is not less than six months' projected expenditures.

The reasons for the recommended initial contribution rate are also discussed, which include uncertainty in PFMLI projections due to no program data, projections being based partly on other states' PFMLI programs that are different from Oregon's PFMLI program, repayment of General Fund Loan, growing awareness of the need for PFMLI programs, change in Oregon's PFMLI program implementation timeline, and consequences of a low contribution rate.

The recommended contribution rate is based on current data and to provide as much advance notice to Oregon employees and employers as possible. The PFMLI projections will continue to be updated based on Office of Economic Analysis (OEA) quarterly Economic and Revenue Forecast. The final rate is intended to be set in August, after an update to, and chance for any final advice from, the PFMLI Advisory Committee.

At the recommended contribution rate, the statutory solvency requirement of six months reserve in the PFMLI Trust Fund is met, and there will be sufficient revenue from contributions and other sources to allow the department to repay the General Fund loan by June 30, 2023.

The proposal also shows the impact (contributions/benefits) of the recommended contribution rate on Oregon employees at different earning levels, particularly, working full time minimum wage, at the state's median income, and at a high income (\$132,900 or more), as well as the contributions paid by their employers.

Docket Materials:

PDF – PFMLI 2023 Contribution Rate Proposal 01242022

Staff Recommendation:

AC members to discuss and provide feedback to staff.

PFMLI Advisory Committee Docket

Docket Item: 4.0 – Model Rules

Docket Summary:

Rules of procedure for contested cases define the appeal and adjudication process. The Attorney General (AG) has developed Model Rules of Procedure for Contested Cases (Model Rules) that majority of state agencies must follow; however, Oregon Employment Department is one of the agencies exempt from the Model Rules. PFMLI statute, ORS 657B.410(2), states notwithstanding the exemption PFMLI shall comply with the Model Rules. However, OAR 137-003-0000(2)(b), gives the AG authority to exempt agencies from Model Rules. The Oregon Employment Department is requesting the AG to exempt the PFMLI program from the Model Rules so that PFMLI may promulgate rules regarding contested cases that are similar to those of the Unemployment Insurance (UI) program, although there will be some differences due to differences between the two programs.

UI has a well-developed set of rules for adjudicating disputes of agency decisions, and UI and PFMLI will share many of the same administrative rules and processes for the operation of both programs, especially in the areas of contributions. Allowing PFMLI to adopt the same rules for contested cases as UI has will have benefits for all covered entities – employers, employees, self-employed individuals – as well as the Department.

Such an exemption will avoid undue duplication of processes and provide better service to the public, while ensuring the due process rights of all involved. Many aspects of the PFMLI program are modeled after, or designed to work in close coordination with, those of the unemployment insurance (UI) program which is also administered by the Employment Department. An exemption from the Model Rules for PFMLI will allow for similar appeals processes between the UI and PFMLI program. Many businesses, workers, and practitioners are already familiar with these UI procedural rules, and many parties will have proceedings involving both programs. Consistency between them will help reduce potential confusion.

Further, there are issues common to both programs, with the same substantive issues to be determined. An exemption from the Model Rules will permit consolidation of proceedings and issues in some cases, aiding administrative efficiency and minimizing the possibility of multiple proceedings or conflicting determinations regarding the same issue and the same parties. Conversely, if PFMLI and UI have different contested case rules, employers and self-employed individuals will be subject to two different rules, and potentially multiple proceedings, even when a decision covers ostensibly the same issue, such as challenging the Employment Department's conclusion that they are subject to penalties under both UI and PFMLI laws for late filing of required payroll reports – when it will be the same report being filed by employers to satisfy their obligations under both programs. This will likely create confusion and additional administrative burden for covered entities and for the public.

This approach is also consistent with the legislative history of ORS chapter 657B. Representative Jennifer Williamson, in carrying HB 2005 (2019) which created PFMLI, stated during its third reading on June 2, 2019:

“Let’s take a few moments to talk about how this program will be implemented... It utilizes the same structure and standard already used by unemployment insurance to prevent fraud and enforce

collections and provide[s] an administrative appeals process for the Office of Administrative Hearings. Those standards and that system work well and they will make sure that our new paid family leave program runs smoothly.”

Allowing contested case hearing rules to be similar for PFMLI as they are for UI supports the PFMLI statutory framework and legislative intent, decreases potential confusion and duplication of processes for the public, and increases administrative efficiency which, as a result, means lower cost to the public to administer the program.

Docket Materials:

Powerpoint – Rules for Contested Cases Procedures AC

Staff Recommendation:

AC members to discuss and provide feedback to staff.

PFMLI Advisory Committee Docket

Docket Item:

5.1 – Communications Update

Docket Summary:

The Communications Contract with Brink Communication’s research and planning phase is nearing completion on January 31, 2022. Communications vendor is currently working on Marketing Plan and Employee Survey deliverables. Employee survey required additional effort to reach Spanish-speaking respondents. This work effort extended the planned completion date for employee survey.

The research and planning phase delivered; Business Survey, Employee Survey, Communications Plan, Key messages, Audience Map, Landscape Scan, and Marketing and Outreach Plan. These deliverables will drive the implementation phase that will start in February 2022. In addition, these plans will provide a strategy and a roadmap for PFMLI Communications Manager and Outreach Coordinator.

The implementation phase will deliver; Interim Website, PFMLI Brand Identity, Social Media Channel Launch, Comprehensive Website, and Media Plans to reach business and employee audiences.

Docket Materials:

PDF – PFMLI Communications Update 1.19.2022

Staff Recommendation:

None, this is an informational item only.