



# Employer Guidebook



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## About this guide

This guide provides information for employers about the Paid Leave Oregon program. Find more information on Paid Leave Oregon [online](#).

Some program details are still under development. This guide will be periodically updated to reflect the most current information available.

## About Paid Leave Oregon

Paid Leave Oregon is a new program that allows employees in Oregon to take paid time off for some of life's most important moments that impact our families, health, and safety. Paid Leave Oregon is a division of the Oregon Employment Department.

### When does Paid Leave Oregon start?

- Contributions start Jan. 1, 2023
- Benefits start Sept. 3, 2023
- Assistance grants start Sept. 3, 2023

### Which employers and employees are covered?

Paid Leave Oregon covers almost every Oregon employer, and almost all employees in Oregon are eligible for benefits. This includes small and large employers, non-profits, charities, and faith-based organizations.

Exceptions are:

- Federal employers and their employees
- [Tribal governments](#) and their employees (may choose coverage)
- Self-employed individuals or independent contractors (may choose coverage)

### How is Paid Leave Oregon funded?

Employers and employees pay contributions to Paid Leave Oregon. Those contributions pay for benefits, assistance grants for small employers, and program administration. Employers are not responsible for payment of benefits through Paid Leave Oregon.

# Can employers opt out of Paid Leave Oregon?

All Oregon employers must allow employees to take paid leave benefits starting in September 2023. If your business or organization has 25 or more employees, you are required to contribute to Paid Leave Oregon. If you have fewer than 25 employees, you are not required to make payments, but your employees still pay their portion and you still need to collect and submit their payments. Employers who prefer to provide paid leave benefits themselves can apply for approval of an [equivalent plan](#), which must offer benefits equal to or greater than the state program.

## What is the difference between Paid Leave Oregon and OFLA/FMLA?

Paid Leave Oregon is different from other programs, including Family and Medical Leave Act (FMLA) and Oregon Family Leave Act (OFLA), because it will provide paid leave to individuals who need it. Even though there are some similarities, Paid Leave Oregon does not replace FMLA or OFLA. Each program has many rules, and they can be complex. Employees must take leave under Paid Leave Oregon and OFLA/FMLA at the same time only if the leave purpose is the same. Otherwise, employees do not have to take paid leave at the same time as OFLA/FMLA.

The table below shows some important differences between the three programs. For detailed information on different types of leave programs in Oregon, visit the [Paid Leave website resources page](#).

	<b>Paid Leave Oregon</b>	<b>OFLA</b>	<b>FMLA</b>
<b>State vs. federal program</b>	State program only available to eligible employees in Oregon	State program only available to eligible employees in Oregon	Federal program available to employees across the United States
<b>Paid vs. unpaid leave</b>	Paid	Unpaid	Unpaid
<b>Program administration</b>	Employees apply for benefits with Paid Leave Oregon	Employees apply for leave with their individual employer(s)	Employees apply for leave with their individual employer(s)

	<b>Paid Leave Oregon</b>	<b>OFLA</b>	<b>FMLA</b>
<b>Program funding</b>	Funded through contributions paid by employers and employees	No contribution payments	No contribution payments
<b>Covered employers</b>	All employers with one or more employees working in Oregon	Employers with 25 or more employees working in Oregon	Employers with 50 or more employees
<b>Eligible employees</b>	Employees who earned at least \$1,000 in wages in the base year and paid program contributions during the base year	Employees who have been employed by the covered employer for at least 180 days and for an average of 25 hours per week during that timeframe	Employees who have been employed by the employer they are taking leave from for at least 12 months and have worked for at least 1,250 hours during the previous 12-month period  Employees also need to be located at a worksite where their employer employs 50 or more employees within 75 miles of that worksite
<b>Purposes qualifying for leave</b>	Family, Medical, and Safe Leave	Parental, Serious Health Condition, Pregnancy, Disability, Military Family Leave, and Bereavement Leave	Parental, Serious Health Condition, Pregnancy, Disability and Military Family Leave

## Can employees access short-term or long-term disability while receiving paid leave benefits?

Short-term and long-term disability are separate from Paid Leave Oregon. If a worker has some coverage through short-term disability, long-term disability, or a similar program, it will not affect their ability to access paid leave benefits. Employers and employees are encouraged to consult their short and long-term disability plans as they may have restrictions on accessing benefits if the worker is receiving paid leave benefits.

## Employer responsibilities

All employers with employees working in Oregon are required to:

- ✓ Report employee wages for those working in Oregon and employee counts for both Oregon employees and those that work in other state(s).
- ✓ Withhold and submit the employee portion of contributions (or cover some or all those contributions for their employees as an employer-offered benefit).
- ✓ Pay the employer portion of contributions (unless exempt from paying employer contributions as a small employer).
- ✓ Inform employees about Paid Leave Oregon.
- ✓ Restore employees to their position after taking paid leave if the employee has worked 90 days or more for the employer.

## Are employers required to register for Paid Leave Oregon?

All Oregon employers are required to complete a combined employer's registration process through the Secretary of State or Oregon Employment Department. Registration for Paid Leave Oregon will be included in this process automatically.

If an employer has already registered and has an active Business Identification Number (BIN), they are already included in Paid Leave Oregon and will be able to start reporting wages and paying contributions when the program starts.

If an employer is a new business, they will be included in Paid Leave Oregon when they complete their business registration and receive their BIN. New businesses can register online through the Oregon Secretary of State Business Registry at <https://sos.oregon.gov/business/pages/register.aspx> or by completing a Combined Employer's Registration form and submitting to the Oregon Employment Department.

## What is different for small employers?

Paid Leave Oregon covers most Oregon employers. There are some specific considerations for employers with fewer than 25 employees.

- ✓ Small employers are not required to pay the employer portion of contributions.
- ✓ Small employers may receive assistance grants when employees take paid leave if the employer commits to pay employer contributions for two years.
- ✓ Small employers have more flexibility regarding job protections.

## How is employer size determined?

Paid Leave Oregon determines employer size each year on Sept. 30. The program counts employer size as the average employee headcount over the previous four quarters using payroll reports. The number of employees for each quarter includes Oregon and out-of-state employees – the count excludes any replacement workers hired to cover for employees taking paid leave. Paid Leave Oregon provides a size determination notice to employers by Nov. 15 for the next calendar year.

### Employer size for 2023 and 2024

For the first two years, employer size determinations are based on available payroll reports after the start of contributions on Jan. 1, 2023.

For 2023, the number of employees reported for the first quarter report (January-March 2023) determines employer size for the calendar year. The program decides employer size after the employer submits the quarterly report. Employers can calculate their employer size by adding the number of Oregon employees to the number of out-state employees and pay employer contributions if they have 25 or more employees in the quarter.

For 2024, employer size will be determined on Sept. 30, 2023, based on the average employee count for the first and second quarter reports (January to March 2023 and April to June 2023).

## What are employers required to tell their employees about Paid Leave?

Employers must provide notice to employees about Paid Leave Oregon at the time of hire and each time the policy or procedure changes. The notice must be in the language that the employer typically uses to communicate with employees.



Employers must display the paid leave notice in each building or worksite in an area that is accessible to and regularly frequented by employees. Employers must provide notice to remote-work employees by hand delivery, electronic delivery, or regular mail upon the employee's hire or assignment to remote work.

Paid Leave Oregon will provide a model notice for employers. The notice will include information on:

- ✓ The right of employees to claim and receive Paid Leave benefits.
- ✓ How to file a claim to receive benefits.
- ✓ The requirement for employees to notify an employer at least 30 days before starting leave (if the leave is foreseeable) and a description of the penalties for not fulfilling this requirement.
- ✓ In cases of emergency, employees must tell their employer within 24 hours and give them written notice within three days of starting leave.
- ✓ The process to appeal benefits decisions.
- ✓ Job protection and continuation of health benefits during paid leave.
- ✓ Prohibition of discrimination and retaliation related to paid leave.
- ✓ The confidentiality of health information provided.
- ✓ How to file a civil action or file a complaint for a violation of rights.

## Contributions

The contribution rate for 2023 is 1% of each employee's wages, up to a maximum of \$132,900 for the year. Employees pay 60% of the contribution rate and employers pay 40% of the contribution rate. For example, if an employee made \$1,000 in wages, the employee would pay \$6 and the employer would pay \$4 for this paycheck. Employers with fewer than 25 employees are not required to pay the employer portion of contributions.

The contribution rate is set annually and will not be more than 1% of each employee's gross wages. The maximum amount of wages is also adjusted annually based on inflation. The department will announce the contribution rate and maximum wage amount by Nov. 15 of each year, and the new rate and maximum wage amount will take effect Jan. 1 of the following year.

Employers must begin withholding employee contributions for Paid Leave Oregon starting on Jan. 1, 2023. Employee contributions must be held in trust until paid to

the department. Paid Leave contributions are made to the department through the combined payroll reporting process.

## What are wages?

Wages for Paid Leave Oregon are in general the same as wages for Unemployment Insurance. This is set in statute in [ORS 657B.010\(26\)](#) and Paid Leave Oregon administrative rules on wages.

Paid Leave Oregon covers more employees and employment than Unemployment Insurance - employers may be required to report wages for more employees for Paid Leave Oregon, but what is included in wages is the same for both programs.

Wages are payments made to an individual for personal services and the cash value of all non-cash payments, except when excluded in statute or rule. Wages for Paid Leave Oregon are in general gross wages, meaning it is the total amount before the deduction of taxes, benefits, or other payroll deductions, unless those deductions are excluded.

Wages for Paid Leave Oregon include:\*

- Salaries and hourly pay
- Piece rate and by the job pay
- Vacation, sick, and holiday pay, and paid time off (PTO)
- Bonuses, fees, and prizes from an employer
- Compensatory time and stand by pay
- Commission or guaranteed wage payments
- Sickness and accident disability payments
- Dividends and distributions for services
- Tips and gratuities
- Dismissal and separation allowance
- Compensation other than cash, such as room and board (except for agricultural and domestic employees)
- Fringe benefits, such as company vehicles, company paid parking, sick pay by third parties (e.g. insurance companies), and dependent care assistance

## Wages for Paid Leave Oregon do not include:\*

- Payments to flexible spending accounts and health saving accounts that meet the requirements of the Internal Revenue Code (IRC) section 125 plan paid by the employer or employee
- Health, dental, and other insurance paid by the employer
- Health, dental, and other insurance paid by the employee under the IRC Section 125 plan
- Meal and travel expenses and per diems paid by the employer under an accountable plan
- Retirement or pension income
- Sickness or accident disability under worker's compensation

\*This list does not cover all wages. See [Oregon Revised Statute 657B](#) and applicable administrative rules for additional information.

## What if my employee works or lives in another state?

Paid Leave covers all employees that work in Oregon, even if they live in another state.

Employers should withhold and pay contributions on wages that are earned for services performed entirely in Oregon and for work that is performed both within and outside of Oregon when the work outside of Oregon is incidental to work inside of Oregon.

This includes wages for the following employees:

- Oregon residents whose work is entirely in Oregon
- Residents of other states who work entirely in Oregon
- Employees that work remotely in Oregon for employers in other states
- Employees that work in Oregon and out of state when the work in other states is temporary or transitory
- Employees that work in Oregon and out of state and when the base of operations or location that directs the work is in Oregon
- Employees that complete some work in Oregon when there is no base of operations or location that directs the work

This does not include:

- Oregon residents that work in other states
- Employees that work remotely in other states for Oregon employers
- Employees that complete some work in Oregon, including remote work, if the base of operations or location that directs the work is out of state and some work is done in that state

## How do employers calculate contributions?

The contribution rate for 2023 is 1% of employee wages. The employee portion is 0.6% of wages and the employer portion is 0.4% of wages.

### Calculate total quarterly contributions as follows:

Employee portion:	Gross Wages x 0.006
Employer portion:	Gross Wages x 0.004
Total:	Employer + Employee Portion

**Large employer example:** Employers gross quarterly wages are \$500,000.

Employees portion:	$\$500,000 \times 0.006 = \$3,000$
Employer portion:	$\$500,000 \times 0.004 = \$2,000$
Total:	Employer + Employee Portion = \$5,000

**Small employer example:** Employers gross quarterly wages are \$200,000.

Employees Portion:	$\$200,000 \times 0.006 = \$1,200$
Employer Portion:	\$0
Total:	Employer + Employee Portion = \$1,200

## Can employers cover the costs of their employees' contributions?

As an employer, you may choose to cover all or part of the employee contribution. You may not withhold more than 0.6% of the total rate (1%) from your employee's gross wages.

## What are the payroll reporting requirements?

### Combined payroll reporting

The Oregon Combined Payroll Reporting process has added Paid Leave Oregon and will be included in the payroll reporting forms. More details on payroll reporting for Paid Leave Oregon will be included in the 2023 Oregon Combined Payroll Tax Report - Instructions for Oregon Employers. For the 2022 version of the instructions, visit the Department of Revenue website at: [2022 Oregon Combined Payroll Tax Report, 150-211-155](#)

### Payroll report deadlines

Quarterly reports are due on or before the last day of the month following the close of the quarter. More information will be included in the upcoming 2023 Combined Reporting guide.

Quarter	Period Ending	Report Due Date
1 January-February-March	March 31	April 30
2 April-May-June	June 30	July 31
3 July-August-September	Sept. 30	Oct. 31
4 October-November-December	Dec. 31	Jan. 31 of the following calendar year

### Annual filers

Domestic employers may file an Oregon Annual Report detailing Paid Leave subject wages and employee contributions if they have, on average, less than 25 employees as calculated under [Oregon Administrative Rules 471-070-3160](#). Annual contributions are due on or before Jan. 31 of the following calendar year.

## What are the penalties for not reporting or paying contributions?

If an employer fails to file or complete all required reports or pay all required contributions prior to Sept. 1 of each year, the department will assess a penalty equal to 1 percent of the employee wages in the previous calendar year.

The department will notify the employer using their preferred method, mail or electronically as indicated in the department's records, on or before Oct. 20 of the year. The penalty will become final on Nov. 10 immediately following the assessment.

If an employer makes a timely request for waiver of the penalty, the department will issue a decision, either granting or denying the waiver, and notify the employer either by mail or electronically if permitted. If, prior to November 10th immediately following the assessment, the department determines that the employer had good cause for failing to file all reports or pay all contributions due, the department will grant the request for waiver and remove the penalty from the employer's account. If the employer fails to establish good cause prior to November 10th immediately following the assessment, the department will deny the request for waiver. If the request for waiver is denied, the department will notify the employer that a request for a contested case hearing may be filed within 20 days after the date that the penalty waiver decision is sent to the employer.

## **What are the recordkeeping requirements?**

All employers must maintain payroll records, including records documenting employee contributions and expenses. Employment records must reflect the total hours worked by all employees and the amount of leave taken by employees under Paid Leave Oregon for the current calendar year including the last three calendar years.

## **What are the requirements for contributions when a business is closed or sold?**

If an employer closes or sells the business, any contributions payable to Paid Leave Oregon are immediately due and must be paid within 10 calendar days.

## **Benefits**

### **What benefits does Paid Leave Oregon provide?**

Paid Leave allows eligible employees in Oregon to take up to 12 weeks of paid family, medical, or safe leave per benefit year. In some pregnancy-related situations, employees may be able to take up to two more weeks, for a total of 14 weeks.

## Eligibility

Employees may be eligible to receive paid leave benefits if they have earned \$1,000 in wages in the previous year. Benefits are based on wages from all employment in Oregon, not just from the current employer, including full-time, part-time, temporary, and seasonal work.

## Leave types

Oregon employees can take leave for any of these reasons:

- **Family Leave:** to bond with a new child after birth, adoption, or foster placement; can be taken within the first 12 months after the birth, adoption, or placement. Additional leave (limited to two weeks) related to pregnancy issues for a birthing parent in addition to the 12 weeks provided for family, medical, and safe leave.
- **Family Leave:** to care for a family member experiencing a serious health condition. Family members include: spouses and domestic partners, children, parents, siblings or stepsiblings, grandparents, grandchildren, and any individual related by blood or affinity, whose relationship is equivalent to family.
- **Medical Leave:** for an employee's own serious health condition.
- **Safe Leave:** for survivors of sexual assault, domestic violence, harassment, or stalking to obtain legal or law enforcement assistance, seek medical treatment or recover from injuries, obtain counseling or support services, or relocate or take other steps to secure the health and safety of themselves or their dependent child.

## Leave time

Employees are entitled to 12 weeks of paid leave per benefit year in any combination of family, medical, and safe leave. The benefit year begins the Sunday before the period of leave and lasts for 52 weeks. An employee may also qualify for an additional two weeks of paid leave if they have limitations related to pregnancy.

Employees can take paid leave in increments equal to one workday or one workweek. Employees can take leave all at once (consecutive) or in separate blocks of time (non-consecutive). Consecutive leave is taken in one block of time due to a single qualifying event (such as five weeks of leave for a knee surgery). Nonconsecutive leave is taken in separate blocks of time due to a single qualifying reason (such as one day every week for 12 weeks for chemotherapy).

Employers cannot require employees to take sick leave, vacation leave, or other accrued leave prior to accessing paid leave benefits.

## Verification of qualifying purpose

When an employee applies for paid leave, they must provide verification of the qualifying purpose to Paid Leave Oregon. An employee must provide the following documentation to OED when applying for leave:

- **For Family Leave**, documentation to show:
  - » The birth, adoption, or placement of child
  - » That a family member is experiencing a serious health condition and a description of the family relationship.
- **For Medical Leave**, documentation to show the employee has a serious health condition.
- **For Safe Leave**, documentation to show the employee had a safe leave event. Self-attestation may be accepted if the employee is not able to provide documentation of the event.
- For limitations related to pregnancy, documentation is required to show the employee is currently or was recently pregnant.

## Benefit amounts

Paid Leave Oregon bases benefit amounts on the employee's previous wages and the state average weekly wage. Here is how benefits are calculated:

Each year, OED sets the state average weekly wage. OED uses the state average weekly wage to set a minimum weekly benefit amount and maximum weekly benefit amount. The minimum is 5% of the state average weekly wage, and the maximum is 120% of the state average weekly wage.

When an employee applies for Paid Leave benefits, a base year is created. The base year is a one-year period made up of the first four of the last five completed calendar quarters.

That time period is used to determine if the employee earned enough money to be eligible for Paid Leave, and how much they are eligible to receive each week. An employee must have at least \$1,000 in wages earned during those quarters. If an employee does not qualify for a claim using a regular base year, the claim will be automatically reviewed to see if they qualify for an alternate base year claim.



OED calculates benefit amounts as follows:

- If the employee's average weekly wage is equal to or less than 65% of the state average weekly wage, the employee's weekly benefit amount is 100% of the employee's average weekly wage.
- If the employee's average weekly wage is greater than 65% of the state average weekly wage, the employee's weekly benefit amount is the sum of:
  - A. 65% of the state average weekly wage, and
  - B. 50% of the employee's average weekly wage that is greater than 65% of the state average weekly wage.

## Are employees required to inform their employers about leave?

Employers may require employees to give notice when they will be taking leave, and to provide an explanation. Employers must outline the notice requirements in their written policy and procedures and provide a copy to employees. The timeline for giving notice may differ depending on whether the leave is for a planned or for an unexpected event:

- **30-day notice:** If employees take paid leave for a planned reason (such as an upcoming surgery or adopting a baby), they need to let the employer know **30 days** before taking leave.
- **24-hour emergency notice:** In an emergency, employees must tell their employer within **24 hours** and give them **written notice within three days** of starting leave.
- Unexpected events include, but are not limited to:
  - A. An unexpected serious health condition of the employee or a family member of the employee.
  - B. A premature birth, unexpected adoption, or unexpected foster placement by or with the employee.
  - C. Safe leave.

If an employee does not provide the correct notice to their employer, the department may reduce the employee's first weekly benefit amount by up to 25%.

## How does an employee apply for benefits?

Employees must submit an application for benefits to Paid Leave Oregon. Employees covered under the state plan **do not** apply directly with the employer. Employees can submit the application as early as 30 days before the start of leave and up to 30 days after the start of leave. Employees will access the application online or they may request a paper form.

## What information do employers receive about benefit applications?

After an employee has filed an application for paid leave benefits, Paid Leave Oregon will notify the employer and provide basic information about the employee's claim. Employers may respond to the notice from the department within 10 calendar days to report any errors in the information or other information relevant to the employee's claim.

Paid Leave Oregon will notify the employer whether the employee's application for benefits was approved or denied. If Paid Leave Oregon approves the application, the employer will also receive notice of the approved dates and period of leave.

## Appealing decisions

Employees have the right to appeal a decision on their claim. After Paid Leave Oregon has issued a decision on a claim, the employee can request a hearing to review the department's decision on their claim and/or the decision of their weekly benefit amount. Employers are not able to appeal benefit decisions.

## Are employers required to maintain an employee's health benefits when they take leave?

Employers are required to maintain existing health benefits for an employee receiving paid leave benefits until the employee's paid leave ends or the employee returns to work after taking their leave. The employer can require that the employee pays their share of health premiums while on leave.

## Can employers provide additional pay to employees taking paid leave?

Employers can choose to provide additional pay to their employees while on paid leave to supplement the benefit amount they receive.

## Are employers required to hold an employee's job while they take leave?

Employers must provide job protections to employees taking paid leave if they have been employed for at least 90 calendar days. When an employee returns to work from paid leave, they are entitled to return to the position they held before the start of leave, if that position still exists.

If the position no longer exists, then job protections depend on the size of the employer:

- For large employers (25 or more employees), the employee is entitled to a position equal to their previous position before they took leave, with equal employment benefits, pay and other terms and conditions of employment.
- For small employers (fewer than 25 employees), the employer may, at the employer's discretion based on business necessity, restore the employee to a different position with similar job duties and the same employment benefits and pay.

Failure to provide job protections is an unlawful employment practice. An employee that believes there was a violation of job protections may bring a civil action against the employer or [file a complaint](#) with the Commissioner of the Bureau of Labor and Industries.

## Assistance grants

### Which employers can receive assistance grants?

Small employers (fewer than 25 employees) who commit to pay employer contributions for eight calendar quarters and do not have any delinquent reports, contributions, or unpaid penalties may be eligible to receive assistance grants.

### What are the types of assistance grants and amounts?

If a small employer hires a worker to replace an employee on qualifying paid leave, they may apply for and receive a grant of \$3,000.

If a small employer has significant additional wage-related costs, like paying additional wages to an existing employee or additional training costs, then the employer may receive a grant up to \$1,000.

In addition, a small employer may receive a grant in the amount of the difference between the grant awarded and \$3,000 if the employee taking Paid Leave extended the period of leave beyond the initial expected leave period and the employer hires a replacement worker.

## **What are the maximum number of assistance grants an employer can apply for each year?**

A small employer may apply for up to 10 grants each year, once per employee.

## **What are the requirements to apply for a grant?**

When an employer applies for a grant, they must provide the following information:

- Their Business Identification Number (BIN) and contact information.
- Information about the employee taking leave.
- The type of grant the employer is requesting and the amount requested.
- An explanation of how costs are related to the employee who is taking leave and documentation supporting the employer's request.
  - » When adding a new temporary employee to the payroll, documentation showing the new employee's name, start date, and Social Security number (SSN) or Individual Taxpayer Identification number (ITIN). The documentation should also clearly show the business name.
  - » For wage-related costs, employers need to provide receipts, personnel or payroll records, or sworn statements to show their costs. Each document must show the date the cost was incurred.

## **Will employers have to pay assistance grants back?**

Employers will not repay assistance grants, unless OED later finds that the employer is ineligible.

## **How does an employer apply for an assistance grant?**

A small employer may apply for an employer assistance grant only after an eligible employee is approved for qualifying paid leave. The employer has up to four months after the end of the employee's leave to apply for a grant. Assistance grant applications will be available starting September 2023.