

# PFMLI Rulemaking Advisory Committee Meetings

December 2, 2021 and December 7, 2021

## Questions & Answers

During the two Batch 2 Rulemaking Advisory Committee (the advisory committee) meetings, the Paid Family and Medical Leave Insurance (PFMLI) Program received several comments, statements, and questions. Thank you! We are taking all feedback received into consideration. Below are our answers to some questions we received during the meetings.

### General Questions

**Q1: Where can I access the second batch of rules discussed at the Dec. 2, 2021 and Dec. 7, 2021 advisory committee meetings?**

**A1:** The second batch of *draft* PFMLI administrative rules (as of Nov. 16, 2021) discussed at the advisory committee meetings can be found on the PFMLI website [here](#).

**Q2: Where can I access the PowerPoint slides for the Dec. 2, 2021 and Dec. 7, 2021 advisory committee meetings?**

**A2:** The Powerpoint slides for the Dec. 2, 2021 advisory committee meeting can be found on the PFMLI website [here](#). The Powerpoint slides for the Dec. 7, 2021 advisory committee meeting can be found on the PFMLI website [here](#).

**Q3: Where can I access the recordings of the Dec. 2, 2021 and Dec. 7, 2021 advisory committee meetings?**

**A3:** The Dec. 2, 2021 recording can be found on the PFMLI website [here](#). The Dec. 7, 2021 recording can be found on the PFMLI website [here](#).

**Q4: Where can I access the Statements of Need and Fiscal Impacts that were discussed at the Dec. 2, 2021 and Dec. 7, 2021 advisory committee meetings?**

**A4:** The Dec. 2, 2021 Statement of Need and Fiscal Impact can be found on the PFMLI website [here](#). The Dec. 7, 2021 Statement of Need and Fiscal Impact can be found on the PFMLI website [here](#).

**Q5: What is the deadline to submit feedback by the public to the department for the second batch of administrative rules?**

**A5:** Please submit all comments, questions, and language suggestions to [OED\\_Rules@employ.oregon.gov](mailto:OED_Rules@employ.oregon.gov) for the second batch of PFMLI administrative rules by the end of the public comment period, which is Tuesday, Mar. 1, 2022 at 5 pm.

## Questions on wage administrative rules

### **Q6: Why are the wage administrative rules associated with Unemployment Insurance?**

**A6:** Our statute, specifically ORS 657B.010(26), established that “wages” for PFMLI have the same meaning given in Unemployment Insurance (ORS 657.105) laws. The wages rules are drafted similar to Unemployment Insurance administrative rules to clarify the definition of wages.

## Equivalent Plans - General

### **Q7: What is the easiest way to find more information regarding the timeline for implementation of either equivalent plans or opting into the state plan?**

**A7:** Information including timelines and overviews can be found on the PFMLI website [here](#).

### **Q8: Will the equivalent plan application and application fee be at each entity level or for an employer’s overall businesses?**

**A8:** The employer must file for an equivalent plan for each BIN (business identification number) for their business.

### **Q9: What starts the two-week first-payment timeline?**

**A9:** As of now, the equivalent plan employer will be expected to make every effort to get benefits to claimants within two weeks of receiving a completed claim or the start of leave. We are still working on clarifying this rule, but it will align with the two-week timeline for the state PFMLI benefit payments.

### **Q10: Are part-time and seasonal workers required to be covered under an equivalent plan?**

**A10:** Yes. All employees (full-time, part-time, seasonal, etc.) are required to be covered by an employer’s equivalent plan.

### **Q11: How will the annual information be reported?**

**A11:** The Equivalent Plan employer will need to report aggregate information on benefit claims and plan expenses annually. The annual information will be reported on a form that will be available online or the business can ask for a paper form. The deadline for the annual information is Jan. 31 each year.

### **Q12: What happens when an equivalent plan employer doesn’t have adequate contributions to cover the costs of requested benefits?**

**A12:** An employer with an approved equivalent plan is taking on the risk and the expectations to pay all benefits, regardless if the equivalent plan employer has enough contributions to cover the benefits. An employer would need to use other funds to pay the PFMLI benefits if they do not have adequate contributions.

### **Q13: Will employers be included in the dispute process?**

**A13:** While the dispute process is still being worked out, the department fully expects the employer to be included in any dispute process. The initial process first involves the employer trying to work out the dispute with the employee before going to the department.

**Q14: Are solvency or bond expectations different for fully insured and employer administered plans?**

**A14:** Yes. Insurance companies offering fully insured insurance plans have solvency expectations under the Insurance Regulation Division with the Department of Business and Consumer Services (DCBS). Solvency will already be verified for fully-insured plans through the DCBS process. Employers offering employer administered plans will not have gone through the process with DCBS, so the department requires proof of solvency for the employer administered plans.

**Q15: How will equivalent plan employers pay for the benefits of claims already approved if they are also required to send/return all contributions to the state upon termination?**

**A15:** The employer pays contributions withheld from employee wages within 52 weeks before the termination date. The employer can subtract the amount equal to the amount of any benefits paid for employees that were taking leave.

**Q16: Which employer is responsible for paying benefits if an employee is taking leave from more-than-one employer?**

**A16:** The division is exploring this topic and will have more information at a later date.

**Q17: Are there any exemptions to equivalent plan registration if the employer is a state/local government entity?**

**A17:** No. There are no exemptions for employers to apply for an equivalent plan based on whether they are a state- or local-government entity. These employers are preempted from establishing their own laws and ordinances related to PFMLI under ORS 657B.470, but they may apply for an equivalent plan.

**Q18: Can employers who have unionized employees apply for equivalent plans?**

**A18:** Yes. All employers can apply for an equivalent plan.

**Q19: How will reporting work for employers who switch to or from an equivalent plan midyear?**

**A19:** Aggregate information on the equivalent plan will be separate from reporting for the state PFMLI plan. The employer will report equivalent plan aggregate information yearly by Jan. 31 and will report PFMLI wages on a quarterly basis on the Oregon Combined Payroll Report..

**Q20: Will equivalent plan reporting be on the combined quarterly payroll report?**

**A20:** Yes. Equivalent plan employers will report PFMLI wages on the Oregon Combined Quarterly Payroll Report. However, an equivalent plan employer will also report aggregate information yearly by Jan. 31. The aggregate information will be a separate form within the system.

**Q21: How would the fee structure for plan changes be impacted by non-legislative changes that are required by state, local, or deferral rules (i.e. IRS rules)?**

**A21:** The fee structure for equivalent plan applications are set in rule and would not be expected to be impacted by non-legislative changes that are required by state, local or deferral rules (i.e. IRS rules).

## **Equivalent Plans – Fully Insured**

**Q22: Will switching insurance carriers be considered a “substantive change” if an employer participates in a fully insured equivalent plan?**

**A22:** Yes. Switching carriers will be considered a “substantive change” because it would require the PFMLI staff to review the new equivalent plan from the new insurance carrier.

**Q23: How will insurance institutions know the financial situation and employer’s employee count to report to the division?**

**A23:** The employer is expected to report the aggregate financial situation annually by January 31<sup>st</sup> and employee count is reported quarterly on the Oregon Combined Quarterly Payroll Report.

## **Other PFMLI-Related Questions**

**Q24: Is the calculation of wages used to determine the payroll deduction?**

**A24:** Yes. The PFMLI contribution rate is calculated based on the employee’s wages.

**Q25: Will the \$132,900 maximum wage amount stay the same?**

**A25:** No. The maximum wage amount for 2023 is \$132,900. This is the maximum amount of wages the PFMLI tax rate can be applied to. The maximum wage amount for calendar year 2024 will be announced prior to Nov. 15, 2023. The maximum wage amount is adjusted annually based on the percentage increase in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics of the United States Department of Labor.

**Q26: When will the department announce the contribution rate for the 2023 calendar year?**

**A26:** The PFMLI contribution rate must be announced by Nov. 15, 2022, pursuant to proposed draft rule 471-070-3010.

**Q27: For employees who are covered by multiple, state programs (ex: they qualify in both Oregon and Washington), will they be required to apply for each program individually?**

**A27:** Yes. At this time, employees will be required to file a separate application for benefits for each state.

**Q28: Will the wages reported for PFMLI be different than the wages reported for Unemployment Insurance?**

**A28:** Yes. In some instances, the PFMLI and UI wages will be different because there are different wage thresholds; however, the definition of wages for PFMLI and UI are mostly identical.

**Q29: Can an employee, who is a member of a union, be required to pay into the PFMLI Fund?**

**A29:** Yes. All employees, regardless of their membership in a union, will be required to pay PFMLI contributions. Additionally, an employer can choose to cover part or all of the employee contribution amount of 60% for all of their employees.

**Q30: Who has to pay into the PFMLI program? Is it based on residence or work location?**

A30: Wages earned for services performed entirely within Oregon are subject to PFMLI contributions. When a service is performed outside of Oregon, but is related to an employee's work within Oregon, it is also subject to PFMLI contributions. The employee's residence is not a factor. The PFMLI division is exploring further administrative rules and guidance to assist with this question.

**Q31: Is the Oregon PFMLI Division looking at the state of Washington for guidance to help build the Oregon PFMLI plan since Washington (state) already has a plan in effect?**

A31: Yes. Staff from both Oregon and Washington (state) are in contact, and we have looked to Washington for guidance, support, and lessons-learned in many areas.