November 28, 2022

Paid Leave Oregon
Oregon Administrative Rules & Status

Note: The below administrative rules are just a copy of the rules put in an easy to read format for your convenience. However, to find the approved rule language, visit the Oregon Secretary of State's website and look for Chapter 471.

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471-070-0010 Definitions (Final 10/6/22)

"Paid Leave Oregon" means the Paid Family and Medical Leave Insurance program as described under ORS chapter 657B.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.340]

471-070-0400 Wages: Definitions (Final 10/6/22)

(1) “Agricultural labor”

(a) Except as provided in subsection (c) of this section, “agricultural labor” means service on a farm in connection with the production, raising, or harvesting of any agricultural or horticultural commodity, includes farming in all its branches, and, among other things, also includes:

(A) Cultivating and tillage of the soil;

(B) Dairying;

(C) Raising, shearing, feeding, caring for, training, and management of livestock, bees, fur-bearing animals, wildlife, and poultry; and

(D) Practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, management, conservation, and improvement or maintenance of such farm and its tools and equipment, including preparation for market, delivery to storage or to market, or to carriers for transportation to market; and

(b) “Agricultural labor” includes all services performed in the employ of the operator or group of operators of a farm or farms (or a cooperative organization of which such operator or operators are members) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator or group of operators produced more than one-half of the commodity, as measured by volume, weight, or other customary means, with respect to which such service is performed.

(c) “Agricultural labor” does not include, among other things, processing services that transform an agricultural commodity from its raw or natural state and services performed with respect to an agricultural product after it has been transformed from its raw or natural state.

(d) “Farms,” as used in this section, includes stock, dairy, poultry, fruit, fur-bearing animals, Christmas tree and truck farms, plantations, orchards, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities.

(2) "Bonuses,” “fees,” and “prizes" means an extra payment given by an employer in consideration of performance, production, or a share of profits.

(3) “Domestic service”

(a) Except as provided in subsection (b) of this section, “domestic service” means general services of a household nature performed by an employee in or about a private home (permanent or temporary) of the person by whom the employee is employed. The term includes, but is not limited to, services performed as cooks, waiters/waitresses, butlers, housekeepers, child monitors, general house workers, personal attendants, baby-sitters, janitors, launderers, caretakers, gardeners, grooms, and chauffeurs of automobiles for family use.

(b) “Domestic service” does not include work performed by:

(A) A parent or spouse of the employer;

(B) A child of the employer who is under 26 years of age;

(C) Students who regularly attend elementary or secondary school during the day;

(D) Children, other than children of the employer, who are under 14 years of age;

(E) Children under 18 years of age who provide babysitting services and persons who provide babysitting on a casual basis;

(F) Persons who perform casual labor in private homes or the maintenance of private homes or their premises, including but not limited to yard work, washing windows, and shoveling snow;

(G) Individuals employed by organizations licensed as required by ORS 443.015 or 443.315;

(H) Individuals performing companionship services exempt from the provisions of the Fair Labor Standards Act of 1938 (29 U.S.C 201 et seq.);

(I) Persons who perform house sitting duties that do not involve domestic service;

(J) Persons who provide domestic service in exchange for an in-kind good or service; and

(K) Services of those not of a household nature, such as services performed as a private secretary, tutor, nurse, or certified nursing assistant, even though performed in the employer’s private home.

(4) “Employing unit” has the same definition as “employer” as provided by ORS 657B.010(14).

(5) “Employment” means any service performed by an employee for an employer for remuneration or under any contract of hire, written or oral, expressed, or implied.

(6) “Holiday” means any of the holidays listed in ORS 187.010(1)(b)–(k) and (2), 187.020 and any holiday designated by the employer, union contract, or otherwise.

(7) "Holiday pay" means any remuneration that an employer pays an employee for a holiday, including, but not limited to, full or partial paid time off or additional pay for work on a holiday.

(8) “Paid time off” means compensated time away from work provided by an employer that the employee can choose to use for any reason, including, but not limited to, vacation, sickness, and personal time.

(9) “Private home,” as used in section (3) of this rule, means a fixed place of abode of an individual household. A separate and distinct dwelling unit maintained by a household in an apartment, house, hotel, or other similar establishment may constitute a private home, provided it is a place in which a person resides with the intention of residence or has so resided with the intention of returning. If a dwelling unit of an individual or family is used primarily as a boarding house for the purpose of supplying lodging to the public as a business enterprise, only that portion of the premises occupied by the individual or family may be considered a private home for the purposes of this rule.

(10) “Sick pay” means remuneration paid by an employer to an employee for time away from work due to sickness, unless excluded as a fringe benefit under ORS 657.115.

(11) “Stand-by pay” means remuneration paid by an employer to an employee who is required to be immediately available for work.

(12) "Vacation pay" means remuneration paid by an employer to an employee for time away from work provided by an employer to an employee to use for any reason the employee chooses but does not include leave for sick pay, compensatory time, holiday, or other special leave.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

471-070-0415 Wages: Incidental Expenses (Final 1/31/22)

(1) Wages do not include:

(a) Moneys paid to employees to reimburse them for meal expenses in the event employees are required to perform work after their regular office hours; and

(b) Amounts paid to employees to reimburse them for traveling or other expenses actually incurred by them while performing service for the employer.

(2) No deduction may be made under this section unless an accurate and detailed expense account is prepared by or with the knowledge of the employee and

submitted to the employer in such form as will meet the requirements of the Internal Revenue Service and unless such account is preserved by the employer for a period of three calendar years.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

471-070-0420 Wages: Pensions (Final 1/31/22)

An individual receiving a pension from a former employer shall not be considered an employee of that employer solely because of the pension. The amount of the pension is not wages.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

471-070-0425 Wages: Jury Pay (Final 1/31/22)

Compensation, reimbursement, fees, lodging, meals or other remuneration paid or provided to an individual for services performed as a juror are not wages.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

471-070-0430 Wages: Bonuses, Fees, and Prizes (Final 1/31/22)

Bonuses, fees and prizes are wages if paid or given by the employer to an employee as compensation, reward, or added remuneration for services. Bonuses, fees, and prizes shall be included in the payroll of the employer at the time they are paid. A bonus, fee, or prize paid or received during a calendar year shall be wages paid during the calendar year, and the Paid Family and Medical Leave Insurance contribution rate for such year shall be applicable to any bonus, fee, or prize constituting wages.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

471-070-0435 Wages: Disability Payments and Accident Compensation (Final 1/31/22)

(1) When an employer continues the payment of wages during a disability period, or pays to the employee all or part of the difference between benefits or compensation received from an insurance carrier or State Accident Insurance Fund and the employee's regular or usual wage, the sums so paid by the employer are wages unless excluded from the term wages by ORS 657.115 and 657.125.

(2) Lump sum or other special payments to compensate an employee for an accident sustained in the course of employment are not wages.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

471-070-0440 Wages: Gifts (Final 1/31/22)

(1) Gifts, other than tips or gratuities, received by an employee during the course of employment from persons other than their employer are not wages.

(2) The director reserves the right, based on the facts in each particular case, to determine whether or not the gift is in fact a bonus, fee, or prize given as a reward or added remuneration for services rendered.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

471-070-0445 Wages: Remuneration Types (Final 1/31/22)

Wages include, but are not limited to:

(1) Commission or a guaranteed wage;

(2) Compensatory pay;

(3) Dismissal or separation allowances;

(4) Holiday pay;

(5) Paid time off;

(6) Sick pay;

(7) Stand-by pay;

(8) Tips or gratuities; and

(9) Vacation pay.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

471-070-0450 Wages: Remuneration Other than Cash (Final 1/31/22)

(1) Subject to the provisions of section (2) of this rule, wages include the cash value of all remuneration paid in any medium other than cash, except for agricultural labor and domestic service, as defined in the wage definition administrative rule, and the specific exemptions enumerated in ORS 657.115 through 657.140.

(2) Board, lodging, services, facilities or privileges furnished by an employer shall be considered remuneration paid for services performed by an employee unless it appears that furnishing of the same was not required by the terms of the contract of hire; written or oral, express or implied; and that the value thereof was not a material factor in the determination by either party of the amount of any cash remuneration payable for such services.

(3) The cash value of noncash remuneration shall be either:

(a) The amount of noncash remuneration which is carried on the employer's payroll, provided such amount is comparable to values prevailing in the community; or

(b) An amount determined by the director when the value of non-cash remuneration is not carried on the employer's payroll. In such determination, board furnished by an employer as remuneration for services shall have a minimum value of 30 percent of the standard meal per diem rates for the 48 continental United States and the District of Columbia established by the U.S General Services Administration (CONUS meal rate) per day. The rate per day will be rounded to the nearest dollar. The rate per month will be 30 times the rounded daily rate. If room is furnished in addition to board, no additional value will ordinarily be placed upon the room. If room and board are furnished at hotels, resorts or lodges, or if a room only, an apartment, a house or any other consideration is provided, the value for tax purposes will be the fair market value thereof.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

471-070-0455 Wages: Cafeteria Plans (Final 1/31/22)

Employee benefits paid through a cafeteria plan, as defined in the Internal Revenue Code Section 125, are not wages if listed as excluded in ORS 657.115, even if paid through a payroll deduction.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

471-070-0465 Wages: Corporate Officer and Shareholder Dividends (Final 1/31/22)

Remuneration means and includes any payments, which includes dividends paid to a corporate officer or shareholder, are wages to the extent that those payments are reasonable compensation for services performed for the corporation.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.010]

471-070-0550 Continuous Jurisdiction (Final 1/31/22)

(1) In accordance with the provisions of ORS 657B.110, the director designates the following employees to have the authority to act for and in the name of the director in matters of reconsideration and correction of any final decision under ORS chapter 657B:

(a) Deputy Director;

(b) Division Director for Paid Family and Medical Leave Insurance;

(c) Deputy Division Director for Paid Family and Medical Leave Insurance; and

(d) Any employee authorized and directed by individuals identified in paragraphs (a) through (c) of this section who, in the course of their assigned duties, are tasked with the writing, review, and reconsideration or correction of decisions issued by the Paid Family and Medical Leave Insurance program.

(2) If the director finds, as new facts not previously known to the director or the designees specified in section (1) of this rule, that a claimant or an employing unit has suffered or would suffer substantial adverse effect because of:

(a) Misinformation provided to such party by an employee of the Employment Department; or

(b) Improper application of Employment Department Law or administrative rules by an employee of the Employment Department, the director, or one of the designees specified in section (1) of this rule, may take appropriate action to restore to the injured party all rights and benefits which were improperly denied.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.110, 657B.340]

471-070-0800 Outreach Plan (Final 1/31/22)

(1) In order to both inform and receive input from Oregon employers and eligible employees about the Paid Family and Medical Leave Insurance (PFMLI) program before and after implementation, the department will establish an outreach and community engagement plan with a small employer, rural community, and equity lens that:

(a) Identifies a diverse group of persons, groups and organizations impacted by the program;

(b) Includes analysis of stakeholder expectations, concerns and suggestions relating to program implementation and administration; and

(c) Develops strategies for engaging with stakeholders.

(2) Outreach and community engagement activities include, but are not limited to:

(a) Public awareness campaigns;

(b) Community outreach events throughout Oregon;

(c) Surveys;

(d) Focus groups;

(e) Town halls;

(f) Workshops; and

(g) Stakeholder interviews.

(3) The department will collaborate with community-based, culturally specific, advocacy organizations, healthcare providers and healthcare navigators, serving historically marginalized and immigrant communities to ensure equitable access to information.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.340]

471-070-0850 Electronic Filing (Final 1/31/22)

(1) Any return, statement, other document or report required to be filed under any provision of the laws administered by the department may be filed in electronic (as defined in ORS chapter 84) form if an authorized electronic method of filing such return, statement, other document or report is made available by the department.

(2) A return, statement, other document or report that is filed in electronic form may not be denied legal effect or enforceability solely because it is in electronic form.

(3) A return, statement, other document or report that is filed in electronic form is deemed to be filed and received on the date actually received by the department or on the date stated in the electronic acknowledgment of receipt issued by the department.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 84.052 and 657B.340]

471-070-1000 Benefits: Definitions (Final 7/22/22 and Amended and Final 11/4/22)

(1) “Application” means the process in which an individual submits the required information and documentation described in OAR 471-070-1100 to request benefits for a period of leave. Approval of an application establishes a claim.

(2) “Average weekly wage” means the amount calculated by the department as the state average weekly covered wage under ORS 657.150 (4)(e) as determined not more than once per year. The average weekly wage is:

(a) Set for each fiscal year beginning July 1 and ending June 30 of the following year;

(b) Applied for the calculation of weekly benefit amounts starting the first full week following July 1;

(c) Applied for the entire benefit year after a new benefit year is established, even if the average weekly wage amount changes when the new fiscal year begins.

(3) “Benefit year” means a period of 52 consecutive weeks beginning on the Sunday immediately preceding the day that family, medical, or safe leave commences for the claimant, except that the benefit year shall be 53 weeks if a 52-week benefit

year would result in an overlap of any quarter of the base year of a previously filed valid claim. A claimant may only have one valid benefit year at a time.

(4) "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(5) "Care," as the term is used in ORS 657B.010(17)(a)(B), means physical or psychological assistance as used for leave taken to care for a family member with a serious health condition.

(a) "Physical assistance" means assistance attending to a family member's basic medical, activities of daily living, safety, or nutritional needs when that family member is unable to attend to those needs themselves, or transporting the family member to a health care provider when the family member is unable to transport themselves.

(b) "Psychological assistance" means providing comfort, reassurance, companionship to a family member, or completing administrative tasks for the family member, or arranging for changes in the family member's care, such as, but not limited to, transfer to a nursing home.

(6) "Child" as the term is used for family leave to care for and bond with a child during the first year after the child's birth, foster placement, or adoption, and as the term is used for a safe leave purpose described in ORS 659A.272, means an individual described in ORS 657B.010(6) and that is:

(a) Under the age of 18; or

(b) Age 18 or older as an adult dependent substantially limited by a physical or mental impairment as defined by ORS 659A.104.

(7) "Claim" means a period of Paid Family and Medical Leave Insurance (PFMLI) benefits that starts with an approved application for benefits and continues through the duration of the approved leave until the approved leave or benefit amount has been exhausted or the approved timeframe for the leave has been reached. A claimant may have multiple claims in a benefit year, but may not be approved for more than the allowable benefit or leave amount as described in OAR 471-070-1030.

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

(9) "Domestic violence," as the term is used for a safe leave purpose described in ORS 659A.272, means abuse or the threat of abuse, as abuse is defined in ORS 107.705.

(10) “Eligible employee’s average weekly wage” means an amount calculated by the department by dividing the total wages earned by an eligible employee during the base year by 52 weeks.

(11) “Harassment,” as the term is used for a safe leave purpose described in ORS 659A.272, means the crime of harassment described in ORS 166.065.

(12) “Health care provider” means:

(a) A person who is primarily responsible for providing health care to the claimant or the family member of the claimant before or during a period of PFMLI leave, who is licensed or certified to practice in accordance with the laws of the state or country in which they practice, who is performing within the scope of the person’s professional license or certificate, and who is:

(A) A chiropractic physician, but only to the extent the chiropractic physician provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays;

(B) A dentist;

(C) A direct entry midwife;

(D) A naturopath;

(E) A nurse practitioner;

(F) A nurse practitioner specializing in nurse-midwifery;

(G) An optometrist;

(H) A physician;

(I) A physician’s assistant;

(J) A psychologist;

(K) A registered nurse; or

(L) A regulated social worker.

(b) A person who is primarily responsible for the treatment of the claimant or the family member of the claimant solely through spiritual means before or during a period of PFMLI leave, including but not limited to a Christian Science practitioner.

(13) “Serious health condition” means an illness, injury, impairment, or physical or mental condition of a claimant or their family member that:

(a) Requires inpatient care in a medical care facility such as, but not limited to, a hospital, hospice, or residential facility such as, but not limited to, a nursing home or inpatient substance abuse treatment center;

(b) In the medical judgment of the treating health care provider poses an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;

(c) Requires constant or continuing care, including home care administered by a health care professional;

(d) Involves a period of incapacity. “Incapacity” is the inability to perform at least one essential job function, or to attend school or perform regular daily activities for more than three consecutive calendar days. A period of incapacity includes any subsequent required treatment or recovery period relating to the same condition. The incapacity must involve one of the following:

(A) Two or more treatments by a health care provider; or

(B) One treatment plus a regimen of continuing care.

(e) Results in a period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity, such as, but not limited to, asthma, diabetes, or epilepsy;

(f) Involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as, but not limited to, Alzheimer's Disease, a severe stroke, or terminal stages of a disease. The employee or family member must be under the continuing care of a health care provider, but need not be receiving active treatment;

(g) Involves multiple treatments for restorative surgery or for a condition such as, but not limited to, chemotherapy for cancer, physical therapy for arthritis, or dialysis for kidney disease that if not treated would likely result in incapacity of more than three calendar days;

(h) Involves any period of disability due to pregnancy, childbirth, miscarriage or stillbirth, or period of absence for prenatal care; or

(i) Involves any period of absence from work for the donation of a body part, organ, or tissue, including preoperative or diagnostic services, surgery, post-operative treatment, and recovery.

(14) “Sexual Assault,” as the term is used for a safe leave purpose described in ORS 659A.272, means any sexual offense or the threat of a sexual offense as described in ORS 163.305 to 163.467, 163.472 or 163.525.

(15) “Stalking,” as the term is used for a safe leave purpose described in ORS 659A.272, means:

(a) The crime of stalking or the threat of the crime of stalking as described in ORS 163.732; or

(b) A situation that results in a victim obtaining a court’s stalking protective order or a temporary court’s stalking protective order under ORS 30.866.

(16) “Subject Wages” means PFMLI wages that are paid and reported for an employee, as defined in ORS 657B.010(13), or an employee of a tribal government who has elected coverage under ORS 657B.130.

(17) “Willful” and “willfully” means a knowing and intentional act or omission.

(18) “Willful false statement” means any occurrence where:

(a) A claimant or employer makes a statement or submits information that is false;

(b) The claimant or employer knew or should have known the statement or information was false when making or submitting it;

(c) The statement or submission concerns a fact that is material to the rights and responsibilities of either the claimant or the employer under ORS chapter 657B; and

(d) The claimant or employer made the statement or submitted the information with the intent that the department would rely on the statement or information when taking action.

(19) “Willful failure to report a material fact” means any occurrence where:

(a) A claimant or employer omit or fails to disclose information;

(b) The claimant or employer knew or should have known that the information should have been provided;

(c) The information concerns a fact that is material to the rights and responsibilities of either the claimant or the employer under ORS chapter 657B; and

(d) The claimant or employer omitted or did not disclose the information with the intent that the department would take action based on other information or a lack of information.

(20) "Work day" means any day on which an employee performs any work for an employer and is an increment of a work week. The number of work days in a work week is based on the average number of work days worked by an employee at all employment. There are a maximum of seven work days in a work week. If a work day spans two calendar days, such as a shift beginning on day one at 10 p.m. and ending on the next day at 5 a.m., the work day will count on the calendar day in which the shift began.

(21) "Work week" means a seven day period beginning on a Sunday at 12:01 a.m. and ending on the following Saturday at midnight. If a claimant works a variable or irregular schedule, the number of work days in a work week is determined by counting the total number of work days worked in the preceding 12 work weeks and dividing the total by 12 and rounding down to the nearest whole number. If the employee has not been employed by the employer for at least 12 weeks, the number of weeks the employee has been employed from the date of hire to the first day of leave shall replace 12 in the calculation.

[Stat. Auth.: ORS 657B.090, 657B.120, 657B.340; Stats. Implemented: ORS 657B.010, 657B.090, 657B.120]

471-070-1010 Benefits: Eligibility and Qualification for Benefits (Final 7/22/22)

(1) For an individual to be eligible to receive Paid Family and Medical Leave Insurance (PFMLI) benefits, the individual must:

(a) Be one of the following:

(A) An employee;

(B) A self-employed individual who has elected coverage under ORS 657B.130 and in accordance with OAR 471-070-2010 and whose coverage is currently in effect; or

(C) An employee of a tribal government, where the tribal government has elected coverage under ORS 657B.130 and where the tribal government's coverage is currently in effect.

(b) Earn at least:

(A) $1,000 in subject wages, as defined in OAR 471-070-1000, in either the base year or alternate base year;

(B) $1,000 in taxable income from self-employment, as defined in OAR 471-070-2000, in either the base year or alternate base year; or

(C) $1,000 in a combination of subject wages and taxable income from self-employment in either the base year or alternate base year.

(c) Contribute to the PFMLI Fund established under ORS 657B.430 in accordance with ORS 657B.150 and OAR 471-070-2030 during the base year or alternate base year, as applicable;

(d) Experience a qualifying purpose for benefits under ORS 657B.020;

(e) Have current Oregon employment or self-employment for which they are requesting leave from work;

(f) Submit an application for benefits in accordance with all requirements under ORS 657B.090 and OAR 471-070-1100;

(g) Have not exceeded their maximum paid leave and benefit amounts under ORS 657B.020 and OAR 471-070-1030 in the active benefit year; and

(h) Have no current disqualifications from receiving benefits due to:

(A) The individual being eligible to receive Workers' Compensation under ORS chapter 656, or Unemployment Insurance benefits under ORS chapter 657; or

(B) A director determination under ORS 657B.120 that the individual previously willfully made a false statement or willfully failed to report a material fact in order to obtain benefits.

(2) An individual may not exceed 12 weeks of paid leave per child for the purpose of caring for and bonding with the child during the first year after the birth or initial placement of the child, regardless if a new benefit year starts during the first year following birth or initial placement.

Example 1: Juan files an application for benefits for seven weeks of paid leave and is approved by the department to care for a family member with a serious health condition and begins a benefit year on November 5, 2023. After returning from this leave, Juan has five weeks of leave remaining in the balance of their benefit year. In March 2024, Juan and their partner adopt a child. Juan submits an application for benefits to the department and is approved for the remaining five weeks of paid leave in the benefit year in order to care for and bond with the newly adopted child. Juan's benefit year expires on November 2, 2024 and Juan submits a new application for benefits to the department. Juan is approved for leave to care for and bond with the same child and starts a new benefit year. Because Juan already bonded with the same child for five weeks in the prior benefit year, Juan may only take leave to care for and bond with that child for up to an additional seven weeks in the new benefit year.

Example 2: Julie files an application for benefits and is approved for leave for their own serious health condition and begins a benefit year on September 17, 2023. Julie takes

two weeks of leave to recover from the serious health condition and then returns to work. In June 2024, Julie gives birth to twins. Julie submits an application for benefits to the department and is approved for ten weeks of leave to care for and bond with the first twin. Julie's benefit year expires on September 14, 2024 and then Julie submits another application for benefits to the department and is approved for twelve weeks of leave to care for and bond with the second twin, starting a new benefit year.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.015, 657B.020]

471-070-1020 Benefits: Assignment of Wages and Income (Final 7/22/22)

(1) For purposes of Paid Family and Medical Leave Insurance (PFMLI) benefits, subject wages shall be assigned to the calendar quarter in which they are paid, in the same manner that PFMLI contributions are payable pursuant to ORS 657B.150.

(2) For purposes of PFMLI benefits, taxable income from self-employment shall be assigned to the quarters in which the contributions are paid in accordance with OAR 471-070-2030.

(3) Subject wages and taxable income from self-employment in a calendar quarter that are included in the base year or alternate base year of a claim for benefits may not be included in a different base year or alternate base year of any subsequent claim.

[Stat. Auth.: 657B.340; Stats. Implemented: ORS 657B.050]

471-070-1030 Benefits: Maximum Amount of Benefits in a Benefit Year (Final 7/22/22)

In any given benefit year, a claimant shall not receive Paid Family and Medical Leave Insurance benefits established under ORS 657B.340 that exceed an amount equal to:

(1) The employee's weekly benefit amount multiplied by 12 for any combination of family, medical, or safe leave; or

(2) The employee's weekly benefit amount multiplied by 14 for any combination of family, medical, or safe leave for 12 weeks and two additional weeks of leave for limitations related to pregnancy, childbirth or related medical condition, including but not limited to lactation for a total of 14.

[Stat. Auth.: 657B.340; Stats. Implemented: ORS 657B.020, 657B.050]

471-070-1100 Benefits: Application for Benefits (Final 7/22/22)

(1) To request Paid Family and Medical Leave Insurance (PFMLI) benefits provided under the state plan established in ORS 657B.340, a claimant must submit an application for benefits. An application must be submitted online or by another method approved by the department. For the application to be approved by the

department, the application must be complete and must include, but is not limited to, the following:

(a) Claimant information, including:

(A) First and last name;

(B) Date of birth;

(C) Social Security Number or Individual Taxpayer Identification Number; and

(D) Contact information, including mailing address and telephone number.

(b) Documentation verifying the claimant's identity;

(c) Information about the claimant's current employment or self-employment for which they are requesting leave from work:

(A) Business name(s) and dates of employment or self-employment;

(B) Business address and contact information for all employers or self-employed businesses;

(C) Average number of work days worked per work week; and

(D) Any current breaks from work or anticipated future breaks from work that are unrelated to PFMLI leave.

(d) Information about the notice given to any employers under ORS 657B.040 and OAR 471-070-1310, if applicable, and the date(s) any notice was given;

(e) Information about the claimant's leave schedule, including:

(A) Employer(s) from which leave is being taken;

(B) Anticipated leave dates; and

(C) Whether the leave is to be taken in consecutive, or nonconsecutive, periods.

(f) The type of leave taken by the claimant, which must be one of the following:

(A) Family leave;

(B) Medical leave; or

(C) Safe leave.

(g) Verification of the reason for the leave, including:

(A) For family leave to care for or bond with a child, verification consistent with OAR 471-070-1110;

(B) For family leave to care for a family member with a serious health condition, verification consistent with OAR 471-070-1120 and an attestation that the claimant has a relationship equal to "family member" under ORS 657B.010 and is caring for a family member with a serious health condition;

(C) For medical leave, verification consistent with OAR 471-070-1120; or

(D) For safe leave, verification consistent with OAR 471-070-1130.

(h) If the claimant is requesting up to two additional weeks of leave for limitations related to pregnancy, childbirth or a related medical condition, documentation that the claimant is currently pregnant or was pregnant within the year prior to the start of leave;

(i) Information about the claimant's eligibility to receive Workers' Compensation under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657; and

(j) A written or electronically signed statement declaring under oath that the information provided in support of the application for PFMLI benefits is true and correct to the best of the individual's knowledge.

(2) An employee who has PFMLI coverage solely through an employer with an equivalent plan approved under ORS 657B.210 must apply for PFMLI benefits by following the employer's equivalent plan application guidelines.

(3) An employee who is simultaneously covered by more than one employer's equivalent plan approved under ORS 657B.210, or that is simultaneously covered by the state plan and at least one employer with an equivalent plan, must apply separately under all plans they are covered under and from which they are taking leave by following the respective application guidelines for each plan.

(4) A complete application for PFMLI may be submitted to the department up to 30 calendar days prior to the start of family, medical, or safe leave and up to 30 calendar days after the start of leave. Applications submitted outside of this timeframe, either early or late, will be denied, except in cases where a claimant can demonstrate an application was submitted late for reasons that constitute good cause under section (6) of this rule.

(5) In cases where a claimant demonstrates good cause for the late submission of an application, the department may accept the application up to one year after the start of leave.

(6) Good cause for the late submission of an application is determined at the discretion of the department and includes, but is not limited to, the following:

(a) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents an individual from timely filing an application; or

(b) A demonstrated inability to reasonably access a means to file an application in a timely manner, such as an inability to file an application due to a natural disaster or a significant and prolonged department system outage.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.090, 657B.100, 657B.340; Stats. Implemented: ORS 657B.090, 657B.100]

471-070-1110 Benefits: Verification of Family Leave to Care for and Bond with a Child (Final 7/22/22)

(1) A claimant applying for Paid Family and Medical Leave Insurance (PFMLI) benefits to care for and bond with a child during the first year after the child's birth must provide one of the following forms of verification:

(a) The child's birth certificate;

(b) A Consular Report of Birth Abroad;

(c) A document issued by a health care provider of the child or pregnant parent;

(d) A hospital admission form associated with delivery; or

(e) Another document approved by the department for this purpose.

(2) A claimant applying for PFMLI benefits to care for and bond with a child during the first year after the placement of the child through foster care or adoption must provide one of the following forms of verification:

(a) A copy of a court order verifying placement;

(b) A letter signed by the attorney representing the prospective foster or adoptive parent that confirms the placement;

(c) A document from the foster care, adoption agency, or social worker involved in the placement that confirms the placement;

(d) A document for the child issued by the United States Citizenship and Immigration Services; or

(e) Another document approved by the department for this purpose.

(3) The verification required in sections (1) and (2) of this rule must show the following:

(a) Claimant's first and last name as parent or guardian of the child after birth or placement of the child through foster care or adoption;

(b) Child's first and last name; and

(c) Date of the child's birth or placement.

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.090]

471-070-1120 Benefits: Verification of a Serious Health Condition (Final 7/22/22)

A claimant applying for Paid Family and Medical Leave Insurance (PFMLI) benefits for their own serious health condition or to care for a family member with a serious health condition must submit verification of the serious health condition from a health care provider that includes:

(1) The health care provider's first and last name, type of medical practice/specialization, and their contact information, including mailing address and telephone number;

(2) The patient's first and last name;

(3) The claimant's first and last name, when different from the patient identified in section (2) of this rule;

(4) The approximate date on which the serious health condition commenced or when the serious health condition created the need for leave;

(5) A reasonable estimate of the duration of the condition or recovery period for the patient;

(6) A reasonable estimate of the frequency and duration of intermittent leave and estimated treatment schedule, if applicable; and

(7) Other information as requested by the department to determine eligibility for the PFMLI benefits; including:

(a) For medical leave, information sufficient to establish that the claimant has a serious health condition; or

(b) For family leave, information sufficient to establish that the claimant's family member has a serious health condition.

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.090]

471-070-1130 Benefits: Verification of Safe Leave (Final 7/22/22)

(1) A claimant applying for Paid Family and Medical Leave Insurance benefits for safe leave must provide verification of the basis for the safe leave, including any of the following forms of documentation:

(a) A copy of a federal agency or state, local, or tribal police report, or a formal complaint to a school's Title IX Coordinator indicating that the claimant or the claimant's child as defined in OAR 471-070-1000(6) was a victim of domestic violence, harassment, sexual assault, or stalking;

(b) A copy of a protective order or other evidence from a federal, state, local, or tribal court, administrative agency, school's Title IX Coordinator, or attorney that the claimant or the claimant's child appeared in or was preparing for a civil, criminal, or administrative proceeding related to domestic violence, harassment, sexual assault, or stalking; or

(c) Documentation from an attorney, law enforcement officer, health care provider, licensed mental health professional or counselor, member of the clergy, or victim services provider that the claimant or the claimant's child was undergoing treatment or counseling, obtaining services, or relocating as a result of domestic violence, harassment, sexual assault, or stalking.

(2) In cases where a claimant can demonstrate good cause for not providing one of the forms of documentation in section (1) of this rule, the claimant may instead provide a written statement attesting that they are taking eligible safe leave. Good cause for not providing the documentation is determined at the discretion of the department and includes, but is not limited to, the following:

(a) Difficulty obtaining verification due to a lack of access to services; or

(b) Concerns for the safety of the claimant or the claimant's child.

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.090]

471-070-1200 Benefits: Claim Processing; Additional Information (Final 7/22/22)

In addition to the information required from a claimant under OAR 471-070-1100 and OAR 471-070-1430, the department may request that a claimant provide additional information necessary to establish facts relating to eligibility or qualification for benefits. Unless a time frame is otherwise defined under statute or rule or is specified by an authorized department representative, the claimant must respond to all requests for information within the following time frames:

(1) 14 calendar days from the date of the request for information, if the request was sent by mail to the claimant's last known address as shown in the department's records.

(2) 10 calendar days from the date of the request for information, if the request was sent by telephone message, fax, email, or other electronic means.

(3) When the response to the request for information is sent to the department by mail, the date of the response shall be the date of the postmark affixed by the United States Postal Service. In the absence of a postmarked date, the date of the response shall be the most probable date of mailing as determined by the department.

(4) The time frames specified in sections (1) and (2) of this rule may be extended at the department's discretion when a claimant can demonstrate they failed to provide a timely response for good cause. Good cause exists when the claimant responds to the department as soon as practicable and establishes by satisfactory evidence that circumstances beyond the claimant's control prevented the claimant from providing a timely response, including, but not limited to, an incapacitating serious health condition or a situation related to safe leave.

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.090]

471-070-1210 Benefits: Updates to a Claim for Leave (Final 7/22/22)

(1) After submitting an application for benefits as specified in OAR 471-070-1100, a claimant must notify the department within 10 calendar days of any changes to the information provided on their application and provide additional information, if applicable, including, but not limited to, changes to the claimant's:

(a) First and last name;

(b) Mailing address;

(c) Telephone number;

(d) Current employment or self-employment;

(e) Average number of work days worked per work week;

(f) Leave schedule;

(g) Type of leave taken; or

(h) Eligibility to receive Workers' Compensation under ORS chapter 656 or Unemployment Insurance benefits under ORS chapter 657.

(2) Failure to notify the department of any changes to the information provided on an application for benefits as specified in section (1) of this rule may result in a delay, denial, overpayment, or disqualification of weekly benefits.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.090, 657B.100]

471-070-1220 Benefits: Cancellation of a Claim (Final 7/22/22)

A claim may be cancelled at any time provided:

(1) A request to cancel has been submitted online or in another method approved by the department;

(2) No leave was taken under the claim;

(3) Benefits have not been paid for the claim. Benefits are considered paid if a payment has been mailed or electronically sent to the claimant's bank or other financial institution, or the payment was distributed but intercepted; and

(4) No disqualification has been issued by the department and no appeal of a disqualification or denial has been requested.

Example: Solomon was approved for three weeks of consecutive leave for a scheduled surgery starting on March 1, 2024. The claim started a new benefit year and established the weekly benefit amount for the benefit year. However, Solomon decides to postpone the surgery until August 1, 2024 and requests to cancel the claim. No leave was taken and no benefits were paid. The request is cancelled by the department. The benefit year and weekly benefit amount are also cancelled. When Solomon applies again for benefits for the surgery in August 2024, a new benefit year is started and a new weekly benefit amount is established.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.090]

471-070-1230 Benefits: Administrative Decisions (Final 7/22/22)

(1) Administrative decision shall be made on timely submitted applications and claims in accordance with ORS 657B.100 and shall be based on information available from the following sources: the department's records, information provided or obtained from the claimant, employers, administrators, or other sources as appropriate, including, but not limited to, health care providers and other state agencies.

(2) Written notice of administrative decisions shall be provided to the claimant and delivered to the claimant's last known address as shown in the department's records or delivered electronically when permitted, if the claimant has opted for electronic notification.

(3) The administrative decision shall contain, at a minimum:

(a) Identification of the claimant;

(b) Identification of the issues, citing the laws and rules involved;

(c) The department's conclusion and the facts and reasons underlying those conclusions;

(d) A statement allowing benefits, including the frequency and duration, or denying benefits;

(e) The date of the decision; and

(f) A statement advising the claimant of their appeal rights and the manner in which an appeal may be submitted.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.090, 657B.100]

471-070-1300 Benefits: Written Notice Poster to Employees of Rights and Duties (Final 11/4/22)

(1) The director shall make available to employers a model Paid Family and Medical Leave Insurance (PFMLI) notice poster that meets the requirements of ORS 657B.440.

(2) (a) Each employer must display the department's notice poster, in each of the employer's buildings or worksites in an area that is accessible to and regularly frequented by employees; and

(b) An employer with employee(s) assigned to remote work must provide, by hand delivery, regular mail, or through an electronic delivery method, a copy of the department's notice poster to each employee assigned to remote work. The notice poster must be delivered or sent to each employee assigned to remote work upon the employee's hire or assignment to remote work.

(3) (a) For employers that have employee(s) working in buildings or worksites, the notice poster displayed under (2)(a) of this rule by the employer must be displayed in the language the employer typically uses to communicate with the employee. If the employer uses more than one language to communicate with employees assigned to a building or worksite, then the employer must display copies of the notice poster in each of the languages that the employer would typically use to communicate with the employees assigned to that building or worksite; and

(b) For employers that have employee(s) assigned to remote work, the notice poster provided under (2)(b) of this rule by the employer must be provided in the language the employer typically uses to communicate with each employee assigned to remote work.

(4) An employer offering an equivalent plan approved under ORS 657B.210 must follow the employer notice poster requirements specified in OAR 471-070-2330.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.340, 657B.440; Stats. Implemented: ORS 657B.070, 657B.440]

471-070-1310 Benefits: Employee Notice to Employers Prior to Commencing Leave (Final 7/22/22)

(1) If the leave is foreseeable, an employer may require an eligible employee to give written notice at least 30 calendar days before commencing a period of paid family, medical, or safe leave. Examples of foreseeable leave include, but are not limited to, an expected birth, planned placement of a child, or a scheduled medical treatment for a serious health condition of the eligible employee or a family member of the eligible employee.

(2) If the leave is not foreseeable, an eligible employee may commence leave without 30 calendar days advance notice. However, the eligible employee must give oral notice to the employer within 24 hours of the commencement of the leave and must provide written notice within three days after the commencement of leave. Leave circumstances that are not foreseeable include, but are not limited to, an unexpected serious health condition of the eligible employee or a family member of the eligible employee, a premature birth, an unexpected adoption, an unexpected foster placement by or with the eligible employee, or for safe leave.

(3) An employer may require written notice to include:

(a) Employee's first and last name;

(b) Type of leave;

(c) Explanation of the need for leave; and

(d) Anticipated timing and duration of leave.

(4) Written notice includes, but is not limited to, handwritten or typed notices, and electronic communication such as text messages and email that is consistent with the employer's known, reasonable, and customary policies. Whether leave is to be continuous or is to be taken intermittently, notice need only be given one time, but the employee shall advise the employer as soon as practicable if dates of scheduled leave change, are extended, or were initially unknown.

(5) An employer that requires eligible employees to provide written notice before the eligible employee commences leave, must outline the requirements in the employer's written policy and procedures. A copy of the written policy and procedure must be provided to all eligible employees at the time of hire and each time the policy and procedure changes and in the language that the employer

typically uses to communicate with the employee. If the employer requires the employee to provide written notice, the policy and procedures must include a description of the penalties under section (9) of this rule that may be imposed by the department for not complying with the employer's notice requirements.

(6) An employee does not need to expressly mention the Paid Family and Medical Leave Insurance program when giving their employer written or oral notice under this rule.

(7) The department will notify the employer pursuant to OAR 471-070-1320(1) when a claimant has applied for paid family, medical, or safe leave benefits. The employer may respond to the notice from the department within 10 calendar days from the date on the department's notice to report if the claimant did not provide the required notice under this rule. The employer may respond to the department's notice either online or by another method approved by the department.

(8) If the employer does not respond to the department's notice as described in section (7) of this rule within 10 calendar days from the date on the department's notice, the claimant's application for benefits shall be processed using the information available in the department's records.

(9) If the department determines that the claimant did not provide the required leave notice to the employer, the department may impose a penalty by issuing a decision and reducing the first weekly benefit amount payable under ORS 657B.090 by 25 percent. The penalty will be a 25 percent reduction, except when it would reduce the weekly benefit amount below the minimum benefit amount provided in ORS 657B.050(2)(b). The claimant may appeal the imposition of the penalty in accordance with ORS 657B.410 and applicable administrative rules.

Example 1: Sanomi did not provide the required notice to their employer about taking family leave. Sanomi's weekly benefit amount is $140. A 25 percent reduction of their benefit amount in the first week equals $35 ($140 x .25), so the first weekly benefit amount would be reduced to $105 ($140 - $35). However, the minimum weekly benefit amount is $120, so Sanomi's first weekly benefit payment would be $120 instead.

(10) For leave taken in increments of less than a full work week, the total penalty amount shall be divided by the number of work day increments contained in a work week and deducted from benefits paid for that number of work days.

Example 2: Joy did not provide the employer with the required leave notice. Joy normally works an average of four work days in a work week and was unable to work the entire week due to taking medical leave. Joy's weekly benefit amount is $400, which is prorated to $100 per work day of leave because Joy only works an average of four days in a work week. The penalty amount is $25 per work day

($100 x .25). Joy's benefit amount is reduced to $75 ($100 per work day minus $25 penalty per work day) for each of the first four work days of leave taken, as four days equals one work week.

(11) The employee may request a waiver of the benefit reduction penalty for good cause. Good cause will be found when the employee establishes, by satisfactory evidence, that factors or circumstances beyond the employee's reasonable control prevented the employee from providing the required notice to the employer. Good cause includes, but is not limited to, an incapacitating serious health condition or a situation related to safe leave, for which the employee provided notice to the employer as soon as was practicable.

(12) If an employee receives their first weekly benefit payment, and the department subsequently determines that proper notice to the employer was not made by the employee, an amount equal to the 25 percent benefit reduction penalty will be considered an erroneous overpayment, and that penalty amount may be collected from the employee in accordance with ORS 657B.120.

[Stat. Auth.: ORS 657B.040, 657B.340; Stats. Implemented: ORS 657B.040]

471-070-1320 Benefits: Communication to Employers about Employee Application for Benefits (Final 7/22/22)

(1) After a claimant has filed an application or updated their claim for Paid Family and Medical Leave Insurance (PFMLI) benefits, the department shall notify any employers that the claimant is requesting leave from and provide information about the employee's claim.

(2) Employers or administrators may respond to the notice from the department within 10 calendar days of the date on the department's notice to report any additional information about the employee's PFMLI claim. Employers or administrators shall respond to the department's notice online or through another method approved by the department. If the employer or administrator fails to provide information within 10 calendar days, the claimant's application for benefits shall be processed using the information available in the department's records. If the employer or administrator later provides additional information, the department may reprocess the claim, taking into account the additional information.

(3) The department may need to determine whether a claimant has coverage under an equivalent plan approved under ORS 657B.210 and the effective dates of any coverage the claimant has, or information about a claim for benefits that the claimant has filed under an equivalent plan. The department may request additional information from the claimant's equivalent plan employer and administrator, if applicable, after the claimant files an application with the department. When this

information is requested, equivalent plan employers or administrators must respond to the department's request within 10 calendar days from the date on the request for additional information.

(4) After a claimant's application for benefits has been processed by the department and a decision is issued to the claimant, the department shall notify the claimant's employers and administrators, if applicable, whether the claimant's application for benefits was approved or denied by the department, and, if approved, the dates and period of leave that the claimant is approved for.

[Stat. Auth.: ORS 657B.040, 657B.340; Stats. Implemented: ORS 657B.040]

471-070-1330 Benefits: Job Protection (Final 11/4/22)

(1) The protections provided under ORS 657B.060 and this rule apply only to an eligible employee who was employed by the employer for at least 90 consecutive calendar days prior to taking Paid Family and Medical Leave Insurance (PFMLI) leave. 90 consecutive calendar days include the days the employee is not scheduled to work but is still employed with the employer.

(2) An employer must restore an employee returning from PFMLI leave to the employee's former position, if the position still exists, even if the former position has been filled by a replacement worker during the employee's PFMLI leave. The employee's former position is the position held by the employee at the time PFMLI leave commenced, regardless of whether the job has been renamed or reclassified. (For example, a delivery driver must be returned to the same route, at the same rate of pay and benefits, driving the same type of truck, delivering the same type of goods, on the same shift, and working from the same location as when the driver started PFMLI leave.)

(3) For the purposes of this rule, any worker hired or reassigned during an eligible employee's leave to perform the same work in the same position that the eligible employee held before the leave was taken is a replacement worker. If the eligible employee on PFMLI leave notifies the employer that they are ready to return to work earlier than anticipated, the employer must give the eligible employee the opportunity to work any hours that the replacement worker would otherwise have been scheduled to work beginning on the second business day following the date the eligible employee notified the employer they were ready to end their leave and return to work.

(4) Notwithstanding section (2) of this rule, an employee is not entitled to return to the former position if the employee would have been terminated or reassigned from their current position to another position if PFMLI leave had not been taken.

(5) Subject to section (6)(d) of this rule, if the position held by the employee at the time PFMLI leave began has been eliminated, and not merely renamed or reclassified, then:

(a) If the employer is a large employer as defined in OAR 471-070-3150, the employer must restore the employee to any available, equivalent position for which the employee is qualified.

(A) An available position is a position that is vacant or not permanently filled.

(B) An equivalent position is a position that is virtually identical to the employee's former position in as many aspects as possible in terms of employment benefits and pay, and similar working conditions, including privileges, perks, and status. It must involve substantially the same or similar duties and responsibilities, which must entail equivalent skill, effort, responsibility, and authority.

(b) If the employer is a small employer as defined in OAR 471-070-3150, the employer may, at the employer's discretion and based on business necessity, restore the employee to a different position. The different position must offer the same employment benefits and pay, and similar working conditions, including privileges, perks, and status as the employee's former position and must have similar job duties and responsibilities as the employee's former position.

(6) (a) Unless the terms of a collective bargaining agreement, other employment agreement, or the employer's policy provides otherwise, an employee on PFMLI leave is not entitled to accrue employment benefits during a period of leave. Employment benefits include but are not limited to: accrual of seniority, production bonuses, or other non-health-care-related benefits that would have accrued if the employee was working;

(b) Benefits an employee was entitled to and that accrued prior to starting PFMLI leave, including, but not limited to seniority or pension rights, must be restored in full upon the employee's return to work. The benefits do not have to be restored if such benefits have been eliminated or changed for all similarly situated employees;

(c) An employee is not entitled to a right, benefit, or position of employment other than a right, benefit, or position to which the employee would have been entitled to if the employee had not taken PFMLI leave; and

(d) An employee is subject to layoff on the same terms or under the same conditions as similarly situated employees who have not taken PFMLI leave.

(7) During any PFMLI leave, an employer must maintain any health care benefits the employee had prior to taking such leave, for the duration of the leave, as if the employee had continued in employment continuously during the period of leave.

(a) An employer continuing health care insurance coverage for an employee on PFMLI leave may require that the employee pay only the same share of premium costs during the leave that the employee would have been required to pay if not on leave.

(b) If an employee cannot or will not pay their share of the premium costs, the employer may elect to discontinue health care benefit coverage, unless doing so would render the employer unable to restore the employee to full benefit coverage once the employee returns to work. If coverage lapses because an employee has not made required premium payments, upon the employee's return from PFMLI leave the employer must restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including being subject to any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage.

(c) If the employer pays (directly or indirectly, voluntarily or as required by state or federal statute) any part of the employee's share of health or other insurance premium while an employee is on PFMLI leave, the employer must receive permission from the employee to deduct from their pay the employee’s share of health or other insurance premiums paid by the employer until the amount is repaid. The employer may deduct up to 10 percent of the employee's gross pay each pay period after the employee returns to work until the amount is repaid.

(d) If an employee fails to return to work — unless the failure to return to work is because of a serious health condition or safe leave for which the employee would be entitled to PFMLI leave or another circumstance beyond the employee's control — the employer may recover the employee's share of the health insurance premiums paid by the employer. The employer may use any legal means to collect the amount owed for the employee's share of health insurance premiums paid by the employer, including deducting the amount from the employee's final paycheck.

(8) An employer may require an employee to follow the employer's established leave policy regarding reporting to the employer any changes to the employee's leave status.

(9) If an employee gives clear notice of intent to not to return to work from PFMLI leave, except as required by other state or federal law, the employer's obligations under ORS chapter 657B to restore the employee's position and maintain any health care benefits cease on the date of the notice is given to the employer.

(10) It is an unlawful employment practice to discriminate against an eligible employee who has invoked any provision of ORS chapter 657B or this rule. An employee who alleges a violation of any provision of ORS chapter 657B or this rule may bring a civil action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.060, 657B.070]

471-070-1410 Benefits: Initial and Amended Monetary Determinations (Final 11/4/22)

(1) (a) When a claimant files an application for benefits as described in OAR 471-070-1100, which establishes a new benefit year, the department shall examine the application for benefits and, on the basis of information available, shall make an initial determination of:

(A) The total amount of subject wages paid to the claimant during the base year or alternate base year;

(B) The total taxable income from self-employment earned by the claimant during the base year or alternate base year for an individual that has elected coverage under OAR 471-070-2010;

(C) Whether or not the amounts in sections (1)(a)(A) and (1)(a)(B) of this rule are sufficient to meet the eligibility requirement under OAR 471-070-1010(1)(b); and

(D) The claimant's weekly benefit amount under ORS 657B.050, provided the claimant is eligible for benefits under section (1)(a)(C) of this rule.

(b) The department's initial determination shall be applicable to all weeks of the benefit year respecting which the claim was filed, except that the department's determination may be amended with respect to any week or weeks of the benefit year as described under section (2) of this rule.

(c) The department shall notify the claimant of the initial determination made under this section.

(2) (a) A claimant who receives an initial determination under section (1) of this rule may request that the determination be amended. Upon receipt of such a request, the department will investigate by examining records of wages and income submitted to the department by the claimant, employers, and state agencies in an attempt to verify subject wages or taxable income from self-employment alleged by the claimant to be missing or reported incorrectly.

(b) If, as the result of an investigation, the subject wages or taxable income from self-employment either make a previously ineligible claimant eligible for benefits, or increase or decrease the weekly benefit amount of a previously approved claim, then the department will issue an amended determination.

(c) The amended determination shall replace the initial determination made under section (1) of this rule and shall be applicable to all weeks of the benefit year respecting which the claim was filed.

(d) If, as the result of an investigation, all or part of the requested wages or taxable income from self-employment is not included in the determination, the department will so notify the claimant by issuing an amended determination or by affirming the initial determination.

(3) Unless the claimant files a request for hearing with the department regarding the initial or amended determination, the determination shall become final once the time for requesting a hearing has passed. The department shall pay or deny benefits in accordance with the determination, unless otherwise provided by law. The request for hearing must be filed not later than 60 calendar days after the delivery of the initial or amended determination unless the department mails the determination, in which case the request for hearing must be filed not later than 60 calendar days after the date the determination is mailed to the last-known address of the claimant.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.050, 657B.100]

471-070-1420 Benefits: Leave Periods and Increments (Final 7/22/22)

(1) A claimant may request family, medical, or safe leave provided under ORS chapter 657B in either consecutive, or nonconsecutive, periods of leave.

(2) Leave may be taken and benefits may be claimed in increments that are equivalent to one work day or one work week, as defined in OAR 471-070-1000. When claiming an increment of less than a full work week, the number of work days that

can be reported during a week is established by the average number of work days typically worked per week by the claimant.

(3) When benefits are claimed in an increment that is equivalent to one work day or one work week, leave must be taken from all employers and from all self-employed work for the entirety of that period to receive benefits.

Example 1: Kelsey is taking family leave and is currently an employee at a university and an architecture firm. Kelsey works for the university in the morning of her work day and the architecture firm in the evenings on the same work day. Kelsey must take leave from both places of employment for the work day in order to claim benefits for the work day. If Kelsey only missed work from the university due to the family leave for that one work day, it would not qualify for benefits.

Example 2: Chloe is taking medical leave and is currently an employee at a department store and a self-employed delivery driver. Chloe works four work days total per work week: Monday and Tuesday at the department store and Wednesday and Saturday as a self-employed delivery driver. Chloe must take leave for all four work days from both jobs in order to claim a full work week of benefits. If Chloe only missed work on Monday and Saturday due to medical leave, Chloe would qualify for benefits for two work days instead of a work week.

[Stat. Auth.: 657B.340; Stats. Implemented: ORS 657B.020, 657B.090]

471-070-1440 Benefits: Weekly Benefit Proration (Final 7/22/22)

(1) A claimant who takes leave in work day increments shall be paid a prorated benefit amount based on the number of work days of leave taken in the work week.

(2) The benefit amount paid for a work day is calculated by dividing the claimant's weekly benefit amount by the average number of work days that the claimant would typically work in their work week.

(3) The total benefit amount paid for leave taken in increments is calculated by multiplying the benefit amount paid for a work day by the number of work days of leave taken for the work week, rounded to the nearest whole cent, and not to exceed the weekly benefit amount.

Example 1: Allison submits an application that states their typical work week consists of five work days. The weekly benefit amount is $1,000.00. Allison states on the application that will take leave for three of the five days that Allison typically worked in the work week for six weeks. The weekly benefit amount paid to Allison for the six weeks is $600 [($1,000.00 weekly benefit amount divided by 5 work days) x 3 days on leave in the work week]. Assuming nothing changes, Allison will receive a total benefit amount of $3,600 [($600 weekly benefit amount) x 6 weeks].

Example 2: Lamar submits an application that states their typical work week consists of three work days and will take leave for one of the three days in each of the four weeks. The weekly benefit amount is $400.00. The weekly benefit amount paid for each week to Lamar is $133.33 [($400.00 weekly benefit amount divided by 3 work days) x 1 day on leave in the work week]. Assuming nothing changes, Lamar will receive a total benefit amount of $533.32 [($133.33 weekly benefit amount) x 4 weeks].

[Stat. Auth.: ORS 657B.090, 657B.340; Stats. Implemented: ORS 657B.090]

471-070-1500 Benefits: Review of Overpaid Benefits (Final 11/4/22)

(1) The department may review an overpayment of benefits to determine the cause of the overpayment and whether the claimant is liable for repayment of the benefits and any applicable penalties.

(2) The department's review of the overpayment shall be used to determine whether:

(a) The overpayment may be waived under ORS 657B.120(5);

(b) Interest may be applied under OAR 471-070-1510(3) to any amount owed;

(c) Penalties shall be applied under ORS 657B.120(3)(b); and

(d) The claimant shall be disqualified from claiming benefits under ORS 657B.120(3)(a);

(3) The department shall review information provided by the claimant or other parties and from the department's records in making its determination under this rule.

(4) The claimant may be held liable for repayment of benefits they were not entitled to, even though all relevant information was provided before a decision was issued, when the claimant should reasonably have known the payment was improper.

(5) The claimant will always be liable for repayment of benefits when an overpayment is the result of a claimant willfully making a false statement or willfully failing to report a material fact in order to obtain Paid Family and Medical Leave Insurance benefits.

(6) In deciding if a claimant is liable for repayment of benefits, the department may also consider factors which may affect the claimant's ability to report all relevant information to the department.

[Stat. Auth.: ORS 657B.120, 657B.340; Stats. Implemented: ORS 657B.120]

471-070-1510 Benefits: Repayment of Overpaid Benefits; Interest (Final 11/4/22)

(1) The director may issue an assessment to a claimant for an overpayment each time a claimant receives Paid Family and Medical Leave Insurance (PFMLI) benefits to which the claimant was not entitled.

(2) If the director determines that a claimant has received benefits to which the claimant was not entitled:

(a) The claimant may be required to repay the amount of benefits that the claimant was overpaid;

(b) The director may secure the repayment of the overpaid benefits through the deduction from future benefits otherwise payable to the claimant under ORS 657B.100; and

(c) The director may deduct all or any part of the claimant's future weekly benefits up to the amount of the prior overpayment.

(3) (a) If the department determines that a claimant is at fault for an overpayment, due to the claimant's error, false statement, or failure to report a material fact, then the claimant may be liable for interest on the overpayment amount. Interest that the claimant is liable for shall be paid and collected at the same time repayment of benefits is made by the individual, at the rate of one percent per month or fraction of a month. Interest will accrue, beginning on the first day of the month that begins 60 calendar days after the administrative decision establishing the overpayment becomes final.

(b) If the department determines that a claimant is not at fault for an overpayment, then the claimant shall not be liable for interest on the amount to be repaid as a result of the overpayment.

(4) (a) Deductions from PFMLI benefits under section (2)(b) of this rule shall be applied solely to the amount of overpaid benefits for which the claimant is liable.

(b) Amounts collected through other means shall be applied first to penalties, then interest, and then to the overpaid benefit amount.

(5) Deductions for the repayment of benefits paid erroneously may be deducted from benefits due to the claimant with no time limitations.

[Stat. Auth.: ORS 657B.120, 657B.340; Stats. Implemented: ORS 657B.120]

471-070-1520 Benefits: Waiving Recovery of Overpayments (Final 11/4/22)

(1) A claimant may request a waiver for recovery of overpayments from the department in the manner specified by the department in its instructions.

(2) In accordance with ORS 657B.120(5), the director may waive, in whole or in part, the amount of Paid Family and Medical Leave Insurance (PFMLI) benefits if:

(a) The benefits were paid based on an error other than a willful provision of a false statement, nondisclosure of a material fact, or misrepresentation by a claimant, and

(b) Recovery would be against equity, good conscience, or administrative efficiency.

(3) The director may determine that recovery of overpaid benefits is against equity and good conscience if the individual requesting a waiver has limited means to repay the benefits and has total allowable household expenses that equal or exceed 90 percent of the total household income, not including PFMLI benefits received. The department will use the current year's Internal Revenue Service (IRS) Collection Financial Standards to determine total allowable household expenses. The director may allow expenses higher than those provided for in the IRS Collection Financial standards if the claimant requesting a waiver provides documentation showing that using those IRS Collection Financial Standards would leave the claimant unable to provide for basic living expenses.

(4) If the director grants a waiver, the department will stop collection activity of any overpaid benefits subject to the waiver. The department will give written notice of any waiver that is granted, indicating the amount of the overpaid benefits for which the waiver is granted.

(5) Waivers granted are effective the Sunday of the week in which the request for waiver was filed with the department. The date of the post mark from the United States Postal Service, a date stamp from an Employment Department office, an embedded fax date, or the electronic filing date as described in OAR 471-070-0850, whichever is earliest, will be used to determine the date of filing.

(6) If a request for waiver is denied, the department will notify the claimant of its decision. The claimant may submit another request for waiver if their situation changes significantly enough to establish that recovery of the benefits would be against equity and good conscience. No subsequent request for waiver of benefits may be granted, unless the claimant satisfactorily demonstrates in writing the significant change in financial situation and provides supporting documentation.

(7) Overpaid benefits that have been recovered from the claimant prior to the filing of a waiver request will not be waived or refunded.

(8) If a person is paid more than once for the same week(s), recovery of only the amount in excess of the final entitlement is eligible to be waived.

(9) In applying ORS 657B.120(5), a waiver will not be granted if the overpayment is a result of a willful false statement or a willful failure to report a material fact as determined under ORS 657B.120(3).

(10) Overpayments caused by the negotiation of an original and a replacement check that were issued for the same period will not be waived.

(11) The determination whether to waive overpayments under ORS 657B.120(5) and this rule shall be made by employees authorized by the director by delegation and may be made with or without the request for a waiver from the claimant.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.120, 657B.340; Stats. Implemented: ORS 657B.120]

471-070-1550 Benefits: Penalties for Employer Misrepresentation (Final 11/4/22)

(1) In accordance with ORS 657B.120(2), the director may assess a civil penalty of up to $1,000 against an employer each time the employer makes or causes to be made a willful false statement or willful failure to report a material fact regarding the claim of an eligible employee or regarding an employee's eligibility for Paid Family and Medical Leave Insurance benefits.

(2) The director may consider the following mitigating and aggravating circumstances when determining whether to assess a civil penalty under section (1) of this rule and the amount assessed:

(a) Whether the employer knew or should have known they were making or causing to be made a false statement or failing to report a material fact;

(b) Prior violations, if any, of ORS chapter 657B by the employer;

(c) Whether a violation of ORS chapter 657B by the employer resulted in harm to an employee;

(d) Whether a violation of ORS chapter 657B by the employer resulted in erroneous or incorrect benefit or assistance grant payments;

(e) The magnitude and seriousness of a violation of ORS 657B.120(1).

(3) It is the responsibility of the employer to provide the director any mitigating evidence concerning liability for or the amount of the civil penalty to be assessed.

(4) The director shall consider all mitigating circumstances presented by the employer for the purpose of determining the amount of the civil penalty to be assessed.

(5) Any amount in penalties due under ORS 657B.120(2) and this rule may be collected by the director in a civil action against the employer brought in the name of the director.

[Stat. Auth.: ORS 657B.120, 657B.340; Stats. Implemented: ORS 657B.120]

471-070-1560 Benefits: Disqualification and Penalties for Claimant Misrepresentation (Final 11/4/22)

(1) In accordance with ORS 657B.120(3), it is unlawful for a claimant to willfully make a false statement or willfully fail to report a material fact in order to obtain Paid Family and Medical Leave Insurance (PFMLI) benefits.

(2) If the director determines that a claimant has made a willful false statement or a willful failure to report a material fact in order to obtain PFMLI benefits, then the claimant shall be:

(a) Disqualified from claiming benefits for a period of 52 consecutive weeks beginning from the date that the claimant made the willful false statement or willful failure to report the material fact;

(b) Assessed for any amount of benefits the claimant received to which the claimant was not entitled to; and

(c) Liable for a penalty under ORS 657B.120(3)(b).

(3) When determining the rate of the penalty imposed under ORS 657B.120(3)(b), the department will review the number of occurrences of willful false statement or willful failures to report material facts. An occurrence shall be counted each time a claimant willfully makes a false statement or misrepresentation or willfully fails to report a material fact in order to obtain PFMLI benefits. There could be multiple occurrences in a single application for benefits. The department shall use the date the claimant failed to report a material fact or willfully made a false statement or misrepresentation as the date of the occurrence. The penalty shall be imposed as follows:

(a) For the first occurrence, or the second occurrence within five years of any previous disqualification or imposition of a penalty, 15 percent of the total amount of benefits the claimant received to which the claimant was not entitled;

(b) For the third or fourth occurrence within five years of any previous disqualification or imposition of penalty, 20 percent of the total amount of benefits the claimant received to which the claimant was not entitled;

(c) For the fifth or sixth occurrence within five years of any previous disqualification or imposition of penalty, 25 percent of the total amount of benefits the claimant received to which the claimant was not entitled;

(d) For the seventh or greater occurrence within five years of any previous disqualification or imposition of penalty, 30 percent of the total amount of benefits the claimant received to which the claimant was not entitled;

(e) In cases of forgery or identity theft, 30 percent of the amount of benefits the claimant received to which the claimant was not entitled, regardless of the number of occurrences.

(4) Any amount subject to recovery and any penalty due under this rule, OAR 471-070-1510, and ORS 657B.120 may be collected by the director in a civil action against the claimant brought in the name of the director.

[Stat. Auth.: ORS 657B.120, 657B.340; Stats. Implemented: ORS 657B.120]

471-070-2000 Self-Employed: Definition (Final 1/31/22)

"Taxable income from self-employment" means Oregon net income from self-employment or earned as an independent contractor as reported on the Oregon personal income tax return.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.130, 657B.150]

471-070-2005 Self-Employed: Eligibility (Final 1/31/22)

A self-employed individual, as defined in ORS 657B.010(22), may elect coverage under the Paid Family and Medical Leave Insurance program if the individual:

(1) Earns at least $1,000 in taxable income from self-employment in the preceding calendar year;

(2) Completes a notice of election and provides the required documentation as described in OAR 471-070-2010; and

(3) Is not terminated from elective coverage within the previous three calendar years, in accordance with OAR 471-070-2170.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.130]

471-070-2010 Self-Employed: Election Requirements and Effective Date (Final 1/31/22)

(1) An eligible self-employed individual may apply to elect coverage under the Paid Family and Medical Leave Insurance program at any time.

(2) A notice to elect must be in writing and submitted online or in another method approved by the department. To be reviewed, the notice must be complete and include:

(a) Information about the individual applying for elective coverage, including:

(A) First and last name;

(B) Social Security Number or Individual Taxpayer Identification Number; and

(C) Address and contact information.

(b) Information on the individual's business, when applicable, including:

(A) Business Identification Number;

(B) Business name; and

(C) Business address and contact information.

(c) The individual's total taxable income from self-employment for the preceding calendar year;

(d) Documentation verifying:

(A) The individual's identity and

(B) The individual's taxable income from self-employment, including but not limited to, income reported to Oregon on the personal income tax return from the preceding calendar year.

(e) An agreement to:

(A) Pay contributions for a period of not less than three years;

(B) Provide any information and documentation on the individual's taxable income from self-employment that the department deems necessary for the administration of the elective coverage, including but not limited to, a copy of the Oregon personal income tax return annually; and

(C) Provide additional information to confirm eligibility for elective coverage, if requested by the department;

(f) Acknowledgement of the conditions for termination of self-employed elective coverage established in OAR 471-070-2170, including, but not limited to, the condition that coverage cannot be terminated until coverage has been in effect for at least three years.

(3) The department may deny a notice to elect if:

(a) The notice does not include the required information and documentation in accordance with this rule or

(b) The self-employed individual does not meet the eligibility requirements in OAR 471-070-2005 or other applicable law.

(4) Approved elective coverage becomes effective on the date the complete notice to elect was received with the department.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.130]

471-070-2030 Self-Employed: Contribution Payments and Reporting Requirements (Final 1/31/22)

(1) A self-employed individual who elects coverage under ORS 657B.130 must contribute to the Paid Family Medical Leave Insurance (PFMLI) Trust Fund in an amount that is equal to 60 percent of the total contribution rate described in OAR 471-070-3010 up to the taxable income from self-employment that is equal to the calendar year maximum wage amount described in OAR 471-070-3010.

(2) Total contribution payments will be based on the individual's total taxable income from self-employment from the tax return required to be filed in the previous calendar year and generally shall be divided into four quarterly contribution payments. The contribution payments will begin in the quarter the self-employed election is made and continue through the first quarter of the next year. If a contribution is due for only part of a quarter, the contribution amount shall be prorated based on the number of calendar days that the elective coverage is in effect.

Example 1: Grace, a self-employed individual elects PFMLI coverage on May 1, 2024. Grace earned $80,000 in taxable income from self-employment in 2023. Assuming a total contribution rate of one percent, Grace's four quarterly contribution amounts due are calculated as follows:

The first payment period of May 1 through June 30 (second quarter for calendar year 2024), will be $80.44 [($80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters) x 61/91 calendar days in the quarter].

The second payment period of July 1 through September 30 (third quarter for calendar year 2024), will be $120 ($80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).

The third payment period of October 1 through December 31 (fourth quarter for calendar year 2024), will be $120 ($80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).

The fourth payment period of January 1 through March 30 (first quarter for calendar year 2025), will be $120 ($80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).

Example 2: Bert, a self-employed individual, elects PFMLI coverage on August 22, 2024. Bert earned $40,000 in taxable income from self-employment in 2023. Because Bert's election is made during the third quarter of 2024, Bert only has three quarterly payments (third quarter of 2023, fourth quarter of 2023, and first quarter of 2024) until a new

quarterly amount is determined. Assuming a total contribution rate of one percent, Bert's three quarterly contribution amounts due are calculated as follows:

The first payment period of July 1 through September 30 (third quarter for calendar year 2024), will be $26.09 [($40,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters) x 40/92 calendar days in the quarter].

The second payment period of October 1 through December 31 (fourth quarter for calendar year 2024), will be $60 ($40,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).

The third payment period of January 1 through March 30 (first quarter for calendar year 2025), will be $60 ($40,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).

Bert's next payment will be based on the taxable income from self-employment in 2024.

(3) Quarterly contributions shall be due and payable in accordance with OAR 471-070-3030.

(4) The date of receipt of contributions transmitted through the mail or private express carrier shall be determined as provided in ORS 293.660. The date of receipt shall be used in the calculation of interest charges, delinquencies, penalties or other sanctions provided by law.

(5) The self-employed individual must annually report information and provide documentation provided in subsection (a) and (b) of this section the department deems necessary for the administrative of elective coverage. Failure to provide the information by December 31 will result in a termination of the self-employed individual's election of PFMLI coverage.

(a) Except as specified in subsection (b) of this section, a self-employed individual must annually report to the department the prior year's taxable income from self-employment required to be filed and provide their Oregon personal income tax return to the department on or before April 30 of each year.

(b) If a self-employed individual fails to provide their Oregon personal income tax return, the department will use the information on the individual's last tax return filed to calculate quarterly contribution payments that begin in the second quarter. The department will adjust the quarterly contribution payment amounts due, if appropriate, when the prior year's tax return is filed and provided to the department on or before December 31 of each year.

Example 3: Tobi, a self-employed individual, elects PFMLI coverage on June 5, 2023 and provides his 2022 Oregon personal income tax return showing $40,000 of taxable income from self-employment. Assuming a total contribution rate of one percent, Tobi's quarterly contribution amounts due are $60 ($40,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).

By April 30, 2024, Tobi needs to provide to the department their 2023 Oregon personal income tax return; however, Tobi is filing an extension for their 2023 Oregon personal income tax return and therefore does not have a tax return to provide to the department. Since the department does not have the prior year's taxable income from Tobi's self-employment, the department calculates Tobi's contribution amount for 2024 based on their 2022 Oregon personal income tax return on file. Tobi will continue to pay $60 each quarter until the 2023 Oregon personal income tax return is received.

Tobi provides to the department their 2023 Oregon personal income tax on September 22, 2024 which shows Tobi's taxable income from self-employment for 2023 was actually $50,000. Assuming a total contribution rate of one percent, Tobi's quarterly contribution amounts that should have been paid starting with the second quarter of 2024 was $75 ($50,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters). By September 22, 2024, Tobi has only made the first quarterly payment (period of April 1 through June 30) of $60. The department adjusts the amount Tobi should have paid for contributions by $15 ($75 assessed minus the $60 paid) and bills Tobi for the difference. The department updates Tobi's contribution amount for the remaining quarters to $75.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 293.660, 657B.130, 657B.150]

471-070-2100 Tribal Government: Election Requirements and Effective Date (Final 10/6/22)

(1) A tribal government may elect coverage at any time under the Paid Family and Medical Leave Insurance (PFMLI) program in accordance with ORS 657B.130(4). The tribal government must elect coverage separately for each business owned by the tribal government.

(2) A tribal government election of the PFMLI program coverage must be in writing and must be accomplished through an intergovernmental agreement between the State of Oregon acting by and through the Employment Department. The tribal government must agree to pay contributions for a period of not less than three years.

(3) A tribal government that has elected coverage by entering an agreement pursuant to section (2) of this rule shall be considered an "employer" and employees of the tribal government shall be considered "employees" under ORS chapter 657B and related

administrative rules. The tribal government and its employees shall be subject to all rights and responsibilities therein, including, but not limited to:

(a) Payment of contributions at the same rate and amount as employers and employees as specified in ORS 657B.150 and applicable administrative rules.

(b) Filing and paying quarterly as required on the Oregon Quarterly Tax Report, including detailing the PFMLI portion of all PFMLI subject wages, the employee count, and the employee and employer PFMLI contributions due in accordance with ORS 657B.150 and OAR 471-070-3030.

(c) Receipt of PFMLI benefit amounts by eligible employees of tribal governments that have elected coverage in accordance with ORS 657B.050(1) and (2) and related administrative rules.

(d) Collection by the department of erroneous payments of benefits to employees of tribal governments in accordance with provisions for employees in ORS 657B.120 and related administrative rules.

(e) Job protection for eligible employees of tribal governments as specified in ORS 657B.060 and applicable administrative rules.

(f) Collection requirements or methods and applicable penalties on delinquent payments of contributions and recovery of improper benefit payments as described in ORS 657B.280 through 657B.330 and applicable administrative rules.

(4) Approved elective coverage becomes effective on the date the intergovernmental agreement is signed by the department and the tribal government.

(5) To the extent allowed by law, the terms of a PFMLI tribal government intergovernmental agreement may supersede this rule and OAR 471-070-2180, if both parties agree.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.130; Stats. Implemented: ORS 657B.130, 657B.150]

471-070-2170 Self-Employed: Termination (Final 1/31/22)

(1) A self-employed individual may terminate elective coverage by filing a written notice online or in another method approved by the department.

(2) A self-employed individual can terminate elective coverage any time after the coverage has been in effect for three years or longer. The termination shall take effect 30 days after the notice to terminate is received by the department, unless a later date is requested by the self-employed individual on the written notice.

(3) A self-employed individual may terminate elective coverage that has been in effect for less than three years only in the following circumstances:

(a) The individual has filed a voluntary or involuntary bankruptcy petition or

(b) The individual changed employment status or is otherwise no longer eligible for elective coverage, in accordance with OAR 471-070-2005.

(4) The notice to terminate elective coverage under (3) of this rule must provide the following information:

(a) The reason for the termination and

(b) Any supporting documentation.

(5) The department may terminate a self-employed individual's elective coverage if the individual is delinquent on contributions in accordance with OAR 471-070-2030.

(6) When the department determines that a self-employed individual's election shall be terminated under section (5) of this rule, the department will send the individual a letter to terminate at their last known address or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records, which provides:

(a) The reason for the termination;

(b) Instructions for how to resolve issues leading to the termination; and

(c) The date that the termination will take effect absent action on behalf of the self-employed individual.

(7) All contributions payable in accordance with OAR 471-070-2030 are due immediately upon termination of coverage.

(8) A self-employed individual whose elective coverage is terminated by the department may not reelect coverage as a self-employed individual for three years following the date of termination.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.130]

471-070-2180 Tribal Government: Termination of Elective Coverage (Final 10/6/22)

(1) A tribal government may terminate elective coverage by filing a written notice with the department requesting a termination of the intergovernmental agreement.

(2) A tribal government can terminate elective coverage any time after the coverage has been in effect for three years or longer. The termination shall take effect 30

calendar days after the notice to terminate is received by the department, unless a later date is requested by the tribal government in the written notice.

(3) A tribal government may terminate elective coverage that has been in effect for less than three years if a voluntary or involuntary bankruptcy petition has been filed for the covered business. The termination shall take effect on the date the department receives the written notice and supporting documentation of the bankruptcy petition.

(4) All contributions payable are due immediately upon termination of coverage.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.130; Stats. Implemented: ORS 657B.130]

471-070-2200 Equivalent Plans: Definitions (Final 4/21/22 and Amended and Final 8/22/22)

(1) “Administrative Costs” means the costs incurred by an employer directly related to administering an equivalent plan which include, but are not limited to, cost for accounting, recordkeeping, insurance policy premiums, legal expenses, and labor for human resources’ employee interactions related to the equivalent plan. Administrative costs do not include rent, utilities, office supplies or equipment, executive wages, cost of benefits, or other costs not immediately related to the administration of the equivalent plan.

(2) “Administrator” means either an insurance carrier/company, third-party administrator, or payroll company acting on behalf of an employer to provide administration and oversight of an approved equivalent plan.

(3) “Declaration of Intent” means a legally binding, signed agreement from an employer documenting the employer’s intent and commitment to provide an approved equivalent plan with an effective date of September 3, 2023.

(4) “Employer administered equivalent plan” means an equivalent plan in which the employer offers a private plan where the employer assumes all financial risk associated with the benefits and administration of the equivalent plan, whether it is administered by the employer or a third-party administrator.

(5) “Equivalent plan” means a Paid Family and Medical Leave Insurance (PFMLI) plan approved by the department that provides benefits that are equal to or greater than the benefits provided by the Oregon PFMLI program established under ORS 657B.340.

(6) “Fully insured equivalent plan” means an equivalent plan in which the employer purchases an insurance policy from an insurance company approved to sell PFMLI products by the Oregon Department of Consumer and Business Services (DCBS)

Division of Financial Regulation and the benefits related to the plan are administered through the insurance policy.

(7) "Successor in interest" means a successor to another's interest in property, organization, trade, or business that is carried on and controlled substantially as it was before the transfer in which there is a complete transfer to the successor of the organization, trade, or business, and substantially all of its assets.

(8) "Substantial reduction in personnel," as used in ORS 657B.260 and applicable administrative rules, means a situation in which the number of employees employed by the predecessor of the organization, trade, or business is reduced by at least 33 percent by the successor in interest.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.210, 657B.260, 657B.340]

471-070-2205 Equivalent Plans: Declaration of Intent to Obtain Approval of Equivalent Plan (Final 8/22/22)

(1) Approved equivalent plans become effective on September 3, 2023, at the same time Paid Family and Medical Leave Insurance (PFMLI) benefits may first be paid to eligible employees. However, the department is accepting equivalent plan applications beginning September 6, 2022.

(2) No later than May 31, 2023, an employer who wishes to provide an equivalent plan with an effective date of September 3, 2023 must submit to the department an equivalent plan application that meets the requirements of OAR 471-070-2210.

(3) Equivalent plan application:

(a)To be exempt from paying required quarterly contribution payments to the Oregon PFMLI program in accordance with ORS 657B.150 and OAR 471-070-3030(6), an employer that is going to provide its employees with an equivalent plan as of September 3, 2023, must receive approval of an equivalent plan application. The equivalent plan application must be submitted to the department by the following dates:

(A) By November 30, 2022, to be exempt from paying and remitting the contribution payments beginning with the first quarter that starts January 1, 2023.

(B) By February 28, 2023, to be exempt from paying and remitting contribution payments beginning with the second quarter that starts April 1, 2023.

(C) By May 31, 2023, to be exempt from paying and remitting contribution payments beginning with the third quarter that starts July 1, 2023.

(b) For equivalent plan applications submitted on or after June 1, 2023 and before July 1, 2023, the equivalent plan application, if approved by the department, will be exempt from paying and remitting contribution payments beginning with the fourth quarter that starts October 1, 2023.

(c) For equivalent plan applications submitted on or after July 1, 2023, the equivalent plan application must follow OAR 471-070-2210, and the employer is liable for all contributions required to be paid or remitted in accordance with ORS 657B.150 prior to the effective date of the equivalent plan.

(4) Declaration of Intent:

(a) If an employer is unable to submit an equivalent plan application by the dates described in section (3)(a) of this rule, the department is allowing an interim solution under which the employer may submit a signed and certified Declaration of Intent acknowledging and agreeing to the following conditions:

(A) Beginning January 1, 2023, and continuing until the department has approved the equivalent plan application, the employer shall:

(i) Deduct employee contributions from the subject wages of each employee in an amount that is equal to 60 percent of the total contribution rate determined in OAR 471-070-3010; or

(ii) If the employer is making the employee contributions in part or in full on the employee's behalf, place in trust for the State of Oregon an amount that is equal to 60 percent of the total contribution rate determined in OAR 471-070-3010.

(B) The employer shall hold any moneys collected or to be contributed on behalf of the employee under this section in trust for the State of Oregon but will not be required to pay employer contributions or remit the withheld employee contributions to the department, unless the department does not receive an equivalent plan application as described in section (3) of this rule or the Declaration of Intent is cancelled as described in this subsection and sections (5) and (6) of this rule. If the equivalent plan application as described in section (3) of this rule is approved by the department, the money collected from the employees may either be returned to the employees or be used for administrative costs as defined in OAR 471-070-2200 and benefits under an approved equivalent plan and cannot be considered part of an employer's assets for any purpose.

(C) The employer must submit the Declaration of Intent to the department no later than November 30, 2022 to be exempt from paying and remitting contribution payments beginning with the first quarter that starts January 1, 2023.

(D) The employer must submit an equivalent plan application no later than the May 31, 2023, deadline as described in section (3) of this rule.

(b) If an equivalent plan application is not received by the department by May 31, 2023, the Declaration of Intent is cancelled and no longer effective. The employer is then liable for paying and remitting an amount equal to the sum of all unpaid employer contributions that were held in trust for the State of Oregon and all unpaid employee contributions due for periods beginning on or after January 1, 2023, and is subject to penalties and interest as described in section (6) of this rule.

(5) An employer that submitted an equivalent plan application or a Declaration of Intent as described in sections (3) and (4) of this rule, may cancel the request for approval or the Declaration of Intent by contacting the department. The employer is then liable for paying and remitting an amount equal to the sum of all unpaid employer and employee contribution payments due for periods beginning on or after January 1, 2023 and is subject to penalties and interest as described in section (7) of this rule.

(6) The department may cancel the approval of an equivalent plan or Declaration of Intent prior to September 3, 2023, for reasons that include, but are not limited to:

(a) Misuse of employee contributions withheld or retained by the employer;

(b) Failure to adhere to applicable PFMLI program requirements, including but not limited to OAR 471-070-2220;

(c) Withheld employee contributions that were greater than the employee contributions that would have been charged to the employees under ORS 657B.150;

(d) Failure to respond timely to the department's reasonable inquires for information about the equivalent plan or Declaration of Intent; or

(e) Failure to submit an equivalent plan application or receive approval of the application by the department as described in section (3) of this rule.

(7) (a) As of the date the equivalent plan approval or the Declaration of Intent is canceled or denied, the employer must pay and remit immediately to the department all unpaid contributions due for periods beginning on or after

January 1, 2023, and is subject to penalties and interest in accordance with ORS 657B.320 and related administrative rules.

(b) An employer that is required to pay or remit contributions, penalties, and interests, in accordance with this section or sections (4), (5), or (6) of this rule may remit employee contributions previously withheld, that were held in trust for the payment of employee contributions due, but the employer is prohibited from withholding additional contributions from employees retroactively to pay any other amounts due. Employee contributions may not be used to pay penalties and interest imposed on the employer.

(8) An employer that has received approval of an equivalent plan application by one of the deadlines in section (3) of this rule may withhold employee contributions in accordance with ORS 657B.210 beginning January 1, 2023, but the employer will not be required to pay employer contributions or remit employee contributions in accordance with ORS 657B.150, unless the equivalent plan application approval is subsequently canceled as described in sections (5) and (6) of this rule.

(9) Section (3) of this rule is in effect until September 3, 2023.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.340; Stats. Implemented: 657B.210]

471-070-2210 Equivalent Plans: Application Requirements and Effective Date (Final 4/21/22)

(1) An employer must submit a separate application and receive department approval for an employer administered equivalent plan or a fully insured equivalent plan for each Business Identification Number. The application must be submitted to the department online or by another method prescribed by the department. An incomplete application will not be reviewed by the department.

(2) For an equivalent plan to be reviewed by the department, the equivalent plan application must include the following:

(a) Information about the employer applying for the equivalent plan, including:

(A) Business Identification Number and Federal Employer Identification Number;

(B) Business name;

(C) Business address; and

(D) Business contact's name and contact information;

(b) A copy of the employer administered equivalent plan or in the case of a fully insured equivalent plan, a copy of the insurance policy or the insurance product and the selected variables the employer is choosing;

(c) A completed questionnaire attesting that the plan meets all requirements for equivalent plans; and

(d) Other information as required on the department's equivalent plan application form.

(3) Employers must pay a nonrefundable $250 application fee with every:

(a) Application for approval of a new equivalent plan; or

(b) Application for reapproval or amendment of an equivalent plan that has substantive amendments to the equivalent plan that was originally approved by the department.

(4) Employers must pay a nonrefundable $150 application fee with every application for reapproval of an equivalent plan that has no changes or only non-substantive amendments to the equivalent plan that was originally approved by the department.

(5) There is no fee for either of the following:

(a) Application for amendment of an equivalent plan that has substantive or non-substantive amendments to the equivalent plan that were required by Oregon, local, or federal law changes or changes to the contribution rate and maximum wage amount as described in OAR 471-070-3010;

(b) Application for amendment of an equivalent plan that has non-substantive amendments to the equivalent plan that was originally approved by the department.

(6) "Substantive amendments" to an equivalent plan that was originally approved by the department as used in sections (3), (5), and (11) of this rule include, but are not limited to, any of the following:

(a) Changing from a fully insured equivalent plan to an employer administered equivalent plan;

(b) Changing from an employer administered equivalent plan to a fully insured equivalent plan;

(c) Changing the fully insured equivalent plan insurance policy to reduce benefits or leave types, regardless of whether the new plan is from the same insurance provider or another insurance provider;

(d) Changing the questionnaire answers for the equivalent plan; or

(e) Changing the employer administered equivalent plan to reduce benefits or leave types.

(7) "Non-substantive amendments" as used in section (4), (5), and (11) of this rule include, but are not limited to, any of the following:

(a) Updating solvency documents for employer administered plans;

(b) Updating the application for an equivalent plan that does not amend the equivalent plan, includes, but is not limited to, the following:

(A) Changing business or contact information, or

(B) Correcting typographical errors; or

(c) Increasing benefits or leave types, regardless of whether the new plan is from the same insurance provider or another insurance provider.

(8) Approved equivalent plans become effective:

(a) For new equivalent plans, on the first day of the calendar quarter immediately following the date of approval by the department; and

(b) For amendments to a previously approved equivalent plan, on the first day of the calendar quarter immediately following the date of approval of the amendment by the department. If approval of the amendment is denied, the employer must continue to follow the originally approved equivalent plan.

(9) An application for reapproval must be submitted by an employer annually for a three-year period following the original effective date of the plan. The application for reapproval is due 30 days prior to the anniversary of the original effective date of the approved equivalent plan

Example: ABC Corporation submitted an equivalent plan application to the department on February 4, 2023. The department sent an approval letter for the equivalent plan that was dated March 5, 2023 and the equivalent plan becomes effective on April 1, 2023. The application for reapproval is due on March 1 of 2024, 2025, and 2026; 30 days prior from the original anniversary of the effective date of April 1st.

(10) For the purposes of determining the reapproval requirement, the equivalent plan approval date and effective date are the first day of the calendar quarter immediately following the date of the original approval letter from the department.

(11) After the three-year period following the original effective date of the plan, an application for reapproval must be submitted anytime a substantive amendment occurs. When a substantive amendment occurs after the three-year period, a reapproval application must be submitted by an employer as described in section (9) of this rule.

For a non-substantive amendments, a copy of the revised equivalent plan must be submitted to the department at the time the change becomes effective.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.220, 657B.340; Stats. Implemented: ORS 657B.210, 657B.220, 657B.230]

471-070-2220 Equivalent Plans: Plan Requirements (Final 4/21/22 and Amended and Final 8/22/22)

In order for an equivalent plan to be approved by the department, the plan must at a minimum:

(1) Cover all Oregon employees who have been continuously employed with the employer for at least 30 calendar days, regardless of hours worked, including full-time, part-time, temporary workers hired by the employer, and replacement employees hired to temporarily replace eligible employees during PFMLI leave. Any employees who were eligible for benefits under their previous Oregon employer's equivalent plan, who begin working for a new employer with an approved equivalent plan must be automatically covered for benefits under the equivalent plan offered by the new employer as described in ORS 657B.250;

(2) Provide family leave as described in ORS 657B.010(17) and applicable administrative rules;

(3) Provide medical leave as described in ORS 657B.010(19) and applicable administrative rules;

(4) Provide safe leave as described in ORS 657B.010(21) and applicable administrative rules;

(5) Allow eligible employees to take family leave, medical leave, or safe leave in a benefit year for periods of time equal to or longer than the duration of leave provided under ORS 657B.020;

(6) Provide eligible employees weekly benefit amounts equal to or greater than benefits provided under ORS 657B.050;

(7) Allow family leave, medical leave, or safe leave to be taken in increments or nonconsecutive periods as provided under ORS 657B.090;

(8) Impose no additional conditions or restrictions on the use of family leave, medical leave, or safe leave beyond those explicitly authorized by ORS chapter 657B and applicable administrative rules;

(9) Provide that the employee contributions withheld by an equivalent plan shall not be greater than the employee contributions that would be charged to employees under ORS 657B.150 and determined annually under OAR 471-070-3010;

(10) Ensure employee contributions that are received or retained under an equivalent plan are used solely for equivalent plan expenses, are not considered part of an employer's assets for any purpose, and are held separately from all other employer funds;

(11) Meet all equivalent plan requirements provided in ORS 657B.210 and applicable administrative rules;

(12) Provide for decisions on benefit claims, to be in writing, either in hard copy or electronically if the employee has opted for electronic notification. Decisions on benefit claim approvals must include the amount of leave approved, the weekly benefit amount, and a statement indicating how the employee may contact the department to request the eligible employee's average weekly wage amount if the employee believes the benefit amount may be incorrect. Denial decisions must include the reason(s) for denial of benefits along with an explanation of an employee's right to appeal the decision and instructions on how to submit an appeal.

(13) Provide an appeal process to review benefit decisions when requested by an employee that also requires the employer or administrator to issue a written decision. The employee must have at least 20 calendar days from the date of the written denial to request an appeal with the employer or administrator, if applicable, or as soon as practicable if there is good cause for the delay beyond the 20 calendar days as described in OAR 471-070-2400(7). The employee, and the employer, or administrator have 20 calendar days from the date the appeal is received, or as soon as practicable if there is good cause as described in OAR 471-070-2400(7), to resolve the appeal and for the employer or administrator to issue a written appeal determination letter along with an explanation of the department's dispute resolution process as described in OAR 471-070-2400 if an appeal is denied;

(14) Provide that the equivalent plan employer or administrator must make all reasonable efforts to make a decision on whether to allow the claim and issue the first payment of any benefits to an employee within two weeks after receiving the claim or the start of leave, whichever is later. Subsequent benefit payments must be provided weekly by a fully insured equivalent plan and benefit payments may be paid according to the existing paycheck schedule for employees under an employer administered equivalent plan; and

(15) Ensure a written notice poster for the equivalent plan as described in OAR 471-070-2330, will be given to all eligible employees, at the time of hire and each time the policy or procedure changes, in the language that the employer typically uses to communicate with the employee.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.210]

471-070-2230 Equivalent Plans: Reporting Requirements (Final 8/22/22)

(1) Employers with an approved equivalent plan are required to file the Oregon Quarterly Tax Report detailing all Paid Family and Medical Leave Insurance (PFMLI) subject wages and the employee count as defined in OAR 471-070-3150 and the Oregon Employee Detail report detailing PFMLI subject wages for each employee in accordance with OAR 471-070-3030.

(2) Employers with an approved equivalent plan must also file annual aggregate benefit usage reports with the department online or in another format approved by the department. The report is due on or before the last day of the month that follows the close of the calendar year or along with the application for reapproval process. The report shall include, but is not limited to, the following:

(a) Number of benefit applications received during the year and the qualifying leave purpose;

(b) Number of benefit applications approved during the year, the qualifying leave purpose, and total amount of leave; and

(c) Number of benefit applications denied during the year and the qualifying purpose and the number of appeals made on denials and the outcome of the appeals.

(3) If the employer assumes only part of the costs of the approved equivalent plan and withholds employee contributions as described in ORS 657B.210(5) the employer must additionally report the aggregate financial information with the department online or in another format approved by the department. That report is due on or before the last day of the month that follows the close of the calendar year or along with the application for reapproval process. The report shall include, but is not limited to, the following:

(a) Total amount of employee contributions withheld during the year;

(b) Total plan expenses paid during the year, including total benefit amounts paid by an employer administered equivalent plan, and total administrative costs, as applicable; and

(c) Balance of employee contributions held in trust at end of the year.

(4) Employers or administrators must respond within 10 calendar days from the date of any notice from the department requesting information about current or prior employees employed by an equivalent plan employer in the base year. The employer or administrator must respond to the department's notice either online or by another method approved by the department. The notice may request but is not limited to the following:

(a) If a benefit year was established;

(b) The start and end date of the established benefit year;

(c) Total amount of benefits paid in the benefit year;

(d) The qualifying leave purpose; and

(e) The amount of qualifying leave taken in the benefit year.

(5) Employers must provide the reports required under sections (2) and (3) of this rule to the department following withdrawal or termination of an approved equivalent plan within 30 calendar days after the effective date as described in OAR 471-070-2450 and 471-070-2460.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.210, 657B.250]

471-070-2240 Equivalent Plans: Recordkeeping and Department Review (Final 4/21/22)

(1) Employers with an approved equivalent plan must, for a period of six years from the date the equivalent plan became effective, retain in any format in the employer's records all of the following related to the equivalent plan:

(a) Oregon Quarterly Tax Reports and other reports as required in OAR 471-070-3030(2);

(b) Information and records relating to the equivalent plan, including:

(A) Any amendments to the equivalent plan;

(B) Financial information regarding the employer's administrative cost, maintenance, and claim documentation for the plan; and

(C) Copy of any written notice(s) provided to employees about the plan as required in ORS 657B.220(11)(c) and applicable administrative rules.

(c) Employee benefit applications with the current status of pending, approved, or denied along with the reason for denial;

(d) Information regarding any disputes and appeals; and

(e) Records regarding each employee's leave taken and any benefits paid or denied and reason for denial under the equivalent plan.

(2) The records identified in section (1) of this rule must be provided to the department for review upon request, with reasonable notice to the employer. The department may request to review the records at any time.

[Stat. Auth.: ORS 657B.220, 657B.340; Stats. Implemented: ORS 657B.210, 657B.220]

471-070-2250 Equivalent Plans: Employee Coverage Requirements (Final 8/22/22)

(1) An employer with an approved equivalent plan is required to cover all employees under the plan as follows:

(a) All employees previously covered under the state plan established under ORS 657B.340, must be covered by the employer's equivalent plan within 30 calendar days of their start date.

(b) All employees previously covered by an employer that had an equivalent plan approved under ORS 657B.210, must be covered by the new employer's equivalent plan immediately as of their start date.

(c) All employees who were not previously covered as described under subsections (a) or (b) of this section, such as employees new to the workforce, relocating from another state, or with a gap in coverage exceeding 30 calendar days must be covered by the employer's equivalent plan within 30 calendar days of their start date.

(2) An employer must specify in their equivalent plan when employees are covered under the plan, which must be in accordance with section (1) of this rule.

(3) An employee described in subsection (1)(a) of this rule, who is not covered under an equivalent plan for any portion of time within the employee's first 30 calendar days, maintains coverage under the state plan established under ORS 657B.340 for that 30 calendar day period.

[Stat. Auth.: ORS 657B. 210, 657B. 340; Stats. Implemented: 657B.210]

471-070-2260 Equivalent Plans: Benefit Amounts and Claims (Final 8/22/22)

(1) Employers with an approved equivalent plan are required to provide covered employees with benefits that are equal to or greater than benefits provided under the Oregon Paid Family and Medical Leave Insurance (PFMLI) program, including, but not limited to:

(a) The duration of leave for qualifying purposes as established in ORS 657B.020 and related administrative rules; and

(b) The amount of benefits established in ORS 657B.050 and related administrative rules.

(2) Benefits under an approved equivalent plan shall be administered using the benefit year defined in OR Laws 2022, Chapter 24, Section 1 and related administrative rules.

(3) When an employee applies for benefits under an equivalent plan, the employer or administrator may request consent from the employee to obtain benefit information from the department in order to ensure benefits are provided in accordance with section (1) of this rule.

(a) If consent is given by the employee, the employer or plan administrator may request from the department the benefit information online or by another method approved by the department. The request shall include:

(A) The employee's name;

(B) The employee's Social Security Number or Individual Taxpayer Identification Number;

(C) The employee's contact information consisting at a minimum, the mailing address, telephone number, and email address;

(b) If consent is not given by the employee, the employee may also request the benefit information from the department online or by another method approved by the department.

(4) If the department receives a request for benefit information in accordance with section (3) of this rule, the department will respond to the request for information within 10 calendar days of the date of the request. If the department is not able to provide information for any reason, the department may contact the employee directly to seek the necessary information. This includes, but is not limited to:

(a) Requesting missing subject wage information;

(b) Correcting subject wage information; or

(c) Correcting taxpayer identification number information.

[Stat. Auth.: ORS 657B.210; Stats. Implemented: 657B.210]

471-070-2270 Equivalent Plans: Proration of Benefit Amounts for Simultaneous Coverage (Final 8/22/22)

(1) An employee is considered to have simultaneous coverage when the employee is covered by more than one employer's equivalent plan at the same time or is covered by the state plan established in ORS 657B.340 and at least one employer with an equivalent plan, at the same time. An employee does not have simultaneous coverage if they work for multiple employers covered by the state plan.

(2) An employee with simultaneous coverage at the start of a leave event shall apply separately under all plans they are covered under and from which they are taking leave by following the respective application guidelines for each plan. An equivalent plan employer may ask an employee whether the employee has additional Paid Family and Medical Leave Insurance (PFMLI) coverage but may not require that the employee provide details on the other employers or the plans. The employer, employee, or administrator may request information from the department as described in OAR 471-070-2260.

(3) Each equivalent plan is required to pay benefit amounts that are equal to or greater than the benefits offered under the state plan as described in OAR 471-070-2260 and ORS 657B.050 and applicable administrative rules. Upon request, the department may provide information to equivalent plan employers or administrators regarding prorated benefit amounts, if the department is aware of simultaneous coverage. Each respective plan benefit amount shall be prorated by the average number of work days typically worked per week by the claimant for each respective plan rounded to the nearest whole cent.

(a) The state plan shall pay benefits based on the prorated weekly benefit amount and shall further prorate the weekly benefit amount as described in OAR 471-070-1440 for leave taken in work day increments.

(b) The equivalent plan shall pay benefits equal to or greater than the prorated weekly benefit amount and may further prorate the weekly benefit amount when leave is taken in work day increments based on the number of work days of leave taken in the work week.

Example 1: Alondra is employed by two employers. One employer is a state plan employer and the other is an equivalent plan employer. Alondra typically works five days a week for the state plan employer and three days a week for the equivalent plan employer. Alondra is unable to work for both employers due to the need to provide care for a seriously ill parent for the next five weeks. Alondra must apply for benefits separately for the state plan and the equivalent plan. Alondra's weekly benefit amount is $1,040. Alondra will receive two separate benefit payments each week. The state plan

will pay the prorated weekly benefit in the amount of $650 [($1,040 weekly benefit amount divided by 8 total days worked at both jobs) x 5 days worked for the state plan employer]. The equivalent plan employer will pay at least the prorated weekly benefit in the amount of $390 [($1,040 weekly benefit amount divided by 8 total days worked at both jobs) x 3 days worked for the equivalent plan employer].

Example 2: Same typical work schedule and weekly benefit amount as in example 1; however, Alondra is unable to work for the state plan employer one day a week and is unable to work for the equivalent plan employer one day a week (for a total of two days of leave each week) to provide care for a seriously ill parent for the next five weeks. Alondra must apply for benefits separately for the state plan and the equivalent plan. Alondra's weekly benefit amount is still the same at $1,040 (the state plan prorated weekly benefit amount is $650 and the equivalent plan prorated weekly benefit amount is at least $390). Because the leave is taken in work day increments and not an entire work week, once the prorated weekly benefit amount is determined, the state plan will further prorate the state's weekly benefit amount by the number of work days on leave. The state plan will pay weekly benefits in the amount of $130 [($650 state plan portion of the weekly benefit amount divided by 5 work days) x 1 day on leave in the work week)]. The equivalent plan employer may choose to further prorate the weekly benefit amount by the number of work days on leave [($390 equivalent plan portion of the weekly benefit amount divided by 3 work days) x 1 day on leave in the work week) for a minimum weekly benefit amount of $130].

(4) The department shall calculate prorated benefit amounts when:

(a) The department receives an application for an employee that provides current employment information from a state plan employer(s) and one or more equivalent plan employer(s). The department shall verify coverage under the equivalent plan as described in OAR 471-070-2230 to determine a prorated benefit amount for benefits offered under the state plan.

(b) The department receives a request from an equivalent plan employer or administrator for an employee's benefit information in accordance with OAR 471-070-2260. The department shall verify whether the employee has coverage under more than one equivalent plan and, if covered, include the prorated benefit amounts to the employer. The department will provide prorated benefit amounts to any other equivalent plan employer or administrator that covers the employee also.

(5) Should the department receive information about changes in simultaneous coverage after information is provided to an equivalent plan employer or administrator in accordance with OAR 471-070-2260 and under this rule, the department shall calculate or re-calculate the proration, as applicable, and notify all employers, administrators, or

employees of the change. Any overpayments made by the Oregon PFMLI program shall be recovered in accordance with OAR 471-070-1510.

[Stat. Auth.: ORS 657B.210, 657B.340; Stats. Implemented: 657B.210]

471-070-2280 Equivalent Plans: Solvency Documentation (Final 4/21/22)

(1) For the purposes of ORS 657B.210, if an employer has an employer administered equivalent plan, the employer must furnish to the department with the initial application, reapproval, or substantive amendment proof of solvency by providing proof of sufficient assets, or a bond or an irrevocable letter of credit with the department named as the payee or beneficiary, issued by an insured institution, as defined in ORS 706.008.

(2) Proof of solvency must be in an amount equal to the contributions due or estimated to be due from the employee and employer for a period of three calendar quarters.

Example: PQR employer is applying for an employer administered equivalent plan. PQR's estimated Paid Family and Medical Leave Insurance subject wages for three calendar quarters is $750,000 ($200,000 the first quarter, $300,000 the second quarter, and $250,000 the third quarter). Assuming a total contribution rate of one percent, PQR's estimated employee and employer contributions is $7,500 ($750,000 subject wages multiplied by one percent). PQR must attach proof of solvency in the amount of $7,500 to the application.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.190, 657B.210]

471-070-2330 Equivalent Plans: Written Notice Poster to Employees of Rights and Duties (Final 8/22/22)

(1) The director shall make available to all employers offering an approved equivalent plan, a Paid Family and Medical Leave Insurance (PFMLI) notice poster template that meets the requirements under this rule.

(2) An employer that offers a plan approved under ORS 657B.210 shall provide a written notice poster to employees that includes:

(a) Information about benefits available under the approved plan, including the duration of leave;

(b) The process for filing a claim to receive benefits under the plan, including any employee notice requirements and penalties established by the employer in accordance with ORS 657B.040, if applicable;

(c) The process for an employee to appeal to the employer or administrator based on a decision made by their employer or administrator as described in OAR 471-070-2220(13);

(d) The process for employee deductions used to finance the cost of the plan, if any;

(e) An employee's right to dispute a benefit determination after the appeal with the employer or administrator in the manner determined by the director under ORS 657B.420 and OAR 471-070-2400;

(f) A statement that discrimination and retaliatory personnel actions against an employee for inquiring about the family and medical leave insurance program established under ORS 657B.340, giving notification of leave under the program, taking leave under the program or claiming family and medical leave insurance benefits are prohibited;

(g) The right to job protection and benefits continuation under ORS 657B.060;

(h) The right of an employee to bring a civil action or to file a complaint for violation of ORS 657B.060 or 657B.070; and

(i) A statement that any health information related to family leave, medical leave or safe leave provided to an employer or plan administrator by an employee is confidential and may not be released without the permission of the employee unless state or federal law or a court order permits or requires disclosure.

(3) (a) Each employer must display the notice poster in each of the employer's buildings or worksites in an area that is accessible to and regularly frequented by employees; and

(b) An employer with employee(s) assigned to remote work must additionally provide, by hand delivery, regular mail, or through an electronic delivery method, a copy of the notice poster to each employee assigned to remote work. The notice poster must be delivered or sent to each employee assigned to remote work upon the employee's hire or assignment to remote work.

(4) (a) For employers that have employee(s) working in buildings or worksites, the notice poster displayed under (3)(a) of this rule by the employer must be displayed in the language the employer typically uses to communicate with the employee. If the employer uses more than one language to communicate with employees assigned to a building or worksite, then the employer must display copies of the notice poster in each of the languages that the employer would typically use to communicate with the employees assigned to that building or worksite; and

(b) For employers that have employee(s) assigned to remote work, the notice poster provided under (3)(b) of this rule by the employer must be provided in

the language the employer typically uses to communicate with each employee assigned to remote work.

(5) An employer with an equivalent plan that does not provide coverage on the employee's first day of employment must additionally provide written notice poster to newly hired employees as described in OAR 471-070-1300.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B. 210, 657B. 340; Stats. Implemented: ORS 657B.070, 657B.210]

471-070-2400 Equivalent Plans: Disputes between an Equivalent Plan Employer and Employee, Request for Hearing (Final 4/21/22)

(1) As required by ORS 657B.420, the department will provide a dispute resolution process to assist in resolving disputes between employers or equivalent plan administrators, as applicable, and employees regarding coverage and benefits provided under an employer's approved equivalent plan if the appeal with the employer or administrator is not otherwise resolved.

(2) Prior to the department providing a dispute resolution process, the employee and employer or administrative must follow the equivalent plan appeal process described in OAR 471-070-2220(13).

(3) In the event that the employee and employer or administrator are unable to resolve an appeal on a coverage or benefit decision through the equivalent plan's appeal process, the employee may request dispute resolution assistance through the department. The dispute resolution request must:

(a) Be in writing, by phone, online, or in another format approved by the department.

(b) Include a copy of the employer or administrator appeal decision and any documents related to the dispute, including documents supporting or referencing the employer's or administrator's decision.

(c) Be received within 20 days of the issuance of the appeal decision, or as soon as practicable if there is good cause as described under section (7) of this rule, for the delay beyond 20 days.

(4) The department shall review the dispute resolution request and issue an advisory decision based on the equivalent plan benefit requirements within 20 days of the receipt of the dispute resolution request.

(5) If the employer or administrator does not comply with the department's administrative dispute decision, the employee may still submit a wage claim with the Oregon Bureau of Labor and Industries under ORS chapter 652.

(6) The payment of any benefits not placed in issue by the request for the administrative hearing shall continue during the appeal process.

(7) Good cause for late appeal or dispute resolution request includes, but is not limited to, the following:

(a) Difficulty obtaining verification;

(b) Factors or circumstances beyond the employee's, employer's, administrator, or department's reasonable control that prevented them from providing information;

(c) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents the employee or employer from timely providing information; or

(d) A demonstrable inability to reasonably access a means to respond in a timely manner, such as an inability to file a leave report due to a natural disaster or a significant and prolonged outage.

[Stat. Auth.: ORS 657B.420; Stats. Implemented: ORS 183.635, 657B.420]

471-070-2450 Equivalent Plans: Termination by the Department (Final 4/21/22)

(1) The department may terminate an employer's equivalent plan due to reasons that include, but are not limited to:

(a) Misuse of employee contributions withheld or retained by the employer;

(b) Failure to adhere to the department approved equivalent plan or to report substantive equivalent plan changes to the department;

(c) Failure to adhere to applicable Paid Family and Medical Leave Insurance (PFMLI) program requirements, including but not limited to OAR 471-070-2220 and equivalent plan reporting requirements;

(d) Failure to file for reapproval as required in OAR 471-070-2210;

(e) Employer insolvency;

(f) Termination of the insurance policy by the plan administrator; or

(g) Failure to respond timely to the department's reasonable inquires for information about the equivalent plan.

(2) If the plan administrator plans to terminate an employer's insurance policy, the administrator must provide notice to the department at least 30 days prior to the termination date. The termination date must be effective on the last day of a calendar quarter. The administrator's notice to the department should include:

(a) The original effective date of the fully insured equivalent plan policy; and

(b) The effective date of the termination requested by the administrator.

(3) If the department seeks to terminate an equivalent plan, the department will send the employer and administrator, if applicable, a notice of termination to the employer's last known address, or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records. The notice must provide:

(a) The reason(s) for the termination;

(b) Instructions on how to resolve the reason(s) for termination; and

(c) The effective date of termination, which must be the last day of a calendar quarter, absent further specified action by or on behalf of the employer.

(4) An employer may appeal the notice of termination in accordance with ORS 657B.410 and applicable administrative rules.

(5) The employer or administrator must notify all employees of any equivalent plan termination within ten business days of the date on the notice of termination sent by the department.

(6) All applicable equivalent plan requirements, including but not limited to those outlined within OAR 471-070-2220 and equivalent plan reporting requirements, remain in effect until the effective date of any termination.

(7) The employer or administrator must pay or continue to pay benefits under the terms of the equivalent plan to eligible employees that were approved for or receiving benefits under the equivalent plan on the effective date of termination until the total amount of the benefit claim is paid, the duration of leave ends, or the benefit year ends, whichever occurs first. If the employer or administrator does not pay the benefits, the employee may file an appeal with the employer as described in OAR 471-070-2220(13) and then a dispute resolution request with the department as described in OAR 471-070-2400.

(8) Within 30 days after the effective date of the termination of an equivalent plan, the employer must send to the department all reporting requirement information on benefit claims paid and administrative expenses incurred from the date of the last report provided to the department under the equivalent plan reporting requirements to the date of termination.

Example: Donald Mouse Partnership's equivalent plan became effective April 1, 2023. On January 31, 2024, Donald Mouse Partnership provided the aggregate equivalent plan information from April 1, 2023 to December 31, 2023. The equivalent plan is terminated effective March 1, 2024. By April 1, 2024, Donald Mouse Partnership must send the aggregate equivalent plan information from January 1, 2024 to February 29, 2024.

(9) Upon the effective date of the termination of an equivalent plan, the employer must send to the department any contributions withheld from employee wages that remain in the possession of the employer minus an amount equal to the amount of any benefits due to be paid under section (7) of this rule and any anticipated administrative expenses. Once all required benefits are paid under section (7) of this rule, the employer must immediately send to the department any remaining contribution amounts for deposit into the PFMLI Trust Fund. Interest upon the contribution amount due from the employer shall accrue from the date of termination until paid to the department, in accordance with ORS 657B.320(3).

(10) Upon the effective date of an equivalent plan termination, the employer must begin paying employee and employer contributions, if required, in accordance with ORS 657B.150 and other applicable statutes and rules.

(11) After the department terminates an equivalent plan, the employer may not reapply for an equivalent plan approval within three years following the date of termination.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.210, 657B.220, 657B.240]

471-070-2455 Equivalent Plans: Termination and Withdrawal by Successor in Interest (Final 4/21/22)

(1) A successor in interest may request to terminate an equivalent plan that was in effect on the date of acquisition within 90 days after becoming a successor in interest or whenever there is a substantial reduction of personnel, as defined in OAR 471-070-2200, resulting from the acquisition in accordance with ORS 657B.260. The request to terminate may be submitted online, by phone, or in another method prescribed by the department. The successor in interest must provide written documentation of the acquisition, and any other relevant information regarding the acquisition required by the department.

(2) A successor in interest may request to withdraw from the equivalent plan in accordance with OAR 471-070-2460.

(3) If a request to terminate or withdraw is approved, the department will notify the successor in interest of the effective date of the termination or withdraw. A successor in interest whose request to terminate is approved is subject to sections

(5) through (10) of OAR 471-070-2450. A successor in interest whose request for withdrawal is approved is subject to sections (3) through (8) of OAR 471-070-2460.

(4) If a request to terminate or withdraw is denied, the department will notify the successor in interest of the reason for the denial. The successor in interest may appeal the decision to deny a request to terminate or withdraw an equivalent plan, in accordance with ORS 657B.410 and applicable administrative rules.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.260]

471-070-2460 Equivalent Plans: Employer Withdrawal (Final 4/21/22)

(1) An employer may withdraw from an approved equivalent plan that has been in effect for at least one year by submitting a withdrawal form online, by phone, or in another method prescribed by the department.

(2) The employer must provide notice to the department by submitting a withdrawal form at least 30 days prior to the effective date of withdrawal. The effective date of the withdrawal is the later of one of the following dates:

(a) A date that is at least 30 days after the date the withdrawal form is sent to the department and that is the last day of the immediately following calendar quarter; or

(b) The date that the equivalent plan has been in effect for one year.

(3) The employer or administrator must provide notice of the withdrawal from an equivalent plan to its employees at least 30 days prior to the effective date of withdrawal. The notice, at a minimum, must include the effective date of the equivalent plan withdrawal and information about the state plan in accordance with ORS 657B.440.

(4) All equivalent plan requirements, including but not limited to those included in OAR 471-070-2220 and the equivalent plan reporting requirements, remain in effect until the effective date of the withdrawal, except as specified in section (5) of this rule.

(5) The employer or administrator must pay or continue to pay benefits under the terms of the equivalent plan to eligible employees that were approved or receiving benefits under the equivalent plan on the effective date of the withdrawal until the total amount of the benefit claim is paid, the duration of leave ends, or the benefit year ends, whichever occurs first. If the employer or administrator does not pay the benefits, the employee may file an appeal with the employer as described in OAR 471-070-2220(13) and then a dispute resolution request with the department as described in OAR 471-070-2400.

(6) Within 30 days after the effective date of the withdrawal of an equivalent plan, the employer must send to the department all reporting requirement information on benefit claims paid and administrative expenses incurred from the last report provided to the department under the equivalent plan reporting requirements to the date of the withdrawal.

Example: XYZ Partnership's equivalent plan became effective July 1, 2023. On January 31, 2024, XYZ Partnership provided the aggregate equivalent plan information from July 1, 2023 to December 31, 2023. XYZ Partnership requested a withdrawal from the equivalent plan with an effective date of November 1, 2024 as the partnership is no longer in business. By December 1, 2024, XYZ Partnership must send the aggregate equivalent plan information from January 1, 2024 to October 31, 2024.

(7) Upon withdrawal of an equivalent plan, the employer must immediately send to the department any contributions withheld from employee wages that remain in the possession of the employer upon the effective date of the withdrawal, minus an amount equal to the amount of any benefits due to be paid as required under section (5) of this rule and any anticipated administrative expenses. Once the benefits are paid under section (5) of this rule, the employer must immediately send to the department any remaining contribution amounts for deposit into the PFMLI Trust Fund. Interest upon the amount due from the employer shall accrue from the date of the withdrawal until paid to the department, in accordance with ORS 657B.320(3).

(8) Upon the effective date of the withdrawal of an equivalent plan, the employer must begin paying employee and employer contributions, if required, in accordance with ORS 657B.150 and other applicable statutes and rules.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.240, 657B.340; Stats. Implemented: ORS 657B.240]

471-070-3000 Contributions: Definitions (Final 1/31/22)

(1) "Legal Fees" means fees attributed to the recording or processing of a distraint warrant on behalf of the department for the purposes of collecting Paid Family and Medical Leave Insurance (PFMLI) contributions pursuant to ORS 657B.300 and search fees attributed to garnishments issued to financial institutions pursuant to ORS 18.790.

(2) "Maximum wage amount" means the maximum employee wages per employer subject to PFMLI contributions per calendar year.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.150, 657B.300]

471-070-3010 Contributions: Method for Determining Contribution Rate and Maximum Wage Amount (Final 1/31/22)

(1) The department shall determine the Paid Family and Medical Leave Insurance (PFMLI) contribution rate on an annual basis. Using current and actual data as well as projections, the factors the department considers in determining the rate include, but are not limited to:

(a) PFMLI Trust Fund balance on August 31 of each year;

(b) Estimated number of Oregon employees and their estimated PFMLI subject wages;

(c) Estimated number of employers that employ on average 25 or more employees, as described in OAR 471-070-3160;

(d) Estimated number of employers that employ on average fewer than 25 employees, as described in OAR 471-070-3160, and the estimated number of those employers that commit to pay the employer contributions in accordance with OAR 471-070-3750;

(e) Estimated number of tribal governments electing coverage under ORS 657B.130(4) and the estimated number of employees employed by tribal governments that have elected coverage;

(f) Estimated number of self-employed individuals electing coverage under ORS 657B.130;

(g) Maximum wage amount;

(h) Average weekly wage as defined in ORS 657B.010(2);

(i) Estimated revenue that will be deposited into the PFMLI Trust Fund through the end of the next calendar year, including projections of:

(A) Contributions paid;

(B) Penalties and interest paid;

(C) Equivalent plan application fees paid; and

(D) Interest accrued on the PFMLI Trust Fund;

(j) Estimated expenditures from the PFMLI Trust Fund through the end of the next calendar year, including projections on:

(A) Benefits paid;

(B) Administrative costs;

(C) Assistance grants paid; and

(D) Amount reimbursed to the General Fund.

(2) For purposes of determining the contribution rate, estimates will include consideration of Oregon PFMLI program data and other relevant data sources, including but not limited to, other Oregon state agencies, other states' agencies, and federal agencies.

(3) Beginning with calendar year 2024, the maximum wage amount will be adjusted by the annual percentage increase (if any) in the August Consumer Price Index for All Urban Consumers, West Region (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor.

(4) The director shall announce the contribution rate and maximum wage amount by November 15 each year, effective for the following calendar year.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.150]

471-070-3020 Contributions: Maximum Wage Amount (Final 1/31/22)

(1) Wages are subject to contributions up to the maximum wage amount paid per employer each calendar year.

(2) If an employee works for multiple employers, each employer must:

(a) Withhold and remit employee contributions for wages paid up to the maximum wage amount paid by the employer; and

(b) Pay employer contributions on wages paid up to the maximum wage amount paid by the employer, when applicable.

Example 1: An engineer works for a hotel chain from January to August 2026 and earns $130,000. The hotel chain will withhold and remit employee contributions and pays employer contributions on the engineer's total wages of $130,000. The engineer then works for a school district from September to December 2026 and earns $60,000. The school district will withhold and remit employee contributions and pays employer contributions on the engineer's total wages of $60,000, without consideration of previous wages paid by the hotel chain.

Example 2: An attorney works full-time for a law firm and part-time for a marketing company throughout 2023. The maximum wage amount for 2023 is $132,900. The attorney earns $165,000 from the law firm. The law firm will withhold and remit employee contributions and pays employer contributions on the first $132,900 of the attorney's wages. After contributions are withheld and paid on $132,900 of wages, the law firm stops withholding and paying contributions on the attorney's wages. The attorney earns $40,000 wages from the marketing company. The marketing company will withhold and

remit employee contributions and pays employer contributions on the attorney's earnings of $40,000, without consideration of the wages paid by the law firm throughout the year.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.150]

471-070-3030 Contributions: Wage Reporting and Contribution Payments (Final 1/31/22)

(1) Employers must file quarterly on the Oregon Quarterly Tax Report detailing the Paid Family and Medical Leave Insurance (PFMLI) portion all PFMLI subject wages, the employee count, and employee and employer PFMLI contributions due except those employers listed in section (2) of this rule and in OAR 471-070-2030. The Oregon Quarterly Tax Report is due on or before the last day of the month following the close of the calendar quarter.

(2) In addition to the Oregon Quarterly Tax Report as provided in section (1) and the contribution payments in section (4) of this rule, each employer shall file an Oregon Employee Detail Report that includes-PFMLI subject wages and other reports as may be required by the department and ORS 316.168.

(3) Domestic employers may file an Oregon Annual Report detailing the PFMLI subject wages and employee PFMLI contributions due if they have on average less than 25 employees as calculated under OAR 471-070-3150. The Oregon Annual Report is due on or before the last day of January of the following year.

(4) An employer may, with the director's approval, substitute Electronic Data Processing (EDP) medium for the reports required in sections (1) through (3) of this rule. The employer's quarterly report of employees' PFMLI wages and other reports as may be required must be attached to or filed with the substitute EDP medium. All reports must be legible and complete as to the information required by this rule and the instructions associated with the report forms. Any report may be returned to the employer if improperly prepared, incomplete, or illegible and such employer shall be deemed to have failed to file reports for PFMLI as required by this rule and shall be subject to the penalties in ORS 657B.910 and OAR 471-070-8520.

(5) If an employer fails to file the reports required in sections (1) through (3) of this rule, the director will estimate the PFMLI subject wages and contribution due based on all information available to the department, including but not limited to , the wage information reported for Unemployment Insurance.

(6) Contribution payments are due quarterly and payable for each calendar quarter with respect to PFMLI wages paid within that calendar quarter unless specified otherwise under section (7) of this rule. Quarterly contributions are due and payable on or before the last day of the month following the close of the calendar quarter.

(7) Contribution payments, from domestic employers who file annually, are payable for each calendar year with respect to wages paid within that calendar year. Annual contributions shall be due and payable on or before the last day of January of the following year.

(8) When the due date falls on a Saturday, Sunday or a legal holiday, the report and payment is due on the next business day following the due date.

(9) If an employer ceases to exist; discontinues operations or business; or sells out, exchanges or otherwise disposes of the business or substantially all of its assets, any contribution payable under this section is immediately due and payable, and the employer shall pay the contributions due within 10 calendar days.

(10) An employer who fails to pay timely contributions as required by sections (6) or (7) of this rule is delinquent. If a delinquency continues following the issuance of a notice of delinquency to the employer's last known address or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records the department may require the employer to report and pay contributions on a monthly basis until all delinquent contributions have been paid in full, along with any currently due contributions, and the employer receives approval to begin making quarterly reports and pay contributions as provided in this rule.

(11) If an employer is required to pay contributions monthly, the monthly contributions are due on or before the last day of the month following the month for which the contributions are payable. If the contributions are not paid by the due date, the employer is delinquent.

(12) Any employer that is delinquent in the payment of contributions as provided in this rule is subject to the penalties as specified in ORS 657B.320, and further may be assessed an additional penalty as provided in ORS 657B.910.

(13) Employers are responsible for the payment of penalties for delinquent contributions. Employers are prohibited from withholding funds from employees for the purposes of paying penalties or applying employee contributions toward the payment of penalties.

(14) The date of receipt of contributions or reports transmitted through the mail or private express carrier shall be determined as provided in ORS 293.660. The date of receipt shall be used in the calculation of interest charges, delinquencies, penalties, or other sanctions provided by law.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 293.660, 657B.150]

471-070-3040 Contributions: Withholding of Employee Contributions (Final 10/6/22)

(1) An employer may not deduct from the employee's subject wages more than the maximum allowable amount of 60 percent of the total contribution rate described in OAR 471-070-3010 for a pay period rounded to the nearest cent.

(2) If an employer fails to deduct the maximum allowable employee share of the contribution rate for a pay period, the employer is considered to have elected to pay that portion of the employee's contribution that the employer failed to deduct, and the employer is liable to pay that portion of the employee share under ORS 657B.150(5) or ORS 657B.210(5) for that pay period if not corrected within the quarter. The employer may deduct from the employee's subject wages the amount they failed to deduct within the quarter.

(3) An employer may elect to pay the employee's contribution, in whole or in part, and must provide a written notice, policy, or procedure to the employee or enter into a collective bargaining agreement with the employee specifying that the employer is electing to pay the employee contribution, making the employer liable for that portion of the employee contribution. The employer must give written notice of an update to its notice, policy, or procedure or amendment to its collective bargaining agreement to the employee at least one pay period prior to any reduction by the employer of the employee contribution amount that the employer previously elected to pay.

(4) If an employer has elected to pay, in whole or in part, the employee portion of contributions as stated in section (3) of this rule, the employer may not deduct the amount the employer elected to pay from a future paycheck of the employee.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.150, 657B.210]

471-070-3100 Contributions: Place of Performance (Final 10/6/22)

(1) For purposes of this rule, "service not covered by a paid leave program in any other state or territory" means that the employee's wages for service are not covered under an existing paid leave program in another state or, if the state or territory has no paid leave program, would not be covered if that other state or territory had a paid leave program similar to Oregon's.

(2) For the purpose of implementing ORS 657B.175 and determining Oregon Paid Family and Medical Leave Insurance (PFMLI) subject wages, an employee's wages shall be used to make determinations under ORS chapter 657B and applicable rules if the employee's wages are earned for service:

(a) Performed entirely within Oregon; or

(b) Performed within and outside Oregon, but the service performed outside of Oregon is incidental to the employee's service performed within Oregon.

(3) An employee's entire wages are PFMLI subject wages if the wages are for employee performance of services within and outside of Oregon and the service performed outside of Oregon is incidental to the employee's service performed in Oregon. Services performed outside of Oregon are incidental to the employee's service performed in Oregon in the following sequence:

(a) If the majority of the employee's service is performed within Oregon and the service outside of Oregon is temporary or transitory in nature or consists of isolated transactions and the employee's service is not covered by a paid leave program in any other state or territory. Factors that the department may consider in determining whether service is temporary or transitory in nature include:

(A) Length of service with the employer within Oregon compared to outside Oregon;

(B) Whether the service is an isolated situation or a regular part of the employee's work;

(C) Whether the employee will return to performing services in Oregon upon completion of the services performed outside of Oregon; and

(D) Whether the service performed outside of Oregon are of the same nature as those performed in Oregon.

(b) If subsection (3)(a) of this rule does not apply, the employee's service is not covered by a paid leave program in any other state or territory, and the employee's base of operations is in Oregon. Base of operations is an established location from where the employee starts work and customarily returns to perform services under the terms of the contract with the employer.

(c) If neither subsections (3)(a) or (b) of this rule apply, the employee's service is not covered by a paid leave program in another state or territory, and the place from which the service is directed or controlled is in Oregon. Direction and control means basic authority and overall control rather than immediate supervision by a manager or foreman.

(d) If neither subsection (3)(a), (b), or (c) of this rule apply, the employee's service is not covered by a paid leave program in another state or territory, and the employee's residence is in Oregon.

Example 1: Robert lives in Vancouver, WA, but rides a motorcycle to work at a company in Southeast Portland. Because Robert's service is performed entirely within Oregon, all

wages earned are considered performed in Oregon and are PFMLI subject wages for Oregon. The fact that Robert resides in Washington does not matter.

Example 2: A storm hits Idaho. An employer in Oregon dispatches Rick who typically lives and works in Oregon to help with repair work. Rick works on an isolated project in Idaho for the employer for two weeks, and then returns to work in Oregon. Rick's employment is considered performed in Oregon and all wages earned for work in both Oregon and Idaho are PFMLI subject wages for Oregon.

Example 3: Shannon works for an employer located in Oregon but works remotely on a permanent basis from a home office in California. Shannon never performs any service in Oregon. Even though the work is directed from Oregon, the service is performed entirely at Shannon's home in California. Therefore, the wages earned by Shannon are considered performed in California and are not PFMLI subject wages for Oregon.

Example 4: Kaitlynn works for an employer located in Illinois but works remotely on a permanent basis from a home office in Oregon. Kaitlynn never performs any service in Illinois other than attending eight days of meetings a year, which is very temporary in nature. Even though the work is directed from Illinois, the service is performed entirely at Kaitlynn's home office in Oregon. Therefore, all of the wages earned by Kaitlynn while in Oregon and Illinois are considered performed in Oregon and are PFMLI subject wages for Oregon.

Example 5: Ganesh is a foreman in Oregon for an Oregon business for several years. Ganesh was moved from the Oregon job to a Texas job where Ganesh worked for seven months until the job was complete, at which time Ganesh returned to Oregon to continue work for the same Oregon employer. Although Ganesh was in Texas for seven months, the employee's regular work is in Oregon, and the Texas work was temporary in nature and incidental to the work performed in Oregon. Therefore, the place of performance is considered Oregon and all of Ganesh's wages earned for work in both Oregon and Texas are PFMLI subject wages for Oregon.

Example 6: Luis is a resident of Nevada and was hired by an Oregon business to work as a foreman on a Nevada job only. After the seven months of employment in Nevada, the work ends. Luis moves to Oregon and continues to work for the Oregon business on jobs throughout Oregon. While Luis was working entirely in Nevada, the wages were considered performed in Nevada and are not PFMLI subject wages. When Luis moved to Oregon and started performing work in Oregon as permanent employment, the place of performance switched to Oregon and all wages earned after the move become PFMLI subject wages for Oregon.

Example 7: Xann works for a major airline as a flight attendant and is based out of Portland, Oregon. Because Xann's work begins and ends in Oregon and the work outside of Oregon is incidental (temporary or transitory in nature) to the work within

Oregon, Xann's place of performance is considered Oregon and all of the wages earned are PFMLI subject wages for Oregon.

Example 8: Ryan is a truck driver who leaves each week in an eighteen wheeler from their home base in Dillard, Oregon, picks up supplies in Northern California and delivers the supplies to Tacoma, Washington. Ryan performs some service in Oregon; driving up and down I-5, changing the oil in the eighteen wheeler and performing maintenance, as well as performing service in California and Washington. Ryan's base of operation is Dillard, Oregon, as the place they leave from and return to, and Ryan's wages are not covered under a paid leave program in Washington or California; therefore, the place of performance is considered Oregon. All of Ryan's wages earned in Oregon, California, and Washington are PFMLI subject wages for Oregon.

Example 9: Cameron is a salesperson who lives in Klamath Falls, Oregon and sells products in Oregon, California, and Nevada and whose employer is located in New York. Cameron works from the home in Klamath Falls where Cameron receives instruction from the employer and communicates with customers. Once a year Cameron travels to New York for a two-week sales meeting. Cameron's base of operations is in Oregon and service is performed in Oregon, California, and Nevada. Because Cameron performs service in the base of operation state, which is Oregon, all of Cameron's wages earned in Oregon, California, and Nevada are PFMLI subject wages for Oregon.

Example 10: Lois works for an Oregon employer that has retail stores in both Oregon and Washington. Lois works at both locations for an equal amount of time during the year. Lois's wages are not covered under Washington's paid leave program and Lois's work is directed from the Oregon headquarters. Therefore, all the wages earned by Lois in Oregon and Washington are considered PFMLI subject wages for Oregon as Lois's work is considered performed in Oregon where the work is directed or controlled.

Example 11: Kelley is a contractor whose main office is located in Idaho and is regularly engaged in road construction work in Oregon and Washington. All operations are under direction of a general superintendent whose office is also in La Grande, Oregon. Work in Oregon and Washington is directly supervised by field supervisors working from field offices located in each of the two states. Each field supervisor has the power to hire and fire personnel; however, all requests for additional staff must be cleared through the central office in La Grande. Kelley works regularly in Oregon and Washington. Because Kelley's work is not considered performed in another state, the base of operation is not in a state where Kelley works, but the direction and control comes from the central office in La Grande, Oregon, all the wages earned by Kelley in Oregon and Washington are considered performed in Oregon and are PFMLI subject wages for Oregon.

Example 12: Bre is a computer designer who works two days a week from home in Beaverton, Oregon and three days a week in the office in Vancouver, Washington. All of

Bre's work is directed from the headquarters in Vancouver, Washington and Bre's wages are thus covered under Washington's paid leave program. All the wages earned by Bre teleworking in Oregon and in-person work in the Washington office are considered Washington wages and are not PFMLI subject wages for Oregon.

Example 13: Andrew works for a Washington employer that dispatches Andrew, who lives in Medford, Oregon, on calls to repair furnaces throughout Oregon, Idaho, and California. Andrew doesn't know where the work will be performed from day to day or each week. Andrew's work is directed from Washington, but no service is performed in Washington. The services performed in Idaho and California would be considered incidental to Andrew's service in Oregon. Since Andrew's residence is in Oregon, all of Andrew's wages earned in Oregon, Idaho, and California are considered Oregon wages and are PFMLI subject wages for Oregon.

Example 14: Theresa lives in Bandon, Oregon and is a member of a traveling circus that performs in Oregon, California, and Arizona. The circus is directed and controlled from Florida. Theresa performed only in Oregon and Arizona before getting a new job. There is no base of operation or direction or control in Oregon and Arizona where the work was performed. Because Theresa performed some service in Oregon where lived, and resides in Oregon, all of the wages earned in Oregon and Arizona are considered performed in Oregon and are PFMLI subject wages for Oregon.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.175]

471-070-3130 Contributions: Successor in Interest Unpaid Contribution Liability (Final 10/6/22)

(1) If an employer fails to pay the Paid Family and Medical Leave Insurance (PFMLI) payroll contribution due within 10 calendar days of ending operations, as described in ORS 657B.150(14)(a), any person who becomes a successor in interest to the business is liable for the full amount of the unpaid PFMLI payroll contribution.

(2) For purposes of ORS 657B.150 and this rule, an employer is a total successor in interest when all or substantially all of the components parts of the business are transferred to or otherwise acquired by the successor in interest, including the employees necessary to carry on day-to-day operations and essential business functions in the same manner and for the same purposes as carried on prior to the acquisition or transfer.

(3) For purposes of ORS 657B.150 and this rule, an employer is a partial successor in interest when a distinct and severable portion of the business is transferred to or otherwise acquired by the successor in interest, including the employees of that portion of the business necessary to carry on day-to-day operations and essential business functions in the same manner and for the same purposes as carried on prior to the acquisition or transfer.

(4) Liability for unpaid contributions under this section shall be assessed as follows:

(a) When an employer acquires the trade or business as a total successor in interest that has an unpaid contribution balance due, the successor in interest is liable for the full amount of the unpaid PFMLI payroll contribution.

(b) When an employer acquires the trade or business as a partial successor in interest that has an unpaid contribution balance due, the predecessor is liable for the total unpaid PFMLI payroll contribution.

(5) Unpaid contributions assessed to the successor in interest shall be due immediately upon assessment.

[Stat. Auth.: ORS 657B.150; Stats. Implemented: ORS 657B.150]

471-070-3150 Employer Size: Definitions (Final 1/31/22, Amended Temp Rule Final 11/22/22, Amended Final 3/16/23)

(1) "Employee count" means a headcount of all of an employer's employees, including employees in Oregon and all out-of-state employees, excluding the number of replacement employees hired to temporarily replace eligible employees during Oregon Paid Family and Medical Leave Insurance (PFMLI) leave.

(2) "Employer size" means an employer's average number of employees for the preceding 12 month period and is based on the number of employees on the employer's payroll for the pay period that includes the 12th of each month.

(3) "Large employer" means an employer whose employer size is 25 or more employees.

(4) "New employer" means an employer that has not previously operated or had employees in or outside of Oregon.

(5) "Small employer" means an employer whose employer size is less than 25 employees.

[Stat. Auth.: ORS 657B.360; Stats. Implemented: 657B.360]

471-070-3160 Employer Size: Method to Determine Number of Employees Employed by an Employer (Final 1/31/22, Amended Temp Rule Final 11/22/22, Amended Final 3/16/23)

(1) Employer size is based on the average of the employer's monthly employee counts as defined in OAR 471-070-3150(2).

(a) An employer's employee count is the number of employees on the employer's payroll for the pay period that includes the 12th of the month, and is the sum of:

(A) The number of employees in Oregon; and

(B) The number of out-of-state employees.

(b) The employee count may not include any replacement employees hired to temporarily replace eligible employees during periods of Oregon Paid Family and Medical Leave Insurance (PFMLI) leave.

Example 1: ABC Construction has weekly pay periods covering Sunday to Saturday. For October 2022, the 12th of the month is included within the pay period covering October 9th to October 15th. ABC Construction paid 15 employees in Oregon and 8 employees in Washington during the pay period covering October 9th to October 15th. ABC Construction's employee count for October 2022 is 23 employees (15 Oregon employees + 8 out-of-state employees).

Example 2: Suzana Vucic, a domestic employer, has monthly pay periods. For April 2024, the 12th of the month is included within the pay period covering April 1st to April 30th. Suzana Vucic paid two employees in Oregon, including one employee temporarily hired to replace an employee during a period of PFMLI leave, and 0 employees out-of-state during the pay period covering April 1st to April 30th. Suzana Vucic's employee count for April 2024 is 1 employee (2 Oregon employees + 0 out-of-state employees - 1 replacement worker).

Example 3: Top Notch Temps has biweekly pay periods. The employer is based in Idaho and opened an office in Oregon in September 2024. For July 2024, the 12th of the month is included within the pay period covering July 12th to 26th. Top Notch Temps was not operating in Oregon during the pay period covering July 12th to 26th and had no Oregon employees or replacement workers and had 40 employees working in Idaho. Top Notice Temps' employee count for July 2024 is 40 employees (0 Oregon employees + 40 out-of-state employees - 0 replacement workers).

(2) Employer size is not rounded.

(3) Employer size shall be determined annually for each calendar year based on the average of the monthly employee counts from January to December in the previous calendar year.

Example 4: Abraham's Furniture Depot has the following employee counts for 2022: January - 25; February - 26; March - 26; April - 24; May - 23; June - 22; July - 24; August - 25; September; 26; October - 26; November - 26; December - 24. The monthly employee counts are added together and then divided by 12 months to arrive at the average employee count of 24.75 [(25+26+26+24+23+22+24+25+26+26+26+24 = 297) / 12 months = 24.75]. Abraham's Furniture Depot is a small employer for all of calendar year 2023.

Example 5: Sally's Tree Farms has the following employee counts for 2025: January - 15; February - 15; March - 14; April - 16; May - 10; June - 12; July - 20; August - 40;

September - 45; October - 50; November - 55; December - 50. The employee counts are added together and then divided by 12 months to arrive at the average employee count of 28.5 [(15+15+14+16+10+12+20+40+45+50+55+50) = 342 / 12 months = 28.5]. Sally's Tree Farms is a large employer for all of calendar year 2026.

Example 6: Reliable Transport has locations in California and Nevada and starts operating in Oregon in September 2026. The employee counts for 2026, which cover for the entire year even though Reliable Transport did not start operating in Oregon until September because Reliable Transport operated out-of-state, are: January - 20; February - 20; March - 21; April - 20; May - 20; June - 19; July - 20; August - 21; September - 30; October - 30; November - 31; December - 30. The employee counts are added together and then divided by 12 months to arrive at the average employee count of 23.5 [(20+20+21+20+20+19+20+21+30+30+31+30) = 282 / 12 months = 23.5]. Reliable Transport is a small employer for all of calendar year 2027.

(4) For new employers, employer size shall be determined quarterly for the first calendar year. At the end of each quarter, the average monthly employee counts from the preceding 12 months shall be used to determine the employer size for the quarter.

Example 7: Cafe Senad is a new business only in Oregon that started operating in May 2027. Cafe Senad's first quarterly payroll report is filed for the second quarter of 2027 (April to June). Employer size for the 2027 second quarter is based on the average employee counts for July 2026 to June 2027. Cafe Senad's employee counts are: May 2027 - 25; June 2027 - 30; and 0 for all other months. The employee counts are added together and then divided by 12 months to arrive at the average employee count of 4.58 [(0+0+0+0+0+0+0+0+0+0+25+30) = 55 / 12 months = 4.58]. Cafe Senad is a small employer for the second quarter of 2027 and should not pay the employer contributions for the second quarter.

Employer size for the 2027 third quarter is based on the average employee counts for October 2026 to September 2027. Cafe Senad's employee counts are: May - 25; June - 30; July - 42; August - 44; September - 44; and 0 for all other months. The employee counts are added together and then divided by 12 months to arrive at the average employee count of 15.41 [(0+0+0+0+0+0+0+25+30+42+44+44) = 185 / 12 months = 15.41]. Cafe Senad is a small employer for the third quarter of 2027 and should not pay the employer contributions for the third quarter.

Employer size for the 2027 fourth quarter is based on the average employee counts for January to December 2027. Cafe Senad's employee counts are: May - 25; June - 30; July - 42; August - 44; September - 44; October - 50; November - 52; December - 55; and 0 for all other months. The employee counts are added together and then divided by 12 months to arrive at the average employee count of 28.5

[(0+0+0+0+25+30+42+44+44+50+52+55) = 342 / 12 months = 28.5]. Cafe Senad is a large employer for the fourth quarter 4 of 2027 and should pay the employer contributions for the fourth quarter.

(5) An employer that determines there is a need to correct their employer size after submitting their Oregon Quarterly Tax Report(s) or Oregon Annual Report shall amend the reports and update the employer contributions.

(a) If the employer changes from a small employer to a large employer, then the employer shall pay employer contributions with the amended reports. Penalties and interests may be assessed in accordance with ORS 657B.320, 657B.910, and associated administrative rules.

(b) If the employer changes from a large employer to a small employer, then the employer shall be credited the previous employer contributions paid. The department may require verification of the employee count before a credit is applied.

(6) The department may verify employee count at any time by requesting employee count information or records or through employer audits. The department may reassess employer size based on the verification received or other information gathered by the department.

(a) If the department determines that an employer designation should be changed from a small employer to a large employer, then the employer shall be assessed any employer contributions due. Penalties and interests may be assessed in accordance with ORS 657B.320, 657B.910, and associated administrative rules.

(b) If the department determines that an employer designation should be changed from a large employer to a small employer, then the employer shall be credited the previous employer contributions paid in error.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.360; Stats. Implemented: ORS 657B.360]

471-070-3310 Contributions: Application of Payments (Final 1/31/22)

(1) “Designated payments” are payments received by the department specifying a specific quarter(s) or distraint warrant.

(2) “Undesignated payments” are payments received by the department that are not specified for a specific quarter(s) or distraint warrant.

(3) Except as otherwise provided by statute, or as directed by a court of competent jurisdiction, payments made to the department by or on behalf of an employer for Paid Family and Medical Leave Insurance (PFMLI) contributions; and legal fees (as defined in OAR 471-070-3000), penalties and interest related to those PFMLI contributions; in accordance with the provisions of ORS chapter 657B shall be identified by the department as either “Designated Payments” or “Undesignated Payments” and will be credited to the employer’s account in the following order of priority:

(a) Undesignated Payments:

(A) To the oldest unwarranted unpaid quarter balance in the following order:

(i) Penalties;

(ii) Interest; and then

(iii) PFMLI Contributions.

(B) After the payment amounts under subsection (a)(A) of this rule have been applied, any remaining amounts shall then be credited to the most recent unpaid distraint warrant in the following order:

(i) Legal Fees;

(ii) Penalties;

(iii) Interest; and then

(iv) PFMLI Contributions.

(b) Designated Payments:

(A) Legal Fees;

(B) Penalties;

(C) Interest; and then

(D) PFMLI Contributions.

(4) The department may identify categories of indebtedness for internal accounting procedures and may retire each category separately in the order of priority set forth in section (3) of this rule.

(5) Nothing in this rule shall be construed in any way as abridging or limiting the authority or powers of the director granted under ORS chapter 657B.

(6) The employees listed in OAR 471-070-0550 may act on behalf of the director for purposes of section (4) and (5) of this rule.

(7) Notwithstanding any instructions to the contrary by or on behalf of the employer, payments will be applied in the manner specified in this rule.

(8) Credit balances will be treated as payments for purposes of this rule.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.120, 657B.150, 657B.320, 657B.430, 657B.910]

471-070-3320 Contributions: Deposit, Bond, or Letter of Credit (Final 1/31/22)

(1) For the purposes of ORS 657B.190, the director or an authorized representative may require a deposit, bond or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, when the director or an authorized representative finds it necessary for the protection of the Paid Family and Medical Leave Insurance (PFMLI) Fund established under ORS 657B.430.

(2) The determination that a deposit, bond or irrevocable letter of credit is necessary is in the director or an authorized representative's sole discretion. Circumstances that will require a deposit, bond or irrevocable letter of credit include, but are not limited to, circumstances where an employer who currently employs employees subject to ORS chapter 657B:

(a) Is currently delinquent in filing PFMLI reports or payment of PFMLI contributions; or

(b) Was previously delinquent in filing PFMLI reports or payment of PFMLI contributions.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.190, 657B.430]

471-070-3340 Contributions: Overpayment Refunds (Final 10/6/22)

(1) Contributions, interest, fines, or penalties received in excess of the amount legally due and payable, shall be refunded by the department without interest.

(2) The department shall not refund for sums of $10 or less unless requested in writing by the person who made the payment, or their legal representative, within three years of the date that the money was paid to the department, as provided under ORS 293.445.

[Stat. Auth.: ORS 293.445, 657B.340; Stats. Implemented: ORS 293.445]

471-070-3700 Assistance Grants: Definitions (Final 1/31/22)

"Significant additional wage-related costs" means added expenses incurred by the employer due to an eligible employee's use of family leave, medical leave, or safe leave and includes:

(1) Paying additional wages to an existing employee;

(2) Outsourcing costs;

(3) Certification;

(4) Equipment purchases;

(5) Training costs; or

(6) Other costs that the department, in its discretion, determines are appropriate.

[Stat. Auth.: ORS 657B.200, 657B.340; Stats. Implemented: ORS 657B.200]

471-070-3705 Assistance Grants: Eligibility (Final 1/31/22)

(1) An employer is eligible for an assistance grant if:

(a) At the time an employee starts a period of family leave, medical leave, or safe leave approved by the department, the employer is a small employer as defined in OAR 471-070-3150;

(b) The employer completes an employer assistance grant application and provides the required documentation to the department within the established timeframe as described in OAR 471-070-3710;

(c) The employer commits to pay the employer contribution for a period of at least eight calendar quarters as described in OAR 471-070-3750; and

(d) The employer does not have any delinquent reports, delinquent contributions, and has no unpaid penalties or interest under ORS chapter 657B.

(2) An employer may apply for an assistance grant under ORS 657B.200 only if an eligible employee has taken family leave, medical leave or safe leave for a period of seven or more working days.

[Stat. Auth.: ORS 657B.200, 657B.340; Stats. Implemented: ORS 657B.200]

471-070-3710 Assistance Grants: Application Requirements (Final 1/31/22)

(1) An employer may apply for an assistance grant only:

(a) After an eligible employee has been approved by the department for family leave, medical leave or safe leave; and

(b) Prior to the end of the fourth month following the last day of the eligible employee's period of leave.

(2) An application for a grant must be submitted online or by another method approved by the department. The grant application must be complete and include the following:

(a) Information about the employer applying for the grant, including:

(A) Business Identification Number;

(B) Business name;

(C) Business address; and

(D) Business contact person's name and contact information;

(b) Information about the eligible employee taking leave for which the employer is requesting the grant, including but not limited to:

(A) First and last name;

(B) Claim identification number;

(C) Start date of the leave; and

(D) End date or expected leave end date;

(c) Information about the grant being requested, including:

(A) Type of grant requested; and

(B) Grant amount requested, when applicable;

(d) Written documentation demonstrating that the employer:

(A) Hired a replacement worker to replace an eligible employee on family leave, medical leave or safe leave, including the replacement worker's name, start date, and Social Security Number or Individual Taxpayer Identification Number; or

(B) Incurred significant additional wage-related costs due to an eligible employee's use of leave and the amount, including, but not limited to, receipts, personnel or payroll records, or sworn statements; and

(e) Acknowledgement that:

(A) The employer is required to pay the employer contribution for a period of eight calendar quarters in accordance with OAR 471-070-3750; and

(B) The employer could be required to repay an assistance grant if employer is later deemed to be ineligible in accordance with OAR 471-070-3850.

(3) An employer that receives a grant under ORS 657B.200(1)(b) may submit a revised grant application requesting an additional grant under ORS 657B.200(2).

(a) The revised grant application must contain:

(A) A revised leave end date or revised expected leave end date showing an extension of the initial period of leave requested; and

(B) Written documentation demonstrating that a replacement worker was hired to replace an eligible employee on family leave, medical leave or safe leave including the replacement worker's name, start date, and Social Security Number or Individual Taxpayer Identification Number.

(b) The revised grant application submitted under this section will not count against an employer's application limit under ORS 657B.200(3).

(4) An incomplete application will not be reviewed by the department until and unless it is completed and will not count against an employer's application limit under ORS 657B.200(3).

(5) The department may deny an application for a grant for reasons that include, but are not limited to, the employer's failure to demonstrate that:

(a) The employer hired a replacement worker or incurred significant additional wage-related costs; or

(b) The replacement worker hired or significant additional wage-related costs incurred was due to an employee's use of family leave, medical leave or safe leave.

(6) A denied grant application will count against an employer's application limit under ORS 657B.200(3).

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.200, 657B.340; Stats. Implemented: ORS 657B.200]

471-070-3730 Assistance Grants: Grant Amounts (Final 1/31/22)

The amount paid for an approved assistance grant is as follows:

(1) An employer that hired a replacement worker to replace an eligible employee on family leave, medical leave or safe leave receives a grant of $3,000.

(2) An employer that incurred significant additional wage-related costs due to an eligible employee's use of family leave, medical leave or safe leave receives a grant equal to the actual costs incurred and provided with the application approved by the department, up to $1,000.

(3) An employer that received a grant in accordance with (2) of this rule may receive the difference between the amount received in (2) of this rule and $3,000, if the

employee taking leave extended the period of leave beyond the initial expected period of the leave and the employer hires a replacement worker.

[Stat. Auth.: ORS 657B.200, 657B.340; Stats. Implemented: ORS 657B.200]

471-070-3750 Assistance Grants: Employer Contributions (Final 1/31/22)

(1) An employer that is approved for an assistance grant must also continue to pay employer contributions for a period of at least eight consecutive calendar quarters starting with the first calendar quarter that begins after the date the most recent grant is approved.

(2) The employer is liable for payment of the employer contribution and subject to penalties and interests in accordance with OAR 471-070-3030.

[Stat. Auth.: ORS 657B.200, 657B.340; Stats. Implemented: ORS 657B.200]

471-070-3850 Assistance Grants: Repayment of Grants (Final 1/31/22)

Grants shall be repaid to the department if, within three years of receiving a grant:

(1) Amendments to a previous wage report resulted in a reassessment of the employer size that determines the employer was a large employer at the time the eligible employee started the period of family leave, medical leave or safe leave used for the grant application; or

(2) The department determines that the information or documentation included in the grant application was inaccurate, misleading or false and the employer was ineligible for the grant or did not meet the grant application requirements.

[Stat. Auth.: ORS 657B.200, 657B.340; Stats. Implemented: ORS 657B.200]

471-070-5240 Compromise of Amount Due (Final 1/31/22)

It shall be the policy of the director to compromise the amount due from an employer or former employer with a delinquent account pursuant to the provisions of ORS 657B.320(8) where it appears that such action would be in the best interests of all parties involved and the statutory criteria for a settlement have been met.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.320]

471-070-8000 Appeals: Department Representation in Hearing (Temp Rule 12/6/22 and Final 3/16/23)

(1) Subject to the approval of the Attorney General, an officer or employee of the Oregon Employment Department is authorized to appear on behalf of the department in the following types of hearings conducted before the Office of Administrative Hearings:

(a) Administrative decisions related to Paid Family and Medical Leave Insurance (PFMLI) benefits under ORS 657B.100 and 657B.120 and applicable rules.

(b) Administrative decisions related to PFMLI contributions under ORS 657B.130 to 657B.175 or 657B.370 and applicable rules.

(c) Administrative decisions related to PFMLI penalties imposed under ORS 657B.910 to 657B.920 and applicable rules.

(d) Administrative decisions related to PFMLI employer assistance grants under ORS 657B.200 and applicable rules.

(e) Administrative decisions related to PFMLI equivalent plans under ORS 657B.210 and applicable rules.

(2) The agency representative may not make legal argument on behalf of the agency.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions or the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence;

(E) The correctness of procedures being followed in the contested case hearing.

[Stat. Auth.: ORS 657B.340, 183.452; Stats. Implemented: ORS 183.452, 657B.410]

471-070-8005 Appeals: Request for Hearing (Final 11/23/22)

(1) A request for hearing may be filed on forms provided by the department. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed.

(2) A claimant's request for hearing on an administrative decision related to Paid Family and Medical Leave Insurance (PFMLI) benefits under ORS chapter 657B and applicable administrative rules must be in writing and filed within 60 calendar days after the administrative decision is issued and may be filed:

(a) By mail, email, or other means, as designated by the department in the notice of administrative decision that is being appealed;

(b) In person at any publicly accessible Employment Department office in Oregon; or

(c) By a method approved by the department, including use of the department's secured website, as provided on the notice of administrative decision that is being appealed.

(3) An employer, self-employed individual, or tribal government's request for hearing on an administrative decision related to PFMLI contributions, employer assistance grants, equivalent plans, or penalties under ORS chapter 657B and applicable administrative rules, must be in writing and filed within 20 calendar days after the administrative decision is issued. The request for hearing may be filed:

(a) By mail, email, or other means, as designated by the department in the notice of administrative decision that is being appealed;

(b) In person at any publicly accessible Employment Department office in Oregon; or

(c) By a method otherwise approved by the department, including through the use of the department's secured website, as provided on the notice of administrative decision that is being appealed.

(4) The filing date for any request for hearing shall be determined as follows:

(a) When delivered in person to any Employment Department office in Oregon, the filing date is the date of delivery to the department, as evidenced by the receipt date stamped or written by the department employee who receives the document.

(b) When filed by mail, the date of filing is the postmarked date affixed by the United States Postal Service. In the absence of a postmark date, the date of the response shall be the most probable date of mailing as determined by the department.

(c) When filed by email, the date of filing is the date of delivery, as evidenced by the receipt date on the department's email system.

(d) When filed through the department's secured website, the date of filing is the date indicated in OAR 471-070-0850(3).

(e) When filed by any other means, the date of filing is the date of delivery, as evidenced by the receipt date stamped or written by the employee of the department who receives the document.

(5) A request for hearing with respect to a claim for benefits shall not stay the payment of any benefits not placed in issue by the request for hearing, nor shall it stay an order previously entered allowing benefits.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.410]

471-070-8010 Appeals: Assignment to Office of Administrative Hearings (Final 11/23/22)

(1) When a request for hearing has been timely filed as provided in OAR 471-070-8005 or a late request for a hearing has been filed as provided in OAR 471-070-8025, the department shall refer the request to the Office of Administrative Hearings established under ORS 183.605, for assignment to an administrative law judge.

(2) The administrative law judge shall review the determination and, if requested by the employer, self-employed individual, or claimant, shall grant a hearing unless a hearing has previously been afforded the requestor on the same grounds that are set forth in the determination.

(3) The Director of the Employment Department shall notify the parties of their right, upon request, to receive copies of all documents and records in the possession of the department relevant to the administrative decision, including any statements of the claimant, employer or others.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.410]

471-070-8015 Appeals: Contested Case Proceedings Interpretation for Non-English-speaking Persons (Final 11/23/22)

(1) This rule applies to the department's Paid Family and Medical Leave Insurance contested case proceedings that require the services of an interpreter for a non-English-speaking person who is a party or witness.

(2) For purposes of this rule:

(a) A "non-English-speaking person" means a person who, by reason of place of birth, national origin, or culture, speaks a language other than English and

does not speak English at all or with adequate ability to communicate effectively in the proceedings.

(b) A "qualified interpreter" means a person who is readily able to communicate with the non-English-speaking person and who can orally transfer the meaning of statements to and from English and the language spoken by the non-English-speaking person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style, and register of the original statement, without additions or omissions. A qualified interpreter does not include any person who is unable to interpret the dialect, slang, or specialized vocabulary used by the party or witness.

(3) In conducting contested case proceedings under this rule, the department will comply with the applicable provisions of ORS 45.272 to 45.292.

(4) If a non-English-speaking person is a party or witness in a contested case proceeding:

(a) The administrative law judge shall appoint a qualified interpreter who is certified under ORS 45.291, if available, to interpret the proceedings to a non-English-speaking party or witness, to interpret the testimony of a non-English-speaking party or witness, or to assist the administrative law judge in performing the duties of the administrative law judge.

(b) If a qualified interpreter who is certified under ORS 45.291 is unavailable, the administrative law judge shall appoint a qualified interpreter that is not certified.

(c) A fee may not be charged to any party or witness for the appointment and services of an interpreter in a contested case proceeding to interpret testimony of a non-English-speaking party or witness, to interpret the proceedings to a non-English-speaking party or witness, or to assist the administrative law judge in performing the duties of the administrative law judge, except as provided by ORS 45.275(4) and subsection (4)(f) of this rule.

(d) The administrative law judge may not appoint any person as an interpreter if the person has a conflict of interest with any of the parties or witnesses, is unable to understand or cannot be understood by the administrative law judge, party or witness, or is unable to work cooperatively with the administrative law judge, the person in need of an interpreter or the representative for that person. If a party or witness is dissatisfied with the interpreter selected by the administrative law judge, a substitute interpreter may be appointed as provided in ORS 45.275(5).

(e) If a party or witness is dissatisfied with the interpreter appointed by the administrative law judge, the party or witness may request a different interpreter as provided in ORS 45.275(4), except that good cause must be shown for a substitution if the substitution will delay the proceeding. Good cause exists when information in the record establishes that the party or witness would be unable to effectively communicate without the assistance of a substitute interpreter. Any party may object to use of any interpreter for good cause.

(f) Fair compensation for the services of an interpreter shall be paid by the department except, when a substitute interpreter is used for reasons other than good cause, the party requesting the substitute shall bear any additional costs beyond the amount that was or would have been paid to the original interpreter.

(5) In determining if a person is a qualified interpreter, the administrative law judge shall consider the following factors to ascertain whether the individual will be able to readily communicate with the non-English-speaking person and orally translate the meaning of the statements made from the English language to the language spoken by the non-English-speaking person:

(a) The person's native language;

(b) The number of years of education the person has in the language to be interpreted and the English language;

(c) The number of years of specialized training that has provided the person with the opportunity to learn and use the language to be interpreted and the English language;

(d) The amount of time the person has spent in countries where the language to be interpreted is the primary language;

(e) The number of years the person has spent acquiring the ability to read or write, or both, the language to be interpreted and the English language;

(f) The person's previous experience as an interpreter;

(g) The person's ability to interpret in a manner that conserves the meaning, tone, level, style, and register of the original statement, without additions or omissions;

(h) The person's ability to interpret the dialect, slang, or specialized vocabulary of the original statement; and

(i) The person's knowledge of the Oregon Code of Professional Responsibility for Interpreters in Oregon Courts.

(6) In appointing an interpreter under this rule, the administrative law judge shall use a procedure and ask questions or make statements on the record substantially similar to the following:

(a) “Please state your name for the record.”

(b) "Are you currently a certified interpreter in Oregon in accordance with ORS 45.291 in the language to be interpreted?" If the prospective interpreter answers no, the interpreter must state or submit their qualifications on the record and must swear or affirm to make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter’s best skills and judgment in accordance with the standards and ethics of the interpreter profession.

(c) “Is there any situation or relationship, including knowing any parties or witnesses in this case, that may be perceived by me, any of the parties, or any witnesses as a bias or conflict of interest in or with the parties or witnesses in this case?” If the prospective interpreter answers affirmatively, the administrative law judge shall inquire further to ascertain whether any disqualifying bias or conflict of interest exists with any of the parties or witnesses.

(d) "Are you able to understand me, the parties, and the witnesses in this proceeding?”

(e) “In your opinion, are the parties and witnesses able to understand you?”

(f) Directed at the parties and witnesses requiring the assistance of an interpreter: “Are you able to understand the interpreter?”

(g) “Are you able to work cooperatively with me and the person in need of an interpreter or counsel for that person?”

(h) If the foregoing questions in subsections (b), (d), (e), (f), and (g) are answered affirmatively and the administrative law judge is satisfied that the prospective interpreter has no bias or conflict of interest under question (c), then the administrative law judge shall state: “I hereby appoint you as interpreter in this matter.”

(i) If the administrative law judge determines that the person is a qualified interpreter, then the administrative law judge shall state on the record, “Based on your knowledge, skills, training, or education, I find that you are qualified to act as an interpreter in this matter.” If the administrative law judge is not satisfied that the person is capable of serving as a qualified interpreter, the administrative law judge shall not appoint the person to serve in such capacity.

(j) The administrative law judge must then administer the oath or affirmation for the interpreter: “Do you (swear) (affirm) that you will make a true and impartial interpretation of the proceedings in an understandable manner, using your best skills and judgment in accordance with the standards and ethics of the interpreter profession?” An oath or affirmation is not required for a certified interpreter in accordance with ORS 45.291.

(k) After receiving the qualified interpreter’s oath or affirmation, the administrative law judge shall state: “I hereby appoint you as interpreter in this matter.”

(L) On the record, the administrative law judge will then instruct any non-English-speaking party or witness as follows: “If, at any time during the hearing, you do not understand something, or believe there are problems with the interpretation, you should indicate by interrupting and calling this to my attention.”

(7) If the department has knowledge that a non-English-speaking person is in need of an interpreter, the department shall provide notice of the need for an interpreter to the Office of Administrative Hearings (OAH), which shall schedule an interpreter for that person’s contested case proceeding. If the department does not have knowledge that an interpreter is needed for a non-English-speaking person, the non-English-speaking person, or that person’s representative, must notify the OAH of such need in advance of the contested case proceeding for which the interpreter is requested.

(a) If, at the time of or during the contested case proceeding, it becomes apparent that an interpreter is necessary for a full and fair inquiry, the administrative law judge shall arrange for an interpreter and may postpone the proceeding, if necessary.

(b) The request for an interpreter may be made orally or in writing to the administrative law judge and must be made as soon as possible, but no later than 14 calendar days before the proceeding, including the hearing or pre-hearing conference, for which the interpreter is requested.

(c) For good cause, the administrative law judge may waive the 14 calendar days advance notice.

(d) The notice to the administrative law judge must include:

(A) The name of the person needing a qualified interpreter;

(B) The person’s status as a party or a witness in the proceeding; and

(C) The language and dialect, if applicable, to be interpreted.

(8) If a party is non-English-speaking, English language exhibits are to be handled as follows:

(a) If the non-English-speaking party confirms on the record that an interpreter already has interpreted an English language document for the party, the administrative law judge may receive the document into evidence without further interpretation of the document, unless necessary to assist a witness to provide relevant testimony.

(b) If the administrative law judge intends to receive into evidence an English language document that has not been previously interpreted under subsection (8)(a) of this rule, the administrative law judge shall read the document and allow for contemporaneous interpretation. If the document is lengthy, the administrative law judge need not read into the record clearly irrelevant portions of the document, provided however that the administrative law judge shall summarize the remaining content of the document on the record.

(c) If, at the time of the proceeding, the administrative law judge does not rule on the admissibility of an offered English language document, then the administrative law judge shall read the offered document into the record and allow contemporaneous interpretation, subject to the exception in subsection (8)(b) of this rule. The interpreter shall interpret all such offered documents or portions of such documents read into the record.

(d) If an offer of proof for excluded evidence includes an English language document, the interpreter shall interpret the document, subject to the exception in subsection (8)(b) of this rule, for a non-English-speaking party on the record, or off the record if so confirmed on the record by the non-English-speaking party.

(e) Offered English language documents that the administrative law judge decides to exclude, in whole or in part, as irrelevant, immaterial, or unduly repetitious do not need to be interpreted. The administrative law judge shall orally summarize the contents of such offered but excluded documents, and the interpreter shall interpret that summary.

(9) A party may offer non-English language documents. If such a document is received into evidence, it shall be translated in writing or read into the record in English by the interpreter. Although the non-English language document will be part of the record, the English version of the document shall be the evidence in the case.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.410]

471-070-8020 Appeals: Contested Case Proceedings Interpretation for Individuals with a Disability (Final 11/23/22)

(1) For purposes of this rule:

(a) An “assistive communication device” means any equipment designed to facilitate communication by an individual with a disability;

(b) An “individual with a disability” means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment;

(c) A “qualified interpreter” for an individual with a disability means a person readily able to communicate with the individual with a disability, interpret the proceedings and accurately repeat and interpret the statements of the individual with a disability.

(2) If an individual with a disability is a party or witness in a contested case proceeding:

(a) The administrative law judge shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to, or to interpret the testimony of, the individual with a disability for that person’s contested case proceeding.

(b) A fee may not be charged to the individual with a disability for the appointment of an interpreter or use of an assistive communication device. A fee may not be charged to any person for the appointment of an interpreter or the use of an assistive communication device if appointment or use is made to determine whether the individual is an individual with a disability for purposes of this rule.

(3) When an interpreter for an individual with a disability is appointed or an assistive communication device is made available under this rule:

(a) The administrative law judge shall appoint a qualified interpreter who is certified under ORS 45.291 if one is available unless, upon request of a party or witness, the administrative law judge deems it appropriate to appoint a qualified interpreter who is not so certified.

(b) The administrative law judge may not appoint any person as an interpreter if the person has a conflict of interest with any of the parties or witnesses, is unable to understand or cannot be understood by the administrative law judge, party or witness, or is unable to work cooperatively with the administrative law judge, the person in need of an interpreter or the representative for that person. If a party or witness is dissatisfied with the

interpreter selected by administrative law judge, a substitute interpreter may be used as provided in ORS 45.275 (4).

(c) If a party or witness is dissatisfied with the interpreter selected by the administrative law judge, the party or witness may use any qualified interpreter except that good cause must be shown for a substitution if the substitution will delay the proceeding. Good cause exists when information in the record establishes that the party or witness would be unable to effectively communicate without the assistance of a substitute interpreter. Any party may object to use of any interpreter for good cause.

(d) Fair compensation for the services of an interpreter or the cost of an assistive communication device shall be paid by the department except, when a substitute interpreter is used for reasons other than good cause, the party requesting the substitute shall bear any additional costs beyond the amount that was or would have been paid to the original interpreter.

(4) The administrative law judge shall require any interpreter for an individual with a disability to state the interpreter's name on the record and whether they are certified under ORS 45.291. If the interpreter is not certified under ORS 45.291, the interpreter must state or submit their qualifications on the record and must affirm that they will make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession.

(5) A person requesting an interpreter or assistive communication device for an individual with a disability must notify the administrative law judge as soon as possible, but no later than 14 calendar days before the proceeding, including the hearing or pre-hearing conference, for which the interpreter or device is requested.

(a) For good cause, the administrative law judge may waive the 14 calendar days advance notice.

(b) The notice to the administrative law judge must include:

(A) The name of the person needing a qualified interpreter or assistive communication device;

(B) The person's status as a party or a witness in the proceeding; and

(C) If the request is on behalf of an individual with a disability, the nature and extent of the individual's physical hearing or speaking impairment, and the type of aural interpreter, or assistive communication device needed or preferred.

(6) If the department has knowledge that an individual with a disability that is a party or witness in a contested case proceeding is in need of an interpreter or assistive communication device, the department shall provide notice of the need to the Office of Administrative Hearings (OAH). If the department does not have knowledge that an interpreter or assistive communication device is needed for a person with a disability, the person, or that person's representative, must notify the OAH of such need in advance of the contested case proceeding for which the interpreter or assistive communication device is requested.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.410]

471-070-8025 Appeals: Late Request for Hearing (Final 11/23/22)

(1) The department shall accept a request for hearing filed after the deadline only if there is good cause shown and the request is filed within seven calendar days after the circumstances that prevented a timely filing ceased to exist.

(2) "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an interested party's reasonable control.

(a) Good cause includes but is not limited to:

(A) Failure to receive a document because the department or Office of Administrative Hearings (OAH) mailed it to an incorrect address despite having the correct address; or

(B) Incapacity.

(b) Good cause does not include:

(A) Failure to receive a document due to not notifying the department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal; or

(B) Not understanding the implications of a decision or notice when it is received.

(3) Notwithstanding section (2) of this rule, good cause for failing to file a timely request for hearing shall exist when a party provides satisfactory evidence that the department failed to follow its own policies with respect to providing service to:

(a) a non-English-speaking person, including the failure to communicate orally or in writing in a language that could be understood by the non-English-speaking person upon gaining knowledge that the person needed or was entitled to such assistance; or

(b) an individual with a disability who cannot readily understand because of deafness or a physical hearing impairment, cannot communicate because of

a physical speaking impairment, or cannot read because of a vision impairment, including the failure to communicate orally or in writing in a manner that could be understood by the individual with a disability upon gaining knowledge that the person needed or was entitled to such assistance.

(4) The party shall set forth the reason(s) for filing a late request for hearing in a written statement, which the OAH shall consider in determining whether good cause exists for the late filing, and whether the request was filed within seven calendar days after the circumstances that prevented a timely filing ceased to exist.

(5) Nothing in this rule prevents the OAH from scheduling a hearing if, in the sole judgment of the OAH, testimony is required.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.410]

471-070-8030 Appeals: Notice of Hearing (Final 11/23/22)

(1) To afford all parties a reasonable opportunity for a fair hearing, a notice of hearing that includes the time, date, and place of the hearing, a statement of the authority and jurisdiction under which the hearing is held, a statement generally identifying the issue(s) to be considered, and all other information required under ORS 183.413(2), shall be mailed at least 14 calendar days in advance of the hearing to the parties or their authorized representatives at their last known address, as shown in the department's records, or shall be sent electronically to the parties, at the location or address shown in the department's records, when permitted and where the party has opted for electronic notification. The parties entitled to notice may waive the requirement for at least 14 calendar days' notice to expedite the process.

(2) The following parties shall be notified of a hearing when a request for a hearing related to benefits under the state plan established under ORS 657B.340 has been filed:

(a) The Director; and

(b) The claimant.

(3) In all other cases for which ORS chapter 657B provides for a hearing, parties who shall be notified of a hearing are:

(a) The Director; and

(b) The employer or employee that has filed a request or application for hearing.

(4) To best serve the parties involved, an administrative law judge shall set the date, time, and location of the hearing.

(5) An administrative law judge may consolidate two or more hearings whenever it appears to the administrative law judge that such procedure will not unduly complicate the issues or jeopardize the rights of any of the parties.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.410]

471-070-8035 Appeals: Subpoenas (Final 11/23/22)

(1) Subpoenas for the attendance of witnesses or the production of books, records, documents, or other physical evidence may be issued by:

(a) The administrative law judge upon request of a party to the contested case upon showing of general relevance and reasonable scope of the evidence sought, or on the administrative law judge's own initiative;

(b) The department on its own motion; or

(c) An attorney representing a party to the contested case on behalf of that party.

(2) A party that submits a request for subpoena must show:

(a) The name of the witness and the address where the witness can be served the subpoena;

(b) That the testimony of the person is material; and

(c) That the person will not voluntarily appear.

(3) If the requesting party wishes the witness to produce books, records, documents, or other physical evidence, the party must also show:

(a) The name or a detailed description of the specific books, records, documents, or other physical evidence the witness should bring to the hearing;

(b) That such evidence is generally relevant and the request is reasonable in scope; and

(c) That such evidence is in the possession of the person who will not voluntarily appear and bring such evidence to the hearing.

(4) An administrative law judge may limit the number of subpoenas for witness material to the proof of any one issue at the hearing.

(5) Service of the subpoena upon the witness is the responsibility of the party requesting the subpoena.

(6) A witness who attends a hearing pursuant to a subpoena issued under this rule is entitled to witness fees and mileage as provided in ORS 44.415(2) for subpoenaed witnesses.

(7) Only witnesses, who are not a party to the proceeding, who attend a hearing pursuant to a subpoena issued by or on behalf of the department under this rule may be paid or reimbursed by the department for witness fees and mileage.

(8) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the Administrative Law Judge, the department or the party requesting the issuance of or issuing the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 183.440, 657B.410]

471-070-8037 Appeals: Individually Identifiable Health Information (Final 11/23/22)

(1) This rule is intended to comply with federal requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA Privacy Rules in 45 CFR Parts 160 and 164 to protect the privacy of Protected Health Information. This rule should be construed to implement and not to alter the requirements of 45 CFR § 164.512(e).

(2) For purposes of this rule, and consistent with the terms in the HIPAA Privacy Rules in 45 CFR Parts 160 and 164:

(a) An "administrative tribunal" is an administrative law judge who conducts a contested case hearing on behalf of the department.

(b) A "covered entity" includes the following entities, as further defined in the HIPAA Privacy Rules:

(A) A Health Insurer or the Medicaid program;

(B) A Health Care Clearinghouse; or

(C) A Health Care Provider that transmits any Individually Identifiable Health Information using Electronic Transactions covered by HIPAA.

(c) "*Protected health information"* means individually identifiable health information:

(A) Except as provided in paragraph (B) of this subsection, that is:

(i) Transmitted by electronic media;

(ii) Maintained in electronic media; or

(iii) Transmitted or maintained in any other form or medium.

(B) Protected health information excludes individually identifiable health information:

(i) In education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g;

(ii) In records described at 20 U.S.C. 1232g(a)(4)(B)(iv);

(iii) In employment records held by a covered entity in its role as employer; and

(iv) Regarding a person who has been deceased for more than 50 years.

(d) A "qualified protective order (QPO)" is an order of the administrative tribunal that:

(A) Prohibits the use or disclosure of protected health information by the administrative law judge, the department, or a party for any purpose other than the contested case proceeding or judicial review of the contested case proceeding;

(B) Requires that all copies of the protected health information be returned to the covered entity or destroyed at the conclusion of the contested case proceeding, or judicial review of the contested case proceeding, whichever is later; and

(C) Includes such additional terms and conditions as may be appropriate to comply with federal or state confidentiality requirements that apply to the protected health information.

(3) An administrative tribunal may issue a QPO at the request of a party, a covered entity, an individual, or the department.

(a) A request for a QPO may be accompanied by a copy of a subpoena, discovery request, or other lawful process that requests protected health information from a covered entity.

(b) If the individual has signed an authorization permitting disclosure of the protected health information for purposes of the contested case proceeding, the administrative tribunal need not issue a QPO.

(4) The provisions of this rule do not supersede any other applicable provisions of the HIPAA Privacy Rules that otherwise permit or restrict uses or disclosure of protected health information without the use of a QPO.

[Stat. Auth.: ORS 183.341, 657B.340; Stats. Implemented: ORS 183.341, 657B.410]

471-070-8040 Appeals: Postponement of Hearing (Final 11/23/22)

(1) At the request of a party or on the administrative law judge's own initiative, an administrative law judge may order, orally or in writing, that a hearing be postponed.

(2) A postponement may be granted by Office of Administrative Hearings staff at the request of a party if:

(a) The request is promptly made after the party becomes aware of the need for postponement; and

(b) The party has good cause, as stated in the request, for not attending the hearing at the time and date set.

(3) For the purpose of subsection (2)(b) of this rule, good cause exists when:

(a) The circumstances causing the request are beyond the reasonable control of the requesting party; and

(b) Failure to grant the postponement would result in undue hardship to the requesting party.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.410]

471-070-8045 Appeals: Telephone and Video Conference Hearings (Final 11/23/22)

(1) Unless precluded by law, the Office of Administrative Hearings (OAH) may, in its discretion, hold a hearing or portion of a hearing by telephone or video conference. Nothing in this rule precludes the OAH from allowing some parties or witnesses to attend by telephone or video conference while others attend in person.

(2) The OAH may direct that a hearing be held by telephone or video conference upon request or on its own motion.

(3) The OAH shall make an audio, video, or stenographic record of any telephone or video conference hearing.

(4) At least seven calendar days prior to commencement of an evidentiary hearing that is held by telephone or video conference, each party shall provide to all other parties and to the OAH copies of documentary evidence that it will seek to introduce into the record. The department shall provide to all parties and to the OAH copies of all documents and records in the possession of the department that will be introduced at the hearing as exhibits, including any statements of the claimant, employee, employer, or employer's agent(s), and all jurisdictional documents.

(5) Nothing in this rule precludes any party from seeking to introduce documentary evidence in addition to evidence described in section (4) of this rule, during the hearing and the administrative law judge shall receive such evidence, subject to the applicable rules of evidence, if inclusion of the evidence in the record is necessary to conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the OAH and to the other parties, the hearing may be continued upon the request of any party for sufficient time to allow the party to obtain and review the evidence.

(6) As used in this rule, “telephone” means any two-way electronic communication device.

(7) As used in this rule, “video conference” means a virtual, online meeting over the internet that simulates a face-to-face meeting.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.410]

471-070-8050 Appeals: The Hearing (Final 11/23/22)

(1) The purpose of the hearing is to inquire fully into the matters at issue and to make a decision on the basis of the evidence shown at the hearing.

(2) No administrative law judge shall participate in a hearing if the administrative law judge has any private interest in the outcome of the hearing or holds any bias or prejudice which would impair a fair and impartial hearing. All testimony at any hearing before an administrative law judge shall be under oath or affirmation.

(3) The Office of Administrative Hearings shall make an audio, video, or stenographic record of the hearing.

(4) The administrative law judge shall conduct and control the hearing. The administrative law judge shall determine the order of the presentation of evidence, administer oaths, examine any witnesses, and may, either on the administrative law judge’s own motion or a party’s request, exclude witnesses from the hearing room. Parties, or their authorized representatives, shall have the right to give testimony and to call and examine witnesses.

(5) Hearings are not open to the public and are closed to non-participants in the hearing. The administrative law judge may exclude witnesses from the hearing, except for a party, a party’s authorized representative, expert witnesses, the agency representative, one agency officer or employee, and any persons authorized below to attend.

(a) An officer or employee of the department may represent the department in a hearing requested under OAR 471-070-8005, when authorized by the

Attorney General in accordance with ORS 183.452 and applicable administrative rules.

(b) Individuals may appear on their own behalf or by an attorney, paralegal worker, legal assistant, union representative, or person otherwise qualified by experience or training. When a party makes a general appearance at a hearing, defects in notice are waived.

(c) Parties that are corporations, partnerships, limited liability companies, unincorporated associations, trusts, or government entities may be represented by an authorized officer, authorized employee, or an attorney.

(d) When a party is not represented at the hearing by an attorney, paralegal worker, legal assistant, union representative, or person otherwise qualified by experience or training, the administrative law judge shall explain the issues involved in the hearing and the matters that the unrepresented party must either prove or disprove. The administrative law judge shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the administrative law judge in the hearing.

(6) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude the administrative law judge from entering a decision unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of serious affairs shall be admissible. If a question of privilege arises, the administrative law judge shall fully and clearly inform the party of any rights as to such privilege and deal with procedural problems created by the existence of such issue in a way which protects the party's right to a fair hearing. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(7) All evidence shall be offered and made a part of the record in the case and, except for matters stipulated to and for notice taken, no other factual information or evidence shall be considered by the administrative law judge in making the decision. The experience, technical competence, and specialized knowledge of the administrative law judge may be utilized in the evaluation of the evidence presented. The administrative law judge may receive evidence deemed relevant and essential by the administrative law judge to a fair disposition of the issues.

(8) The administrative law judge may take official notice of judicially cognizable facts. The administrative law judge may take notice of general, technical, or scientific facts within the administrative law judge's specialized knowledge and may take

notice of documents, records, and forms retained within the department's files. The administrative law judge shall notify the parties of any official notice taken during the hearing or in the decision prior to such decision becoming final. Parties shall be afforded an opportunity to contest the material so noticed during the hearing or prior to the administrative law judge's decision becoming final.

(9) The administrative law judge shall render a decision on the issue and law involved as stated in the notice of hearing. The administrative law judge's jurisdiction and authority is confined solely to the issue(s) arising under the Paid Family and Medical Leave Insurance laws in ORS chapter 657B.

[Stat. Auth.: ORS 183.452, 657B.340; Stats. Implemented: ORS 183.452, 657B.410]

471-070-8055 Appeals: Continuance of Hearing (Final 11/23/22)

(1) At the request of a party or on the administrative law judge's own initiative, an administrative law judge may order, orally or in writing, that a hearing be continued.

(2) An administrative law judge may grant a continuance at the request of a party if:

(a) The request is made prior to the issuance of the administrative law judge's decision; and

(b) The party has good cause, as stated in the request, for continuing the hearing.

(3) For the purpose of subsection (2)(b) of this rule, good cause exists when:

(a) The circumstances causing the request are beyond the reasonable control of the requesting party; and

(b) Failure to grant the continuance would result in undue hardship to the requesting party.

(4) An administrative law judge other than the one who presided at the first hearing may conduct a continued hearing.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.410]

471-070-8060 Appeals: Office of Administrative Hearings Transmittal of Questions (Final 11/23/22)

(1) Questions from the administrative law judge regarding the following issues related to the Paid Family and Medical Leave Insurance program may be transmitted to the department:

(a) The department's interpretation of its rules and applicable statutes; or

(b) Which rules or statutes apply to a proceeding.

(2) At the request of a party, the department, or their representatives, or on the administrative law judge's own motion, the administrative law judge may transmit a question to the department.

(3) The administrative law judge shall submit any transmitted question in writing to the department. The submission shall include a summary of the matter in which the question arises and shall be served on the department representative and parties in the manner required by OAR 471-070-8030.

(4) The department may request additional submissions by a party or the administrative law judge in order to respond to the transmitted question.

(5) Unless prohibited by statute or administrative rules governing the timing of hearings, the administrative law judge may stay the proceeding and shall not issue the proposed order or the final order, if the administrative law judge has authority to issue the final order, until the department responds to the transmitted question.

(6) The department shall respond in writing to the transmitted question within a reasonable time. The department's response must be delivered by a person with authority to speak on the question transmitted.

(7) The department's response shall be made a part of the record of the hearing. The department may decline to answer the transmitted question. The department shall provide its response to the administrative law judge and to each party. The parties may reply to the department's response within a reasonable time.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.410]

471-070-8065 Appeals: Administrative Law Judge's Decision (Final 11/23/22)

(1) After the administrative law judge has given all parties reasonable opportunity for a fair hearing, the administrative law judge shall promptly affirm, modify, or set aside the decision of the department. The administrative law judge shall promptly prepare and serve a written decision to all parties entitled to notice of the administrative law judge's decision, including any dismissal of the request for hearing as provided in OAR 471-070-8070, and the reasons for the decision. In the case of an assessment, the administrative law judge may increase or decrease the amount of the assessment.

(2) The administrative law judge's decision shall be based upon the evidence in the hearing record and upon any stipulated or officially noticed facts. Any findings of fact by the administrative law judge shall be based upon reliable, probative, and substantial evidence.

(3) The administrative law judge may address issues raised by evidence in the record, including but not limited to the claims filed subsequent to issuance of a decision to

allow or deny a benefit claim or employer's application for approval of an equivalent plan under ORS 657B.210, notwithstanding the scope of the issues raised by the parties or the arguments in a party's request for hearing.

(4) The administrative law judge's decision shall be in an approved form and shall contain:

(a) A caption clearly identifying the parties;

(b) A statement of jurisdiction;

(c) A statement of the issues and law involved;

(d) Evidentiary rulings to include or exclude evidence;

(e) Findings of fact;

(f) Conclusions based upon the findings of fact; or a statement adopting conclusions set forth in the appealed administrative decision; and

(g) A decision setting forth the action to be taken.

(5) Copies of the administrative law judge's decision shall be sent to the parties, or their authorized representatives, at their last known address or electronically when permitted and the parties have opted for electronic notification, as shown on record.

(6) A decision of the administrative law judge becomes final 60 calendar days after the date of electronic notification or the mailing of the decision to the parties, or their authorized representatives, at the last-known address of record with the Director unless:

(a) The administrative law judge, on the administrative law judge's own motion, reviews the decision and issues an amended decision in which case the amended decision becomes the new decision and becomes final 60 calendar days after; or

(b) A petition is filed in the Court of Appeals in accordance with ORS 183.482.

(7) An administrative law judge may issue an amended decision prior to the previous decision becoming final. The amended decision shall be served as required by these rules and shall be subject to review.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.410]

471-070-8070 Appeals: Dismissals of Requests for Hearing (Final 11/23/22)

(1) An administrative law judge may order that a request for hearing be dismissed upon request from the party to withdraw the request for hearing.

(2) An administrative law judge may order that a request for hearing be dismissed upon request of the Director or the authorized representative of the Director after either one has:

(a) Issued a new or amended determination or decision that grants the party that which was placed in issue by the request for hearing; or

(b) Withdrawn or cancelled the determination or decision upon which the request for hearing was based.

(3) On the administrative law judge's own initiative, an administrative law judge may order that a request for hearing be dismissed if:

(a) The party fails to file the request for hearing within the time allowed by statute or rule without a sufficient showing of good cause, as required for a late request for hearing in OAR 471-070-8025(3);

(b) The party fails to provide information requested by the administrative law judge or their designee;

(c) The party fails to appear at the hearing at the time and place stated in the notice of hearing;

(d) The request for hearing has been filed prior to the service of the decision or determination that is the subject of the request;

(e) The request for hearing is made by a person not entitled to a hearing on the merits or is made with respect to a determination or decision of the Director or authorized representative of the Director with respect to which there is no lawful authority to request a hearing.

(4) A dismissal by the administrative law judge is final unless the party whose request for hearing has been dismissed files, within 20 calendar days after the dismissal notice was sent electronically or mailed to the party's last-known address, a request under OAR 471-070-8075 to reopen the hearing.

(5) The Director of the Employment Department may dismiss a request for hearing if the conditions described in sections (1), (2), (3)(d) or (3)(e) of this rule exist.

(6) (a) A dismissal by the Director under section (5) of this rule is final unless the party whose request for hearing has been dismissed files, within 20 calendar days after the dismissal notice was sent electronically or mailed to the party's last-known address, a request for hearing regarding the dismissal.

(b) If the party files a timely request under subsection (6)(a) of this rule, the hearing regarding the dismissal shall be assigned to an administrative law judge from the Office of Administrative Hearings under OAR 471-070-8010.

(c) The administrative law judge assigned under subsection (6)(b) of this rule shall determine whether the dismissal was appropriately entered. If the dismissal was not appropriately entered, the administrative law judge shall decide the underlying issue upon which the hearing was requested.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.410]

471-070-8075 Appeals: Reopening of a Hearing (Final 11/23/22)

(1) After issuance of an administrative law judge's written decision as set forth in OAR 471-070-8065, any party may file a request to reopen the hearing. An administrative law judge may reopen the hearing if the party:

(a) Requesting the reopening failed to appear at the hearing;

(b) Files in writing, within 20 calendar days of the date of mailing or electronic notification of the hearing decision, a request with Office of Administrative Hearings (OAH) and simultaneously provide a copy of the request to the department to reopen; and

(c) Has good cause for failing to appear at the hearing.

(2) "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an interested party's reasonable control.

(a) Good cause includes but is not limited to:

(A) Failure to receive a document because the department or OAH mailed it to an incorrect address despite having the correct address;

(B) For telephone or video conference hearings, unanticipated, and not reasonably foreseeable, loss of telephone or video conference service; or

(C) Incapacity.

(b) Good cause does not include:

(A) Failure to receive a document due to not notifying the department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal;

(B) Not understanding the implications of a decision or notice when it is received.

(3) The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement which the OAH shall consider in determining whether good cause exists for failing to appear at the hearing.

(4) The administrative law judge's ruling on a request to reopen the hearing shall be in writing and mailed to the parties.

(5) The date that a request to reopen is considered filed shall be determined under OAR 471-070-8005.

(6) Nothing in section (3) of this rule prevents the OAH from scheduling a hearing if, in the sole judgment of the OAH, testimony is required.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.410]

471-070-8080 Appeals: Late Request to Reopen Hearing (Final 11/23/22)

(1) The period within which a party may request reopening of a hearing may be extended if the party requesting reopening:

(a) Has good cause for failing to request reopening within the time allowed; and

(b) Acts within a reasonable time.

(2) "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an interested party's reasonable control.

(a) Good cause includes but is not limited to:

(A) Failure to receive a document because the department or Office of Administrative Hearings (OAH) mailed it to an incorrect address despite having the correct address;

(B) For telephone or video conference hearings, unanticipated, and not reasonably foreseeable, loss of telephone or video conference service; or

(C) Incapacity.

(b) Good cause does not include:

(A) Failure to receive a document due to not notifying the department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal; or

(B) Not understanding the implications of a decision or notice when it is received.

(3) The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which the OAH shall consider in determining whether good cause exists for the late filing, and whether the party acted within seven calendar days after the circumstances that prevented a timely filing ceased to exist.

(4) The date that a late request to reopen is considered filed shall be determined under OAR 471-070-8005.

(5) Nothing in section (3) of this rule prevents the OAH from scheduling a hearing if, in the sole judgment of the OAH, testimony is required.

(6) The administrative law judge's decision on a late request to reopen shall be in writing and mailed to the parties.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.410]

471-070-8520 One-Percent Penalty (Final 1/31/22)

(1) If an employer has failed to file or complete all required reports or pay all required contributions for the calendar year as described in 471-070-3030, the department shall assess the penalty authorized by ORS 657B.910 on the Paid Family and Medical Leave Insurance (PFMLI) subject wages. The department shall send notice of the assessment of such penalty to the employer's last known address or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records on or before October 20 of the year. The penalty shall become final on November 10 immediately following the assessment.

(2) On or after the date of the assessment, but prior to November 10 immediately following the assessment, the employer may request waiver of the penalty based on good cause as defined in OAR 471-070-8530.

(3) If an employer makes a request for waiver of the penalty within the time prescribed in section (2) of this rule, the department shall make a decision, either granting or denying the waiver, and mail notice of the decision to the employer's last known address or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records. If, prior to November 10 immediately following the assessment, the department determines that the employer had good cause for the failure to file all reports or pay all contributions due by September 1, the department shall 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 10 immediately following the assessment, the department shall deny the request for waiver. If the request for waiver is denied, the department shall 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.

(4) Hearings held and administrative law judge decisions issued pursuant to section (3) of this rule shall be in accordance with the provisions of chapter 137, division 3 of the Oregon Administrative Rules that have been adopted for the PFMLI program.

(5) Judicial review of administrative law judge decisions issued pursuant to this rule shall be as provided for review of orders in contested cases under ORS 183.310 through 183.550. The director is designated as a party for purposes of hearings under this rule.

(6) Upon motion of the director or upon application of an interested employer, the director may reconsider a penalty imposed under ORS 657B.910 irrespective of whether it has become final:

(a) Such reconsideration shall be restricted to penalties resulting from clerical errors or errors of computation and may include a new decision upon any grounds or issues not previously ruled upon or new facts not previously known to the director;

(b) A new decision issued after reconsideration shall be subject to hearing and judicial review in accordance with this rule.

(7) A request for waiver of the penalty for good cause must be in writing. The date of any request for waiver under this rule shall be:

(a) The postmarked date on the request, if mailed;

(b) The date specified in OAR 471-070-0850, if electronically filed; or

(c) In the absence of a postmark, submittal date or machine imprinted date, the most probable date of mailing as determined by the director.

(8) The employees listed in OAR 471-070-0550 may act on behalf of the director for the purposes of sections (1), (2) and (3) of this rule.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.910]

471-070-8530 Good Cause for Failure to File Reports or Pay Contributions (Final 1/31/22)

(1) As used in ORS 657B.910 and 657B.920 and OAR 471-070-8520, good cause for failure to file all required reports or to pay all contributions due will be found when the employer establishes, by satisfactory evidence, that factors or circumstances beyond the employer's reasonable control caused the delay in filing the required report or paying the contribution due.

(2) In determining good cause under section (1) of this rule, the director may consider all circumstances, but shall require at a minimum, that the employer:

(a) Prior to the date the report or contributions were due, gave notice to the department, when reasonably possible, of the factors or circumstances which ultimately caused the delay;

(b) Filed the required report or paid the contributions due within seven days after the date determined by the director to be the date the factors or circumstances causing the delay ceased to exist;

(c) Made a diligent effort to remove the cause of the delay and to prevent its recurrence; and

(d) Provided an official police report, or other documentation acceptable to the director or an authorized representative, that was made within 20 days of a criminal act, or discovery of the act, if the delay was due to a criminal act by any party.

(3) In applying sections (1) and (2) of this rule, a lack of funds on the part of the employer shall not constitute good cause.

(4) In applying sections (1) and (2) of this rule, failure to notify the department of an updated mailing address shall not constitute good cause.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.910, 657B.920]

471-070-8540 Penalty Amount When Employer Fails to File Report (Final 10/6/22)

(1) If an employer fails to file all required reports within the time period described in ORS 657B.920(2), the department may assess a late filing penalty in addition to any other amounts due.

(2) The penalty shall be 0.02 percent of the employer's employees total Paid Family and Medical Leave Insurance (PFMLI) subject wages for the late report rounded to the nearest $100. If the penalty is calculated to be less than $100, the amount will be the minimum $100.

Example: Athena's Yoga and Piyo Studio has 20 employees with total PFMLI subject wages for first quarter of 2024 of $120,000. Athena does not file the 2024 Oregon Quarterly Tax Report for the first quarter. The department sends a written notice warning on May 10, 2024, to Athena's Yoga and Piyo Studio, but they do not correct the deficiency by filing the needed report. A penalty of $24 (0.0002 x $120,000 PFMLI subject wages) is calculated by the department. But since the minimum penalty is $100, the penalty imposed by the department is $100.

[Stat. Auth.: ORS 657B.340; Stats. Implemented: ORS 657B.920]