# A Primer on Oregon’s Paid Family and Medical Leave Insurance Program

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In 2019, the Oregon Legislative Assembly passed the Paid Family Medical Leave Act, which established a paid family and medical leave insurance (PFMLI) program for Oregon employees. PFMLI provides an employee with compensated time off from work to care for and bond with a child following the child’s birth or adoption, to recover from a serious health condition or care for a family member’s serious health condition, or to take leave if the employee or the employee’s family member has experienced domestic violence, sexual assault, or harassment.

PFMLI does not provide additional leave beyond what is currently provided by Oregon law, but it provides compensation during such leave. The PFMLI program will be funded by employee and employer contributions (PFMLI Fund) in the form of payroll deductions, which are expected to begin on January 1, 2023. Eligible employees may file for benefits starting September 1, 2023.

On April 27, 2022, the Oregon Employment Department (OED) filed proposed administrative rules with the Oregon Office of the Secretary of State to detail the specifics of the program. Although the final rules may be slightly different from the proposed rules, the broad strokes of the program, and what employers need to know, will largely remain the same. The following is a nonexhaustive overview of several important aspects of the PFMLI program.

## Covered Employers and Eligible Employees

An employer that employs one or more employees anywhere in the state of Oregon is a covered employer.

To be eligible for PFMLI benefits, an employee who performs work in Oregon must have:

- earned at least $1,000 in wages in the year prior to taking leave;
- contributed to the PFMLI Fund in the base year or alternate base year;

- experienced a qualifying event;
- submitted an application for benefits; and
- not received workers' compensation or unemployment insurance benefits during the same period the employee is seeking benefits.

Additionally, employees who have been employed by covered employers for at least ninety days are entitled to return to their prior jobs after taking family or medical leave.

## Qualifying Reasons

An eligible employee may take twelve weeks of PFMLI leave for any of the following reasons:

- to care for and bond with a child during the first year after the child's birth or placement through foster care or adoption;
- to care for a family member with a serious health condition;
- to care for the employee's own serious health condition; or
- to seek medical, legal, or law enforcement assistance for the employee or the employee's minor child or dependent related to domestic violence, harassment, sexual assault, or stalking.

The definition of "family member" is expanded under the PFMLI program to include all individuals covered under the Oregon Family Leave Act (OFLA) as a "family member" (spouse, child, parent, sibling, grandparent, and grandchild), as well as "[a]ny individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship."

## Leave Periods and Increments

Eligible employees may take up to twelve weeks of PFMLI leave in a benefit year. If the qualifying reason for taking PFMLI leave also qualifies the employee for unpaid leave under the OFLA and federal Family and Medical Leave Act (FMLA), the employee must take such leave concurrently. Employees may not take more than sixteen weeks of combined paid and unpaid leave each benefit year. Employees may also qualify for up to two additional weeks of leave related to pregnancy, childbirth or a related medical condition, including lactation, for a total amount of leave not to exceed eighteen weeks per benefit year.

As with OFLA leave, employees may take PFMLI leave in continuous or intermittent periods. Leave may be taken in increments of a full workweek or by workdays. PFMLI leave is in addition to paid sick time under the Oregon Paid Sick Time Law. The law requires employers to continue to provide healthcare benefits during employees' PFMLI leave.

## Funding, Equivalent Plans, and Benefits

Beginning January 1, 2023, eligible employees and employers will contribute to the PFMLI Fund. Employees will contribute 60 percent and employers will contribute 40 percent of the total contribution rate determined annually by OED, which has a statutory maximum of 1 percent of wages. The employee's portion is withheld from the employee's pay, similar to income tax withholding. Employers with fewer than twenty-five employees will not be required to contribute to the PFMLI Fund.

Employers are required to contribute to the PFMLI Fund unless an employer has an equivalent plan approved by OED. Employers must apply for reapproval annually for three years after OED initially approves the employer's equivalent plan. Employees of an employer with an approved equivalent plan will not pay into, or receive benefits from, the PFMLI Fund, but will instead receive benefits from the employer's plan.

Eligible employees will be able to apply for PFMLI leave starting September 1, 2023, and benefits are expected to begin September 3, 2023. PFMLI benefits are wage-replacement benefits. An employee who takes leave in workday increments will be paid a prorated benefit amount based on the number of workdays of leave taken in the employee's average workweek.

## Notice of Leave and Application for Employee Benefits

If an employee's PFMLI leave is foreseeable, an employer may require an employee to provide thirty days' written notice. If the leave is not foreseeable, an employer may require that the employee give oral notice within twenty-four hours of the leave's commencement and written notice within three days after the commencement of leave. An employer that requires employees to provide written notice either before leave commences or shortly thereafter must outline the notice requirements in a written policy, which must be provided to the employee at the time of hire and each time the policy is modified.

An employee seeking PFMLI benefits must submit an application to OED, not the employer, that provides basic information including the employee's name, Social Security number, identify verification documents, and the employer's information. The application must also include information about the notice given to the employer and details about the employee's leave schedule, including the anticipated length of leave and type of leave. The application must also include proper verification for the type of leave requested, if the employer has requested verification of the leave.

Once an employee has applied for PFMLI benefits, OED will notify the employer of the leave request and the employer may provide any additional information about the claim. Employers may respond to these requests within ten calendar days for any additional information to be considered. OED will communicate its decision to the applicant after consideration. The rules do not give a timeframe for when OED must render a decision on an application.

## Key Takeaways for Employers

The rules will be finalized by September 22, 2022, and OED will begin reviewing equivalent plans on October 22, 2022. Employers with employees working in Oregon might consider drafting policies related to PFMLI leave now in preparation for when the law takes effect on January 1, 2023.

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