

Enrolled House Bill 2474

Sponsored by Representative POWER, Senator TAYLOR; Representatives ALONSO LEON, CAMPOS, DEXTER, GRAYBER, HUDSON, NERON, REYNOLDS, RUIZ, SCHOUTEN, SMITH WARNER, VALDERRAMA, WILLIAMS, ZIKA, Senator PATTERSON (Presession filed.)

CHAPTER

AN ACT

Relating to family leave; amending ORS 659A.150, 659A.156, 659A.159, 659A.162 and 659A.168.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 659A.150 is amended to read:

659A.150. As used in ORS 659A.150 to 659A.186:

- (1) "Covered employer" means an employer described in ORS 659A.153.
- (2) "Eligible employee" means any employee of a covered employer other than those employees exempted under the provisions of ORS 659A.156.
- (3) "Family leave" means a leave of absence described in ORS 659A.159, except that "family leave" does not include leave taken by an eligible employee who is unable to work because of a disabling compensable injury, as defined in ORS 656.005, under ORS chapter 656.
- (4) "Family member" means the spouse of an employee, the biological, adoptive or foster parent or child of the employee, the grandparent or grandchild of the employee, a parent-in-law of the employee or a person with whom the employee was or is in a relationship of in loco parentis.
- (5) "Health care provider" means:
 - (a) A person who is primarily responsible for providing health care to an eligible employee or a family member of an eligible employee, who is performing within the scope of the person's professional license or certificate and who is:
 - (A) A physician licensed under ORS chapter 677;
 - (B) A physician assistant licensed under ORS 677.505 to 677.525;
 - (C) A dentist licensed under ORS 679.090;
 - (D) A psychologist licensed under ORS 675.030;
 - (E) An optometrist licensed under ORS 683.070;
 - (F) A naturopath licensed under ORS 685.080;
 - (G) A registered nurse licensed under ORS 678.050;
 - (H) A nurse practitioner licensed under ORS 678.375;
 - (I) A direct entry midwife licensed under ORS 687.420;
 - (J) A licensed registered nurse licensed by the Oregon State Board of Nursing as a nurse practitioner specializing in nurse midwifery;
 - (K) A regulated social worker authorized to practice regulated social work under ORS 675.510 to 675.600; or

(L) A chiropractic physician licensed under ORS 684.054, 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 person who is primarily responsible for the treatment of an eligible employee or a family member of an eligible employee solely through spiritual means, including but not limited to a Christian Science practitioner.

(6) "Public health emergency" means:

(a) A public health emergency declared under ORS 433.441.

(b) An emergency declared under ORS 401.165 if related to a public health emergency as defined in ORS 433.442.

[(6)] (7) "Serious health condition" means:

(a) An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility;

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

(c) Any period of disability due to pregnancy, or period of absence for prenatal care; or

(d) Any period of absence for the donation of a body part, organ or tissue, including preoperative or diagnostic services, surgery, post-operative treatment and recovery.

SECTION 2. ORS 659A.156 is amended to read:

659A.156. (1) All employees of a covered employer are eligible to take leave for one of the purposes specified in ORS 659A.159 (1)(b) to (e) except:

(a) An employee who was employed by the covered employer for fewer than 180 days immediately before the date on which the family leave would commence.

(b) An employee who worked an average of fewer than 25 hours per week for the covered employer during the 180 days immediately preceding the date on which the family leave would commence.

(2) All employees of a covered employer are eligible to take leave for the purpose specified in ORS 659A.159 (1)(a) except an employee who was employed by the covered employer for fewer than 180 days immediately before the date on which the family leave would commence.

(3) Notwithstanding subsections (1) and (2) of this section, all employees of a covered employer are eligible to take leave for one of the purposes specified in ORS 659A.159 (1)(a) to (e) during a period of time covered by a public health emergency except:

(a) An employee who worked for the covered employer for fewer than 30 days immediately before the date on which the family leave would commence; or

(b) An employee who worked for the covered employer for an average of fewer than 25 hours per week in the 30 days immediately before the date on which the family leave would commence.

(4)(a) Notwithstanding subsections (1) and (2) of this section, an employee of a covered employer is eligible to take leave for one of the purposes specified in ORS 659A.159 (1)(b) to (e) or for the purpose specified in ORS 659A.159 (1)(a), if the employee:

(A)(i) Separates from employment with the covered employer, irrespective of any reason;

(ii) Is eligible to take leave under subsections (1) or (2) of this section at the time the employee separates; and

(iii) Is reemployed by the covered employer within 180 days of separation from employment; or

(B)(i) Is eligible to take leave under subsections (1) or (2) of this section at the beginning of a temporary cessation of scheduled hours of 180 days or less; and

(ii) Returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

(b) Any family leave taken by the employee within any one-year period continues to count against the length of time of family leave the employee is entitled under ORS 659A.162.

(c) **The amount of time that an employee is deemed to have worked for a covered employer prior to a break in service due to a separation from employment or a temporary cessation of scheduled hours shall be restored to the employee when the employee is reemployed by the employer within 180 days of separation from employment or when the employee returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.**

SECTION 3. ORS 659A.159 is amended to read:

659A.159. (1) Family leave under ORS 659A.150 to 659A.186 may be taken by an eligible employee for any of the following purposes:

(a) To care for an infant or newly adopted child under 18 years of age, or for a newly placed foster child under 18 years of age, or for an adopted or foster child older than 18 years of age if the child is incapable of self-care because of a mental or physical disability.

(b) To care for a family member with a serious health condition.

(c) To recover from or seek treatment for a serious health condition of the employee that renders the employee unable to perform at least one of the essential functions of the employee's regular position.

(d) To care for a child of the employee who is suffering from an illness, injury or condition that is not a serious health condition but that requires home care **or who requires home care due to the closure of the child's school or child care provider as a result of a public health emergency.**

(e) To deal with the death of a family member by:

(A) Attending the funeral or alternative to a funeral of the family member;

(B) Making arrangements necessitated by the death of the family member; or

(C) Grieving the death of the family member.

(2)(a) Leave under subsection (1)(a) of this section must be completed within 12 months after birth or placement of the child, and an eligible employee is not entitled to any period of family leave under subsection (1)(a) of this section after the expiration of 12 months after birth or placement of the child.

(b) Leave under subsection (1)(e) of this section must be completed within 60 days of the date on which the eligible employee receives notice of the death of a family member.

SECTION 4. ORS 659A.162 is amended to read:

659A.162. (1) Except as specifically provided by ORS 659A.150 to 659A.186, an eligible employee is entitled to up to a total of 12 weeks of family leave within any one-year period.

(2)(a) Except as provided by paragraph (b) of this subsection, an eligible employee is entitled to a total of two weeks of family leave for the purposes described in ORS 659A.159 (1)(e).

(b) An eligible employee is entitled to the period of leave described in paragraph (a) of this subsection upon the death of each family member of the employee within any one-year period, except that leave taken as provided by this subsection may not exceed the total period of family leave authorized by subsection (1) of this section.

(c) A covered employer may not require an eligible employee to take multiple periods of leave described in ORS 659A.159 (1)(e) concurrently if more than one family member of the employee dies during the one-year period.

(d) All leave taken for the purposes described in ORS 659A.159 (1)(e) shall be counted toward the total period of family leave authorized by subsection (1) of this section.

(3)(a) In addition to the 12 weeks of family leave authorized by subsection (1) of this section, *[a female]* **an** eligible employee may take a total of 12 weeks of leave within any one-year period for an illness, injury or condition related to **the eligible employee's own** pregnancy or childbirth that disables the eligible employee from performing any available job duties offered by the covered employer.

(b) An eligible employee who takes 12 weeks of family leave within a one-year period for the purpose specified in ORS 659A.159 (1)(a) may take up to an additional 12 weeks of leave within the one-year period for the purpose specified in ORS 659A.159 (1)(d).

(4) When two or more family members work for the same covered employer, the eligible employees may not take concurrent family leave unless:

(a) One employee needs to care for another employee who is a family member and who is suffering from a serious health condition;

(b) One employee needs to care for a child who has a serious health condition while another employee who is a family member is also suffering from a serious health condition; or

(c) The employees are taking leave described in ORS 659A.159 (1)(e).

(5) An eligible employee may take family leave for the purpose specified in ORS 659A.159 (1)(a) in two or more nonconsecutive periods of leave only with the approval of the employer.

(6) Leave need not be provided to an eligible employee by a covered employer for the purpose specified in ORS 659A.159 (1)(d) if another family member is available to care for the child.

(7) A covered employer may not reduce the amount of family leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury.

(8)(a) The Commissioner of the Bureau of Labor and Industries shall adopt rules governing when family leave for a serious health condition of an eligible employee or a family member of the eligible employee may be taken intermittently or by working a reduced workweek. Rules adopted by the commissioner under this paragraph shall allow taking of family leave on an intermittent basis or by use of a reduced workweek to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis or by use of a reduced workweek does not result in the loss of an eligible employee's exempt status under the federal Fair Labor Standards Act.

(b) The commissioner shall adopt rules governing when family leave for the purposes described in ORS 659A.159 (1)(e) may be taken to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis does not result in the loss of an eligible employee's exempt status under the federal Fair Labor Standards Act.

SECTION 5. ORS 659A.162, as amended by section 56, chapter 700, Oregon Laws 2019, is amended to read:

659A.162. (1) Except as specifically provided by ORS 657B.020 and 659A.150 to 659A.186, an eligible employee is entitled to up to a total of 12 weeks of family leave within any one-year period.

(2)(a) Except as provided by paragraph (b) of this subsection, an eligible employee is entitled to a total of two weeks of family leave for the purposes described in ORS 659A.159 (1)(e).

(b) An eligible employee is entitled to the period of leave described in paragraph (a) of this subsection upon the death of each family member of the employee within any one-year period, except that leave taken as provided by this subsection may not exceed the total period of family leave authorized by subsection (1) of this section.

(c) A covered employer may not require an eligible employee to take multiple periods of leave described in ORS 659A.159 (1)(e) concurrently if more than one family member of the employee dies during the one-year period.

(d) All leave taken for the purposes described in ORS 659A.159 (1)(e) shall be counted toward the total period of family leave authorized by subsection (1) of this section.

(3)(a) In addition to the 12 weeks of family leave authorized by subsection (1) of this section, [a female] **an** eligible employee may take a total of 12 weeks of leave within any one-year period for an illness, injury or condition related to **the eligible employee's own** pregnancy or childbirth that disables the eligible employee from performing any available job duties offered by the covered employer.

(b) An eligible employee who takes 12 weeks of family leave within a one-year period for the purpose specified in ORS 659A.159 (1)(a) may take up to an additional 12 weeks of leave within the one-year period for the purpose specified in ORS 659A.159 (1)(d).

(4) When two or more family members work for the same covered employer, the eligible employees may not take concurrent family leave unless:

(a) One employee needs to care for another employee who is a family member and who is suffering from a serious health condition;

(b) One employee needs to care for a child who has a serious health condition while another employee who is a family member is also suffering from a serious health condition; or

(c) The employees are taking leave described in ORS 659A.159 (1)(e).

(5) An eligible employee may take family leave for the purpose specified in ORS 659A.159 (1)(a) in two or more nonconsecutive periods of leave only with the approval of the employer.

(6) Leave need not be provided to an eligible employee by a covered employer for the purpose specified in ORS 659A.159 (1)(d) if another family member is available to care for the child.

(7) A covered employer may not reduce the amount of family leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury.

(8)(a) The Commissioner of the Bureau of Labor and Industries shall adopt rules governing when family leave for a serious health condition of an eligible employee or a family member of the eligible employee may be taken intermittently or by working a reduced workweek. Rules adopted by the commissioner under this paragraph shall allow taking of family leave on an intermittent basis or by use of a reduced workweek to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis or by use of a reduced workweek does not result in the loss of an eligible employee's exempt status under the federal Fair Labor Standards Act.

(b) The commissioner shall adopt rules governing when family leave for the purposes described in ORS 659A.159 (1)(e) may be taken to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis does not result in the loss of an eligible employee's exempt status under the federal Fair Labor Standards Act.

SECTION 6. ORS 659A.168 is amended to read:

659A.168. (1) Except as provided in subsection (2) of this section, a covered employer may require medical verification from a health care provider of the need for the leave if the leave is for a purpose described in ORS 659A.159 (1)(b) to (d) **other than to care for a child who requires home care due to the closure of the child's school or child care provider as a result of a public health emergency.** If an employee is required to give notice under ORS 659A.165 (1), the employer may require that medical verification be provided by the employee before the leave period commences. If the employee commences family leave without prior notice pursuant to ORS 659A.165 (2), the medical verification must be provided by the employee within 15 days after the employer requests the medical verification. The employer may require an employee to obtain the opinion of a second health care provider designated by the employer, at the employer's expense. If the opinion of the second health care provider conflicts with the medical verification provided by the employee, the employer may require the two health care providers to designate a third health care provider to provide an opinion at the employer's expense. The opinion of the third health care provider shall be final and binding on the employer and employee. In addition to the medical verifications provided for in this subsection, an employer may require subsequent medical verification on a reasonable basis.

(2) A covered employer may require medical verification for leave taken for the purpose described in ORS 659A.159 (1)(d), **other than to care for a child who requires home care due to the closure of the child's school or child care provider as a result of a public health emergency,** only after an employee has taken more than three days of leave under ORS 659A.159 (1)(d) during any one-year period. Any medical verification required under this subsection must be paid for by the covered employer. An employer may not require an employee to obtain the opinion of a second health care provider for the purpose of medical verification required under this subsection.

(3) **A covered employer may request verification for the need for leave for the purpose in ORS 659A.159 (1)(d) to care for a child who requires home care due to the closure of the child's school or child care provider as a result of a public health emergency. A request for verification may include a request for:**

(a) **The name of the child requiring home care;**

(b) **The name of the school or child care provider that is subject to closure;**

(c) A statement from the employee that no other family member of the child is willing and able to care for the child; and

(d) A statement that special circumstances exist that require the employee to provide home care for the child during the day, if the child is older than 14 years of age.

[(3)] (4) Subject to the approval of the health care provider, the employee taking family leave for a serious health condition of the employee or a family member of the employee shall make a reasonable effort to schedule medical treatment or supervision at times that will minimize disruption of the employer's operations.

Passed by House April 15, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 26, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State