

House Bill 2474

Sponsored by Representative POWER (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Expands applicability of certain provisions relating to family leave to employers who employ one or more employees. Includes closure of child care provider or school due to public health emergency as qualifying purpose for which leave may be taken. Reduces amount of time employee must work for employer before becoming eligible to take leave. Eliminates disciplinary action that may be imposed upon employee for employee's failure to comply with leave notice requirements. Allows employee to determine order in which employee may choose to use accrued leave.

A BILL FOR AN ACT

1
2 Relating to family leave; amending ORS 653.601, 659A.090, 659A.150, 659A.153, 659A.156, 659A.159,
3 659A.162, 659A.165, 659A.168 and 659A.174.

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

5 **SECTION 1.** ORS 659A.090 is amended to read:

6 659A.090. As used in ORS 659A.090 to 659A.099:

7 (1) Notwithstanding ORS 659A.001, "employee" means an individual who performs services for
8 compensation for an employer [*for an average of at least 20 hours per week*]. "Employee" includes
9 all individuals employed at any site owned or operated by an employer, but does not include inde-
10 pendent contractors.

11 (2) Notwithstanding ORS 659A.001, "employer" means:

12 (a) A person, firm, corporation, partnership, legal representative or other business entity that
13 engages in any business, industry, profession or activity in this state and that employs [25] **one** or
14 more persons in the State of Oregon for each working day during each of 20 or more calendar
15 workweeks in the year in which leave is taken under ORS 659A.093 or the year immediately pre-
16 ceding the year in which the leave is to be taken;

17 (b) The state, and a department, agency, board or commission of the state; and

18 (c) A local government, including, but not limited to, a county, city, town, municipal corporation,
19 independent public corporation or political subdivision of the state.

20 (3) "Period of military conflict" means a period of war:

21 (a) Declared by the United States Congress;

22 (b) Declared by executive order of the President of the United States; or

23 (c) In which a reserve component of the Armed Forces of the United States is ordered to active
24 duty pursuant to Title 32 of the United States Code or section 12301 or 12302 of Title 10 of the
25 United States Code.

26 **SECTION 2.** ORS 659A.150 is amended to read:

27 659A.150. As used in ORS 659A.150 to 659A.186:

28 (1) **"Babysitter" has the meaning given that term in ORS 329A.250.**

29 (2) **"Child care facility" has the meaning given that term in ORS 329A.250.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **(3) “Child care provider” includes, but is not limited to, any of the following that provide,**
 2 **on a regular basis, in whole or in part, care, guidance and supervision of a child, with or**
 3 **without compensation:**

- 4 **(a) A person who is related to the child by blood or marriage within the second-degree;**
- 5 **(b) A babysitter;**
- 6 **(c) A child care facility;**
- 7 **(d) A preschool recorded program;**
- 8 **(e) A facility providing enrichment activity programs for school-age children; and**
- 9 **(f) A facility operating as a school-age recorded program.**

10 **[(1)] (4) “Covered employer” means an employer described in ORS 659A.153.**

11 **[(2)] (5) “Eligible employee” means any employee of a covered employer other than those em-**
 12 **ployees exempted under the provisions of ORS 659A.156.**

13 **[(3)] (6) “Family leave” means a leave of absence described in ORS 659A.159, except that “family**
 14 **leave” does not include leave taken by an eligible employee who is unable to work because of a**
 15 **disabling compensable injury, as defined in ORS 656.005, under ORS chapter 656.**

16 **[(4)] (7) “Family member” [means the spouse of an employee, the biological, adoptive or foster**
 17 **parent or child of the employee, the grandparent or grandchild of the employee, a parent-in-law of the**
 18 **employee or a person with whom the employee was or is in a relationship of in loco parentis] has the**
 19 **meaning given that term in ORS 657B.010.**

20 **[(5)] (8) “Health care provider” means:**

21 **(a) A person who is primarily responsible for providing health care to an eligible employee or**
 22 **a family member of an eligible employee, who is performing within the scope of the person’s pro-**
 23 **fessional license or certificate and who is:**

- 24 **(A) A physician licensed under ORS chapter 677;**
- 25 **(B) A physician assistant licensed under ORS 677.505 to 677.525;**
- 26 **(C) A dentist licensed under ORS 679.090;**
- 27 **(D) A psychologist licensed under ORS 675.030;**
- 28 **(E) An optometrist licensed under ORS 683.070;**
- 29 **(F) A naturopath licensed under ORS 685.080;**
- 30 **(G) A registered nurse licensed under ORS 678.050;**
- 31 **(H) A nurse practitioner licensed under ORS 678.375;**
- 32 **(I) A direct entry midwife licensed under ORS 687.420;**
- 33 **(J) A licensed registered nurse licensed by the Oregon State Board of Nursing as a nurse prac-**
 34 **titioner specializing in nurse midwifery;**
- 35 **(K) A regulated social worker authorized to practice regulated social work under ORS 675.510**
 36 **to 675.600; or**

37 **(L) A chiropractic physician licensed under ORS 684.054, but only to the extent the chiropractic**
 38 **physician provides treatment consisting of manual manipulation of the spine to correct a subluxation**
 39 **demonstrated to exist by X-rays.**

40 **(b) A person who is primarily responsible for the treatment of an eligible employee or a family**
 41 **member of an eligible employee solely through spiritual means, including but not limited to a**
 42 **Christian Science practitioner.**

43 **(9) “Preschool recorded program” has the meaning given that term in ORS 329A.250.**

44 **(10) “School age” has the meaning given that term in ORS 329A.250.**

45 **(11) “School-age recorded program” has the meaning given that term in ORS 329A.250.**

1 [(6)] (12) "Serious health condition" means:

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

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

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

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

10 **SECTION 3.** ORS 659A.153 is amended to read:

11 659A.153. (1) The requirements of ORS 659A.150 to 659A.186 apply *[only]* to employers who em-
12 ploy [25] **one** or more persons in the State of Oregon for each working day during each of 20 or
13 more calendar workweeks in the year in which the leave is to be taken or in the year immediately
14 preceding the year in which the leave is to be taken.

15 (2) The requirements of ORS 659A.150 to 659A.186 do not apply to any employer who offers to
16 an eligible employee a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal
17 Revenue Code of 1986, providing, as one of its options, employee leave at least as generous as the
18 leave required by ORS 659A.150 to 659A.186.

19 **SECTION 4.** ORS 659A.156 is amended to read:

20 659A.156. (1) All employees of a covered employer are eligible to take leave for one of the pur-
21 poses specified in ORS 659A.159 [(1)(b)] (1)(a) to (e) except[:]

22 [(a)] **for** an employee who was employed by the covered employer for fewer than [180] **30** days
23 immediately before the date on which the family leave would commence.

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

26 [(2) *All employees of a covered employer are eligible to take leave for the purpose specified in ORS*
27 *659A.159 (1)(a) except an employee who was employed by the covered employer for fewer than 180 days*
28 *immediately before the date on which the family leave would commence.*]

29 **(2) Notwithstanding subsection (1) of this section, if an eligible employee leaves employ-**
30 **ment with an employer and subsequently is reemployed by the employer within 180 days of**
31 **separation from employment, the employee is considered immediately eligible to take leave**
32 **for one of the purposes specified in ORS 659A.159 (1)(a) to (e) on the date of rehire.**

33 **SECTION 5.** ORS 659A.159 is amended to read:

34 659A.159. (1) Family leave under ORS 659A.150 to 659A.186 may be taken by an eligible em-
35 ployee for any of the following purposes:

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

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

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

43 (d) To care for a child of the employee who is suffering from an illness, injury or condition that
44 is not a serious health condition but that requires home care, **including care for an employee's**
45 **child whose school or child care provider is closed for any continuous, intermittent or re-**

curring period of time by order of a public official due to 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 6. 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 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

1 compensable injury.

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

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

13 **SECTION 7.** ORS 659A.162, as amended by section 56, chapter 700, Oregon Laws 2019, is
14 amended to read:

15 659A.162. (1) Except as specifically provided by ORS 657B.020 and 659A.150 to 659A.186, an el-
16 igible employee is entitled to up to a total of 12 weeks of family leave within any one-year period.

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

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

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

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

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

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

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

37 (a) One employee needs to care for another employee who is a family member and who is suf-
38 fering from a serious health condition;

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

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

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

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

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

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

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

15 **SECTION 8.** ORS 659A.165 is amended to read:

16 659A.165. (1) Except as provided in subsection (2) of this section, a covered employer may re-
 17 quire an eligible employee to give the employer written notice at least 30 days before commencing
 18 family leave. The employer may require the employee to include an explanation of the need for the
 19 leave in the notice.

20 (2) An eligible employee may commence taking family leave without prior notice under the fol-
 21 lowing circumstances:

- 22 (a) An unexpected serious health condition of an employee or family member of an employee;
- 23 (b) An unexpected illness, injury or condition of a child of the employee that requires home care;
- 24 (c) A premature birth, unexpected adoption or unexpected foster placement; or
- 25 (d) The death of a family member.

26 (3) If an employee commences leave without prior notice under subsection (2) of this section, the
 27 employee must give oral notice to the employer within 24 hours of the commencement of the leave,
 28 and must provide the written notice required by subsection (1) of this section within three days after
 29 the employee returns to work. The oral notice required by this subsection may be given by any
 30 other person on behalf of the employee taking the leave.

31 *[(4) Except as provided in this subsection, if the employee fails to give notice as required by sub-*
 32 *sections (1) and (3) of this section, the employer may reduce the total period of family leave authorized*
 33 *by ORS 659A.162 by three weeks, and the employee may be subject to disciplinary action under a*
 34 *uniformly applied policy or practice of the employer. A reduction of family leave under this subsection*
 35 *may not limit leave described in ORS 659A.159 (1)(e).]*

36 **SECTION 9.** ORS 659A.174 is amended to read:

37 659A.174. (1) Except as provided in subsection (2) of this section, and unless otherwise provided
 38 by the terms of an agreement between the eligible employee and the covered employer, a collective
 39 bargaining agreement or an employer policy, family leave is not required to be granted with pay.

40 (2) An employee taking family leave is entitled to use any paid accrued sick leave or any paid
 41 accrued vacation leave during the period of family leave, or to use any other paid leave that is of-
 42 fered by the employer in lieu of vacation leave during the period of family leave.

43 (3) Subject to the terms of any agreement between the eligible employee and the covered em-
 44 ployer or the terms of a collective bargaining agreement, the [employer] **employee** may determine
 45 the particular order in which accrued leave is to be used in circumstances in which more than one

1 type of accrued leave is available to the employee.

2 **SECTION 10.** ORS 653.601 is amended to read:

3 653.601. As used in ORS 653.601 to 653.661:

4 (1)(a) "Employee" means an individual who renders personal services at a fixed rate to an em-
5 ployer if the employer either pays or agrees to pay for personal services or permits the individual
6 to perform personal services.

7 (b) "Employee" includes, but is not limited to:

8 (A) An individual who is paid on a piece-rate basis or the basis of the number of operations
9 accomplished or quantity produced or handled;

10 (B) Individuals paid on an hourly, salary or commission basis;

11 (C) Individuals for whom withholding is required under ORS 316.162 to 316.221;

12 (D) Home care workers as defined in ORS 410.600; and

13 (E) Personal support workers as defined in ORS 410.600.

14 (c) "Employee" does not include:

15 (A) An employee who receives paid sick time under federal law;

16 (B) An independent contractor;

17 (C) A participant in a work training program administered under a state or federal assistance
18 program;

19 (D) A participant in a work-study program that provides students in secondary or post-secondary
20 educational institutions with employment opportunities for financial assistance or vocational train-
21 ing;

22 (E) A railroad worker exempted under the federal Railroad Unemployment Insurance Act; and

23 (F) An individual employed by that individual's parent, spouse or child.

24 (2)(a) "Employer" means any person that employs one or more employees working anywhere in
25 this state, a political subdivision of the state and any county, city, district, authority, public corpo-
26 ration or entity, and any instrumentality of a county, city, district, authority, public corporation or
27 entity, organized and existing under law or charter.

28 (b) "Employer" includes an employer located in a city with a population exceeding 500,000.

29 (c) "Employer" does not include the federal government.

30 (3)(a) "Employer located in a city with a population exceeding 500,000" includes, but is not
31 limited to, an employer that maintains any office, store, restaurant or establishment in that city.

32 (b) "Employer located in a city with a population exceeding 500,000" does not include an em-
33 ployer that maintains only a seasonal farm stand or a trailer that is used temporarily on a con-
34 struction site for office purposes only.

35 (4) "Family member" *[has the meaning given that term in ORS 659A.150]* **means the spouse of**
36 **an employee, the biological, adoptive or foster parent or child of the employee, the**
37 **grandparent or grandchild of the employee, a parent-in-law of the employee or a person with**
38 **whom the employee was or is in a relationship of in loco parentis.**

39 (5)(a) "Front-load," except as provided in paragraph (b) of this subsection, means to assign and
40 make available a certain number of hours of sick time to an employee as soon as the employee be-
41 comes eligible to use sick time and on the first day of the immediately subsequent year without re-
42 gard to an accrual rate.

43 (b) For employees employed by an employer for less than a full year, "front-load" means to as-
44 sign and make available to an employee as soon as the employee becomes eligible to use sick time
45 a number of hours of sick time that is the pro rata percentage of the hours the employee would be

1 entitled to for an entire year based on the number of hours the employee was actually employed by
 2 the employer for the year.

3 (6) "Paid sick time" means time off:

4 (a) That is provided to an employee by an employer that employs 10 or more employees;

5 (b) That may be used for the purposes specified in ORS 653.616; and

6 (c) That is compensated at the regular rate of pay and without reductions in benefits, including
 7 but not limited to health care benefits, that the employee earns from the employer at the time the
 8 employee uses the paid sick time.

9 (7) "Sick time" means time during which an employee is permitted to be absent from work for
 10 a reason authorized under ORS 653.616 without a reduction in benefits, including but not limited to
 11 health care benefits, that the employee earns from the employer.

12 (8) "Year" includes any consecutive 12-month period, such as a calendar year, a tax year, a
 13 fiscal year, a contract year or the 12-month period beginning on the anniversary of the date of em-
 14 ployment of the employee.

15 **SECTION 11.** ORS 659A.168 is amended to read:

16 659A.168. (1) Except as provided in subsection (2) of this section, a covered employer may re-
 17 quire medical verification from a health care provider of the need for the leave if the leave is for
 18 a purpose described in ORS 659A.159 (1)(b) to (d) **other than to care for a child who requires**
 19 **home care due to the closing of the child's school or child care provider.** If an employee is
 20 required to give notice under ORS 659A.165 (1), the employer may require that medical verification
 21 be provided by the employee before the leave period commences. If the employee commences family
 22 leave without prior notice pursuant to ORS 659A.165 (2), the medical verification must be provided
 23 by the employee within 15 days after the employer requests the medical verification. The employer
 24 may require an employee to obtain the opinion of a second health care provider designated by the
 25 employer, at the employer's expense. If the opinion of the second health care provider conflicts with
 26 the medical verification provided by the employee, the employer may require the two health care
 27 providers to designate a third health care provider to provide an opinion at the employer's expense.
 28 The opinion of the third health care provider shall be final and binding on the employer and em-
 29 ployee. In addition to the medical verifications provided for in this subsection, an employer may
 30 require subsequent medical verification on a reasonable basis.

31 (2) A covered employer may require medical verification for leave taken for the purpose de-
 32 scribed in ORS 659A.159 (1)(d), **other than to care for a child who requires home care due to**
 33 **the closing of the child's school or child care provider,** only after an employee has taken more
 34 than three days of leave under ORS 659A.159 (1)(d) during any one-year period. Any medical verifi-
 35 cation required under this subsection must be paid for by the covered employer. An employer may
 36 not require an employee to obtain the opinion of a second health care provider for the purpose of
 37 medical verification required under this subsection.

38 (3) Subject to the approval of the health care provider, the employee taking family leave for a
 39 serious health condition of the employee or a family member of the employee shall make a reason-
 40 able effort to schedule medical treatment or supervision at times that will minimize disruption of the
 41 employer's operations.