

D R A F T

SUMMARY

Authorizes Director of Employment Department to deduct amount from future weekly family and medical leave insurance benefits for overpayments due to individual's fault. Authorizes director to deduct amount from future weekly benefits for overpayments not due to individual's fault. Limits collection period to five years following week in which erroneous payment finally established, except in case of fraud. Specifies contents of notices of recovery. Authorizes director to waive recovery of overpaid benefits, except in case of fraud. Requires director to establish process by which covered individual may request hearing to obtain review of final determination of director regarding benefit deductions.

Provides that person is ineligible for benefits after person is convicted of fraud.

Authorizes director to cancel unrecoverable benefits paid as overpayments under certain circumstances.

Authorizes director to request offset of moneys owed to debtor by state against certain benefit overpayments.

Authorizes director to collect employer assistance grant repayments and contributions from self-employed individuals and tribal governments, including penalties and interest. Allows director to attach liens on real or personal property as result of failure to remit such repayments and contributions.

Authorizes director to assess penalties against employer that violates requirements applicable to employer-offered family and medical leave benefit plans. Requires director to establish process by which employer may request hearing to obtain review of penalty assessments.

Authorizes director to waive, reduce or compromise outstanding nonpayment contribution balances of \$10 or less. Authorizes director to retain overpayments of mandatory contributions for overpayments that do not exceed \$10.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1

2 Relating to the family and medical leave insurance program; creating new

1 provisions; amending ORS 657B.120, 657B.280, 657B.320 and 657B.410; and
2 prescribing an effective date.

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

4 **SECTION 1. Sections 2 to 8 of this 2023 Act are added to and made**
5 **a part of ORS chapter 657B.**

6 **SECTION 2. Deduction of benefits paid in error not due to recipient**
7 **fault; director discretion; civil action by director. (1)(a) If the Director**
8 **of the Employment Department decides that a covered individual has**
9 **been paid benefits to which the covered individual is not entitled be-**
10 **cause of an error not due to the covered individual providing a false**
11 **statement or misrepresentation of a material fact or not disclosing a**
12 **material fact, or because an initial decision to pay benefits is subse-**
13 **quently reversed by a decision finding that the covered individual is**
14 **not eligible for the benefits, then the covered individual is liable to**
15 **have the amount of any benefits paid in error deducted from any fu-**
16 **ture benefits otherwise payable to the covered individual under this**
17 **chapter for any week or weeks within five years following the week in**
18 **which the decision establishing the erroneous payment became final.**

19 (b) For purposes of paragraph (a) of this subsection, the director
20 may deduct all or any part of the covered individual's future weekly
21 benefits.

22 (c) Any notice provided to a covered individual of the individual's
23 liability for recovery of benefits under this section must include a de-
24 scription of:

25 (A) The basis for the director's decision that benefits have been
26 overpaid; and

27 (B) The consequences of the overpayment, including recovery of the
28 overpaid amount and the possibility of waiver under section 3 of this
29 2023 Act.

30 (2) Subject to ORS 657B.410, a decision of the director under this
31 section does not authorize the recovery of the amount of any benefits

1 **paid to a covered individual until the decision is final.**

2 **(3) The director may bring a civil action against a covered individ-**
3 **ual to recover amounts paid to the individual in excess of the maxi-**
4 **imum benefits allowable pursuant to this chapter.**

5 **SECTION 3. Waiver of recovery of overpaid benefits.** (1) **The Direc-**
6 **tor of the Employment Department shall waive recovery of overpaid**
7 **benefits under section 2 of this 2023 Act if the director finds that the**
8 **benefits are recoverable due to a change in state law, the application**
9 **of which has caused the disqualification of benefits previously paid.**

10 **(2) The director may not waive recovery under this section of**
11 **overpaid benefits that are subject to the penalty imposed under ORS**
12 **657B.120 (3).**

13 **(3) The director may waive establishment and recovery of overpaid**
14 **benefits when no decision has been issued under ORS 657B.120 or sec-**
15 **tion 2 of this 2023 Act and the amount of the overpayment is equal to**
16 **or less than one-half of the maximum weekly benefit amount in effect**
17 **at the time the overpayment is discovered.**

18 **(4) Any waiver granted under this section extinguishes all liability**
19 **of the debtor for the waived amounts.**

20 **SECTION 4. Ineligibility for benefits upon conviction of fraud in**
21 **obtaining benefits.** (1) **If a person is convicted by a court of competent**
22 **jurisdiction of willfully making a false statement or misrepresentation,**
23 **or willfully failing to report a material fact, to obtain any benefits**
24 **under this chapter, in addition to any penalties imposed by the court,**
25 **the person shall:**

26 **(a) Be ineligible for benefits based upon wages paid to the person**
27 **in the calendar quarter in which the person was convicted and in all**
28 **prior calendar quarters; and**

29 **(b) Be ineligible for benefits after the conviction until the person**
30 **has reimbursed the Paid Family and Medical Leave Insurance Fund**
31 **established under ORS 657B.430 for the full amount received as a result**

1 of the false statement or misrepresentation or of the failure to report
2 a material fact.

3 (2) The provisions of this section are in addition and supplemental
4 to the provisions of ORS 657B.120.

5 **SECTION 5. Cancellation of unrecoverable benefits.** (1)(a) If any
6 amount paid to a covered individual as benefits, for which the covered
7 individual has been found liable under the provisions of ORS 657B.120
8 to repay or to have deducted from benefits payable, has been neither
9 repaid nor deducted within a period of five years following the date the
10 decision establishing the overpayment became final, and is equal to
11 or less than one-half of the state maximum weekly benefit amount in
12 effect at the time the overpayment is discovered, or determined by the
13 Director of the Employment Department to be uncollectible, the
14 overpayment, together with the record of the overpayment and the
15 resulting shortage, may be canceled.

16 (b) Notwithstanding paragraph (a) of this subsection, the overpay-
17 ment may not be canceled if the debt is being recovered by payments
18 or deductions that were received within the last three months or if
19 repayment of the overpayment is required under section 4 of this 2023
20 Act.

21 (2) If an amount paid to a covered individual as benefits, for which
22 the covered individual has been found liable under the provisions of
23 section 2 of this 2023 Act to have deducted from benefits payable, has
24 not been waived under section 3 of this 2023 Act, paid or deducted from
25 benefits otherwise payable to the individual for any week or weeks
26 within five years following the week in which the decision establishing
27 the overpayment became final, the overpayment, together with the
28 record of the overpayment and the resulting shortage, shall be can-
29 celed.

30 (3) When in the judgment of the director the best interests of the
31 Employment Department are served in an effort to settle accounts, the

1 **director may waive, reduce or compromise any part or all of the in-**
2 **terest or penalty charged pursuant to ORS 657B.120. The director may**
3 **determine that the amount of interest or penalty due and unpaid is**
4 **uncollectible, and write off the amount. In making the determination**
5 **that interest or a penalty is uncollectible, the director shall consider,**
6 **among other factors:**

7 **(a) The administrative costs of continued collection efforts in re-**
8 **lation to the amount due;**

9 **(b) The accessibility of the debtor for effective collection actions;**
10 **and**

11 **(c) The debtor's financial condition and ability to pay the amount**
12 **due, both current and projected.**

13 **SECTION 6. Offset of moneys owed to debtor by state governments**
14 **against certain benefit overpayments; fees. (1) The Director of the**
15 **Employment Department may request an offset against liquidated**
16 **state debt under this section only if:**

17 **(a) The debt is legally enforceable;**

18 **(b) The debt is past due;**

19 **(c) The debt was caused by the debtor's:**

20 **(A) Willfully making a false statement or misrepresentation, or**
21 **willfully failing to report a material fact, to obtain any benefits under**
22 **this chapter;**

23 **(B) Failure to report earnings or to report earnings accurately; or**

24 **(C) Failure to make contributions required under ORS 657B.150 for**
25 **which the state has determined the debtor to be liable and that remain**
26 **uncollected;**

27 **(d) The debtor's appeal period for contesting the debt and the ele-**
28 **ment of causation described in paragraph (c) of this subsection has**
29 **expired; and**

30 **(e) The director has provided at least 60 days' advance written no-**
31 **tice to the debtor that the debt will be offset pursuant to this section**

1 and that the debtor has the right to request administrative review
2 under rules adopted by the director.

3 (2)(a) The director may pay a charge to the Department of Revenue
4 pursuant to ORS 293.250 for processing a request to offset against liq-
5 uidated state debt a state tax refund owed to the debtor.

6 (b) The net amount received from the Department of Revenue after
7 deduction of fees charged under paragraph (a) of this subsection shall
8 be offset against the debt.

9 **SECTION 7. Penalties for employers with employer-offered benefit**
10 **plans.** (1) If the Director of the Employment Department determines
11 that an employer that offers benefits pursuant to a plan approved
12 under ORS 657B.210 has at any time violated any requirements appli-
13 cable to plans approved under ORS 657B.210, the director may assess
14 the following penalties against the employer:

15 (a) \$1,000 for the first violation.

16 (b) \$2,000 for the second and each subsequent violation.

17 (2) The director may waive collection of a penalty assessed under
18 subsection (1) of this section if the employer corrects the violation
19 within 30 days of receiving a notice of the violation and the notice is
20 for a first violation.

21 (3) The director may waive collection of any penalties if the director
22 determines the violation to be an inadvertent error by the employer.

23 (4) Monetary penalties collected under this section shall be depos-
24 ited in the Paid Family and Medical Leave Insurance Fund established
25 under ORS 657B.430.

26 (5) An employer may appeal the director's assessment of a penalty
27 under this section as provided in ORS 657B.410.

28 **SECTION 8. Authority of director to compromise or adjust debts**
29 **or overpayments.** When in the judgment of the Director of the Em-
30 ployment Department the best interests of the Employment Depart-
31 ment are served, the director may:

1 **(1) Waive, reduce or compromise any balance of \$10 or less from a**
2 **contribution due under ORS 657B.150; or**

3 **(2) Retain any overpayment of \$10 or less from a contribution paid**
4 **under ORS 657B.150.**

5 **SECTION 9.** ORS 657B.120 is amended to read:

6 657B.120. (1) An employer may not willfully make or cause to be made
7 false statements or willfully fail to report a material fact regarding the claim
8 of an eligible employee or regarding an employee's eligibility for family and
9 medical leave insurance benefits under this chapter.

10 (2) The Director of the Employment Department may assess a civil pen-
11 alty in an amount not to exceed \$1,000 against an employer for each occur-
12 rence that violates subsection (1) of this section.

13 (3) If the director determines that a covered individual willfully made a
14 false statement or willfully failed to report a material fact in order to obtain
15 benefits under this chapter, the covered individual is:

16 (a) Disqualified from claiming benefits for one year; and

17 (b) Liable for a penalty imposed at a rate prescribed by the director of
18 at least 15 percent, but not greater than 30 percent, of the amount of benefits
19 the individual received to which the individual was not entitled.

20 (4)(a) If the director determines that a covered individual has received
21 benefits to which the individual was not entitled, the director may:

22 [(a)] **(A)** Seek repayment of benefits from the covered individual in a
23 manner prescribed by the director by rule; [and] **or**

24 [(b)] **(B)** Have the amount of the benefits deducted from any future ben-
25 efits otherwise payable to the individual under ORS 657B.100.

26 **(b) For purposes of paragraph (a)(B) of this subsection, the director**
27 **may deduct all or any part of the covered individual's future weekly**
28 **benefits.**

29 **(c) Except as provided in paragraph (d) of this subsection, benefits**
30 **described in paragraph (a) of this subsection may be collected for any**
31 **week or weeks within five years following the week in which the de-**

1 **cision establishing the erroneous payment became final.**

2 **(d) Notwithstanding paragraph (c) of this subsection, overpaid ben-**
3 **efits subject to the penalty imposed under subsection (3)(b) of this**
4 **section may be collected at any time.**

5 **(e) Notice provided to a covered individual of the individual's li-**
6 **ability for recovery of benefits under this section must include a de-**
7 **scription of:**

8 **(A) The basis for the director's decision that benefits have been**
9 **overpaid; and**

10 **(B) The consequences of the overpayment, including the methods**
11 **of recovery of the overpaid amount, with interest and penalties, and**
12 **the possibility of waiver under section 3 of this 2023 Act.**

13 (5) If benefits are paid because of an error that is not due to provision
14 of a false statement, nondisclosure of a material fact or misrepresentation
15 by a covered individual, the director may waive, in whole or in part, the
16 amount of any such payments for which recovery under subsection (4) of this
17 section would be against equity, good conscience or administrative efficiency.

18 (6) A decision of the director under this section does not authorize the
19 recovery of the amount of any benefits paid to a covered individual until the
20 decision is final and the decision specifies:

21 (a) That the covered individual, by reason of false statement,
22 nondisclosure or misrepresentation, is liable to repay the amount to the Paid
23 Family and Medical Leave Insurance Fund established under ORS 657B.430;

24 (b) The nature of the false statement, nondisclosure or misrepresentation;

25 (c) The week or weeks for which the benefits were paid; and

26 (d) That any amount subject to recovery and any penalty due under this
27 section may be collected by the director in a civil action against the em-
28 ployer or covered individual brought in the name of the director.

29 **(7)(a) The director may bring a civil action against an individual to**
30 **collect any amount subject to recovery and any penalty due under this**
31 **section.**

1 (b) Any judgment rendered shall bear interest at the rate provided
2 in subsection (8) of this section.

3 (8) Interest on any amount liable to be repaid under this section
4 shall be paid and collected at the same time repayment of benefits is
5 made by the individual, at the rate of one percent per month. In
6 computing the interest, a fraction of a month shall be counted as a
7 full month.

8 (9)(a) Deductions from paid family and medical leave insurance
9 benefits pursuant to subsection (4) of this section shall be applied
10 solely to the amount of the benefits liable to be repaid under this
11 section.

12 (b) All other payments shall be applied first to court costs, then to
13 penalties, then to interest, then to the amount liable to be repaid.

14 (10) The following amounts collected under this section shall be paid
15 into the Paid Family and Medical Leave Insurance Fund established
16 under ORS 657B.430:

17 (a) Amounts in repayment of benefits; and

18 (b) The penalties imposed under subsection (3)(b) of this section.

19 [(7)] (11) The director shall adopt rules establishing standards and proce-
20 dures for the repayment of benefits and payment of penalties and interest
21 under this section.

22 [(8)] (12) An employer or covered individual may appeal a determination
23 made under this section as provided in ORS 657B.410.

24 **SECTION 10.** ORS 657B.280 is amended to read:

25 657B.280. (1) This section applies to:

26 (a) An employer that fails to remit to the Department of Revenue any
27 amount of contributions due under ORS 657B.150;

28 (b) An individual liable to repay any amount of benefits paid under this
29 chapter to which the individual was not entitled; [*and*]

30 (c) A person liable under ORS 657B.330 for amounts due under this
31 chapter[.];

1 (d) A self-employed individual or tribal government that fails to
2 remit to the Department of Revenue any amount of contributions due
3 under ORS 657B.130;

4 (e) An employer liable to repay any amount of grant moneys
5 awarded under ORS 657B.200 for which the employer was not eligible;
6 and

7 (f) An individual liable for any amounts due under this chapter.

8 (2) If a judgment or final administrative order is rendered in favor of the
9 Director of the Employment Department for amounts described in subsection
10 (1) of this section, the amounts shall be a lien in favor of the director upon
11 all property, whether real or personal, belonging to the employer, individual
12 or person.

13 (3) The lien shall be perfected and attach:

14 (a) To real and personal property located within the county, upon the
15 recording of a warrant, as provided in ORS 657B.300, with the clerk of the
16 county in which the property is located.

17 (b) To personal property wherever located within the state, upon:

18 (A) The recording of a warrant, as provided in ORS 657B.300, with the
19 clerk of any county; and

20 (B) The filing of a copy of the warrant with the Secretary of State as
21 provided in ORS 657B.290.

22 (4) The lien created by this section may be foreclosed by a suit in the
23 circuit court in the manner provided by law for the foreclosure of other liens
24 on real or personal property.

25 **SECTION 11.** ORS 657B.320 is amended to read:

26 657B.320. (1) If an employer defaults with respect to any amount of con-
27 tributions required to be made by the employer to the Paid Family and
28 Medical Leave Insurance Fund established under ORS 657B.430 **or with re-**
29 **spect to the repayment of any grant moneys awarded to the employer**
30 **under ORS 657B.200 for which the employer was not eligible**, the unpaid
31 amount, together with interest and penalties, shall be collected by the Di-

1 rector of the Employment Department in a civil action against the employer
2 brought in the name of the director.

3 (2)(a) Judgment rendered on a civil action brought under subsection (1)
4 of this section in favor of the director shall bear interest at the rate provided
5 in subsection (3) of this section.

6 (b) An employer's compliance with the requirements of ORS 657B.150 shall
7 date from the time that contributions were collected from the employer **or**
8 **grants were received by the employer.**

9 (c) The amount of contributions **or any grant repayment described in**
10 **subsection (1) of this section** collected from an employer, together with
11 interest and penalties, shall be paid into the fund.

12 (3)(a) Interest upon any amounts due from an employer shall be paid and
13 collected at the rate of one and one-half percent per month from the date
14 prescribed for the payment to the fund. In computing the interest, a fraction
15 of a month shall be counted as a full month.

16 (b) Interest shall be paid at the same time contributions **or grant re-**
17 **payments** are required to be paid by the employer to the fund.

18 (4) If an employer fails to pay contributions required by ORS 657B.150 at
19 the time prescribed by the director, the employer shall be in default.

20 **(5) If an employer is awarded grant moneys under ORS 657B.200 for**
21 **which the employer was not eligible and the employer fails to repay**
22 **the moneys to the Employment Department within 30 days after re-**
23 **ceiving notice from the department explaining the employer's obli-**
24 **gation to repay the moneys, the employer shall be in default.**

25 [(5)] **(6)** If an employer that is in default with respect to payment of
26 contributions **or a grant repayment** fails to make payment within 10 days
27 after written demand has been made by the director, the employer shall be
28 subject to a penalty of 10 percent of the amount of the contributions **or the**
29 **grant repayment.** A demand for payment shall be deemed to have been made
30 when deposited in the mail addressed to the employer at the employer's last
31 known address of record with the director.

1 [(6)] (7)(a) If any part of a deficiency is due to fraud with intent to avoid
2 payment of contributions to the fund, then 50 percent of the total amount
3 of the deficiency, in addition to the deficiency, shall be assessed, collected
4 and paid, in the same manner as if it were a deficiency, and deposited in the
5 fund.

6 (b) **If an employer's award of grant moneys under ORS 657B.200 was**
7 **obtained by fraud or misrepresentation by the employer, then 50 per-**
8 **cent of the total amount of the grant award, in addition to the amount**
9 **of the grant repayment due to the department, shall be assessed, col-**
10 **lected and paid, in the same manner as if it were a deficiency, and**
11 **deposited in the fund.**

12 [(7)] (8) Civil actions brought in the name of the director under this sec-
13 tion to collect contributions, **grant repayments**, interest or penalties from
14 an employer shall be entitled to preference upon the calendar over all civil
15 cases that involve only private parties.

16 [(8)(a)] (9)(a) Notwithstanding the provisions of this section, the director
17 may agree to accept from an employer or former employer with a delinquent
18 account any amount the director finds reasonable under the circumstances
19 as consideration in settlement of the full amount of contributions, **grant**
20 **repayments**, interest or penalties due if the director finds that:

21 (A) The total interest collectible on the delinquent account is in excess
22 of 25 percent of the principal;

23 (B) The employer or former employer no longer conducts an active busi-
24 ness and has insufficient net assets to pay the full amount of all contribu-
25 tions, **grant repayments**, interest or penalties due; and

26 (C) The employer or former employer can pay some but not all of the
27 delinquent amounts.

28 (b) Whenever a settlement agreement is made pursuant to paragraph (a)
29 of this subsection, a written record signed by the director shall be main-
30 tained in the files of the director. Such records shall set forth:

31 (A) The name of the employer or former employer against whom the li-

1 ability was assessed;

2 (B) The amount of the assessed liability;

3 (C) The amount of the liability paid;

4 (D) The amount of the liability canceled or waived; and

5 (E) A sworn statement of the employer or former employer setting forth
6 the complete financial responsibility of the employer or former employer and
7 containing a full disclosure of all matters bearing upon the ability of the
8 employer or former employer to pay the full amount of the liability assessed.

9 [(9)] (10) The director shall file a full and true copy of the record of each
10 settlement agreement with the Secretary of State as a public record.

11 [(10)] (11) Any amount agreed to in settlement of the director's claims on
12 behalf of the fund pursuant to subsection [(8)(a)] (9)(a) of this section shall
13 be first credited to the contributions **or grant repayments** due from the
14 employer or former employer, **whichever is applicable**, until the principal
15 amount of contributions **or grant repayments** due has been satisfied and
16 shall be deposited in the fund.

17 **SECTION 12.** ORS 657B.410 is amended to read:

18 657B.410. (1) The Director of the Employment Department shall establish
19 a process by which:

20 (a) An employer may request a hearing to obtain review of a final deci-
21 sion of the director regarding **any of the following**:

22 (A) Approval or denial of an employer's application for approval of a plan
23 under ORS 657B.210[.];

24 (B) **The assessment of penalties under section 7 of this 2023 Act; or**

25 (C) **A determination made under ORS 657B.120.**

26 (b) A covered individual may request a hearing to obtain review of a final
27 decision of the director regarding **any of the following**:

28 (A) Approval or denial of a claim submitted to the director for payment
29 of family and medical leave insurance benefits;

30 (B) The weekly benefit amount payable to a covered individual as deter-
31 mined under ORS 657B.050; or

1 (C) Disqualification from the receipt of benefits including liability or re-
2 payment of benefits as determined under ORS 657B.120 **and section 2 of this**
3 **2023 Act.**

4 (2) Notwithstanding ORS 183.315, the process established by the director
5 under this section shall comply with provisions for a contested case under
6 ORS chapter 183 and is subject to judicial review as provided in ORS 183.482.

7 **SECTION 13. The section captions used in this 2023 Act are provided**
8 **only for the convenience of the reader and do not become part of the**
9 **statutory law of this state or express any legislative intent in the**
10 **enactment of this 2023 Act.**

11 **SECTION 14. This 2023 Act takes effect on the 91st day after the**
12 **date on which the 2023 regular session of the Eighty-second Legislative**
13 **Assembly adjourns sine die.**

14
