

House Bill 3512

Sponsored by Representative RUIZ

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**.

Permits employee to take bereavement leave to grieve loss of pregnancy due to miscarriage.
Allows employee to take one week of allowable bereavement leave without loss of pay.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to bereavement leave; amending ORS 657B.020, 659A.159, 659A.162, 659A.165 and 659A.174;
3 and prescribing an effective date.

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

5 **SECTION 1.** ORS 659A.159 is amended to read:

6 659A.159. (1) Family leave under ORS 659A.150 to 659A.186 may be taken by an eligible em-
7 ployee for any of the following purposes:

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

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

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

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

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

19 [(A)] (i) Attending the funeral or alternative to a funeral of the family member;

20 [(B)] (ii) Making arrangements necessitated by the death of the family member; or

21 [(C)] (iii) Grieving the death of the family member.

22 **(B) To grieve the loss of a pregnancy due to a miscarriage.**

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

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

29 **SECTION 2.** ORS 659A.162 is amended to read:

30 659A.162. (1) Except as specifically provided by ORS 659A.150 to 659A.186, an eligible employee
31 is entitled to up to a total of 12 weeks of family leave within any one-year period.

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

3 (b) An eligible employee is entitled to the period of leave described in paragraph (a) of this
 4 subsection upon the death of each family member of the employee within any one-year period, **or**
 5 **upon the occurrence of a loss of pregnancy due to a miscarriage**, except that leave taken as
 6 provided by this subsection may not exceed the total period of family leave authorized by subsection
 7 (1) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

45 **SECTION 3.** ORS 659A.162, as amended by section 56, chapter 700, Oregon Laws 2019, and

1 section 5, chapter 182, Oregon Laws 2021, is amended to read:

2 659A.162. (1) Except as specifically provided by ORS 657B.020 and 659A.150 to 659A.186, an el-
 3 igible employee is entitled to up to a total of 12 weeks of family leave within any one-year period.

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

6 (b) An eligible employee is entitled to the period of leave described in paragraph (a) of this
 7 subsection upon the death of each family member of the employee within any one-year period, **or**
 8 **upon the occurrence of a loss of pregnancy due to a miscarriage**, except that leave taken as
 9 provided by this subsection may not exceed the total period of family leave authorized by subsection
 10 (1) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

44 (b) The commissioner shall adopt rules governing when family leave for the purposes described
 45 in ORS 659A.159 (1)(e)(A) may be taken to the extent permitted by federal law and to the extent that

1 taking family leave on an intermittent basis does not result in the loss of an eligible employee's
 2 exempt status under the federal Fair Labor Standards Act.

3 **SECTION 4.** ORS 659A.165 is amended to read:

4 659A.165. (1) Except as provided in subsection (2) of this section, a covered employer may re-
 5 quire an eligible employee to give the employer written notice at least 30 days before commencing
 6 family leave. The employer may require the employee to include an explanation of the need for the
 7 leave in the notice.

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

- 10 (a) An unexpected serious health condition of an employee or family member of an employee;
- 11 (b) An unexpected illness, injury or condition of a child of the employee that requires home care;
- 12 (c) A premature birth, **loss of pregnancy due to a miscarriage**, unexpected adoption or unex-
 13 pected foster placement; or
- 14 (d) The death of a family member.

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

20 (4) Except as provided in this subsection, if the employee fails to give notice as required by
 21 subsections (1) and (3) of this section, the employer may reduce the total period of family leave au-
 22 thorized by ORS 659A.162 by three weeks, and the employee may be subject to disciplinary action
 23 under a uniformly applied policy or practice of the employer. A reduction of family leave under this
 24 subsection may not limit leave described in ORS 659A.159 (1)(e).

25 **SECTION 5.** ORS 659A.174 is amended to read:

26 659A.174. (1) Except as provided in subsection (2) of this section, and unless otherwise provided
 27 by the terms of an agreement between the eligible employee and the covered employer, a collective
 28 bargaining agreement or an employer policy, family leave is not required to be granted with pay.

29 (2)(a) **Subject to paragraph (b) of this subsection**, an employee taking family leave is entitled
 30 to use any paid accrued sick leave or any paid accrued vacation leave during the period of family
 31 leave, or to use any other paid leave that is offered by the employer in lieu of vacation leave during
 32 the period of family leave.

33 (b) **An employee taking leave for the purpose described in ORS 659A.159 (1)(e)(B) is enti-**
 34 **ttled to take one week of leave without loss of pay, accrued leave or any other form of em-**
 35 **ployee compensation or benefit.**

36 (3) Subject to the terms of any agreement between the eligible employee and the covered em-
 37 ployer or the terms of a collective bargaining agreement, the employer may determine the particular
 38 order in which accrued leave is to be used in circumstances in which more than one type of accrued
 39 leave is available to the employee.

40 **SECTION 6.** ORS 657B.020 is amended to read:

41 657B.020. (1) A covered individual may qualify for up to 12 weeks of family and medical leave
 42 insurance benefits per benefit year for leave taken for any of the following purposes, in any combi-
 43 nation:

- 44 (a) Family leave;
- 45 (b) Medical leave; or

1 (c) Safe leave.

2 (2) Notwithstanding ORS 657B.025 and except as provided under subsection (3) of this section,
3 a covered individual who has taken any amount of paid leave available under subsection (1) of this
4 section may take a total of 16 weeks of leave in the benefit year in any combination of the paid
5 leave available under subsection (1) of this section, not to exceed 12 weeks, and [*unpaid*] leave under
6 ORS 659A.159 for which the covered individual is eligible under ORS 659A.156. The leave may be
7 taken for any purpose for which leave is allowable under the respective leave programs.

8 (3) In addition to the leave available under subsections (1) and (2) of this section, a covered in-
9 dividual may qualify for up to two additional weeks of benefits for limitations related to pregnancy,
10 childbirth or a related medical condition, including but not limited to lactation, for a total amount
11 of leave under this subsection and subsections (1) and (2) of this section, not to exceed 18 weeks per
12 benefit year.

13 **SECTION 7. This 2023 Act takes effect on the 91st day after the date on which the 2023**
14 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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