

# Senate Bill 881

Sponsored by Senator KNOPP; Senators ANDERSON, BONHAM, FINDLEY, HANSELL, LINTHICUM, SMITH DB, THATCHER, WEBER

## 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**.

Provides that client company that is furnished workers by worker leasing company is responsible for employer duties under paid family and medical leave insurance program with respect to workers leased to client company.

Directs Director of Employment Department to reimburse worker leasing company for any employer contribution payments made by worker leasing company on behalf of client company that meets certain criteria. Applies to payments made before effective date of Act.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to obligations of worker leasing companies under the paid family and medical leave insur-  
3 ance program; creating new provisions; amending ORS 657B.010 and 657B.150; and prescribing  
4 an effective date.

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

6 **SECTION 1. Sections 2 and 3 of this 2023 Act are added to and made a part of ORS**  
7 **chapter 657B.**

8 **SECTION 2. When an employer is a client company that has been furnished workers by**  
9 **a worker leasing company, the client company shall be considered the employer of record**  
10 **of the leased workers and shall be responsible for performing the duties and obligations re-**  
11 **quired of employers under this chapter with respect to the leased workers.**

12 **SECTION 3. The Director of the Employment Department shall reimburse a worker**  
13 **leasing company for the costs of complying with the employer contribution requirements**  
14 **under ORS 657B.150 to the extent that those costs were incurred as a result of the worker**  
15 **leasing company paying the contributions for a client company that:**

16 (1) **Is furnished workers by the worker leasing company;**

17 (2) **Employs fewer than 25 employees; and**

18 (3) **On or after the effective date of this 2023 Act, elects to forgo paying the employer**  
19 **contributions pursuant to ORS 657B.150 (4).**

20 **SECTION 4. ORS 657B.010, as amended by section 1, chapter 24, Oregon Laws 2022, and section**  
21 **29, chapter 83, Oregon Laws 2022, is amended to read:**

22 657B.010. As used in this chapter:

23 (1) "Alternate base year" means the last four completed calendar quarters preceding the benefit  
24 year.

25 (2) "Average weekly wage" means the amount calculated by the Employment Department as the  
26 state average weekly covered wage under ORS 657.150 (4)(e) as determined not more than once per  
27 year.

28 (3) "Base year" means the first four of the last five completed calendar quarters preceding the

**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 benefit year.

2 (4) "Benefits" means family and medical leave insurance benefits.

3 (5)(a) "Benefit year" means, except as provided in paragraph (b) of this subsection, a period of  
4 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family  
5 leave, medical leave or safe leave commences.

6 (b) "Benefit year" means, in the event that the 52-week period described in paragraph (a) of this  
7 subsection would result in an overlap of any quarter of the base year of a previously filed valid  
8 claim, a period of 53 consecutive weeks beginning on the Sunday immediately preceding the date  
9 on which family leave, medical leave or safe leave commences.

10 (6) "Child" means:

11 (a) A biological child, adopted child, stepchild or foster child of a covered individual or of the  
12 covered individual's spouse or domestic partner;

13 (b) A person who is or was a legal ward of a covered individual or of the covered individual's  
14 spouse or domestic partner; or

15 (c) A person who is or was in a relationship of in loco parentis with a covered individual or  
16 with the covered individual's spouse or domestic partner.

17 (7) "Contribution" or "contributions" means the money payments made by any of the following  
18 under ORS 657B.150:

19 (a) An employer;

20 (b) An eligible employee;

21 (c) A self-employed individual;

22 (d) A tribal government; or

23 (e) An employee of a tribal government.

24 (8) "Covered individual" means any one of the following who qualifies to receive family and  
25 medical leave insurance benefits:

26 (a) An eligible employee;

27 (b) A self-employed individual; or

28 (c) An employee of a tribal government.

29 (9) "Domestic partner" means an individual joined in a domestic partnership.

30 (10) "Domestic partnership" has the meaning given that term in ORS 106.310.

31 (11) "Eligible employee" means:

32 (a)(A) An employee who has earned at least \$1,000 in wages during the base year; or

33 (B) If an employee has not earned at least \$1,000 in wages during the base year, an employee  
34 who has earned at least \$1,000 in wages during the alternate base year; and

35 (b) Who may apply for paid family and medical leave insurance benefits under ORS 657B.015.

36 (12) "Eligible employee's average weekly wage" means an amount calculated by the Director of  
37 the Employment Department by dividing the total wages earned by an eligible employee during the  
38 base year by the number of weeks in the base year.

39 (13)(a) "Employee" means:

40 (A) An individual performing services for an employer for remuneration or under any contract  
41 of hire, written or oral, express or implied.

42 (B) A home care worker as defined in ORS 410.600.

43 (b) "Employee" does not include:

44 (A) An independent contractor as defined in ORS 670.600.

45 (B) A participant in a work training program administered under a state or federal assistance

1 program.

2 (C) A participant in a work-study program that provides students in secondary or postsecondary  
3 educational institutions with employment opportunities for financial assistance or vocational train-  
4 ing.

5 (D) A railroad worker exempted under the federal Railroad Unemployment Insurance Act.

6 (E) A volunteer.

7 (14)(a) "Employer" means any person that employs one or more employees working anywhere in  
8 this state or any agent or employee of such person to whom the duties of the person under this  
9 chapter have been delegated.

10 (b) "Employer" includes:

11 (A) A political subdivision of this state or any county, city, district, authority or public corpo-  
12 ration, or any instrumentality of a county, city, district, authority or public corporation, organized  
13 and existing under law or charter;

14 (B) An individual;

15 (C) Any type of organization, corporation, partnership, limited liability company, association,  
16 trust, estate, joint stock company or insurance company;

17 (D) Any successor in interest to an entity described in subparagraph (C) of this paragraph;

18 (E) A trustee, trustee in bankruptcy or receiver; [or]

19 (F) A trustee or legal representative of a deceased person[.]; or

20 **(G) A client company that is furnished workers by a worker leasing company.**

21 (c) "Employer" does not include the federal government or a tribal government.

22 (15) "Employment agency" has the meaning given that term in ORS 658.005.

23 (16) "Family and medical leave insurance benefits" means the wage replacement benefits that  
24 are available to a covered individual under ORS 657B.050 or under the terms of an employer plan  
25 approved under ORS 657B.210, for family leave, medical leave or safe leave.

26 (17)(a) "Family leave" means leave from work taken by a covered individual:

27 (A) To care for and bond with a child during the first year after the child's birth or during the  
28 first year after the placement of the child through foster care or adoption; or

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

30 (b) "Family leave" does not mean:

31 (A) Leave described in ORS 659A.159 (1)(d);

32 (B) Leave described in ORS 659A.159 (1)(e); or

33 (C) Leave authorized under ORS 659A.093.

34 (18) "Family member" means:

35 (a) The spouse of a covered individual;

36 (b) A child of a covered individual or the child's spouse or domestic partner;

37 (c) A parent of a covered individual or the parent's spouse or domestic partner;

38 (d) A sibling or stepsibling of a covered individual or the sibling's or stepsibling's spouse or  
39 domestic partner;

40 (e) A grandparent of a covered individual or the grandparent's spouse or domestic partner;

41 (f) A grandchild of a covered individual or the grandchild's spouse or domestic partner;

42 (g) The domestic partner of a covered individual; or

43 (h) Any individual related by blood or affinity whose close association with a covered individual  
44 is the equivalent of a family relationship.

45 (19) "Medical leave" means leave from work taken by a covered individual that is made neces-

1 sary by the individual's own serious health condition.

2 (20) "Parent" means:

3 (a) A biological parent, adoptive parent, stepparent or foster parent of a covered individual;

4 (b) A person who was a foster parent of a covered individual when the covered individual was  
5 a minor;

6 (c) A person designated as the legal guardian of a covered individual at the time the covered  
7 individual was a minor or required a legal guardian;

8 (d) A person with whom a covered individual was or is in a relationship of in loco parentis; or

9 (e) A parent of a covered individual's spouse or domestic partner who meets a description under  
10 paragraphs (a) to (d) of this subsection.

11 (21) "Safe leave" means leave taken for any purpose described in ORS 659A.272.

12 (22) "Self-employed individual" means:

13 (a) An individual who has self-employment income as defined in section 1402(b) of the Internal  
14 Revenue Code as amended and in effect on December 31, 2021; or

15 (b) An independent contractor as defined in ORS 670.600.

16 (23) "Serious health condition" has the meaning given that term in ORS 659A.150.

17 (24) "Third party administrator" means a third party that enters into an agreement with the  
18 Director of the Employment Department to implement and administer the paid family and medical  
19 leave program established under this chapter.

20 (25) "Tribal government" has the meaning given that term in ORS 181A.940.

21 (26) "Wages" has the meaning given that term in ORS 657.105.

22 **(27) "Worker leasing company" has the meaning given that term in ORS 656.850.**

23 **SECTION 5.** ORS 657B.150 is amended to read:

24 657B.150. (1)(a) Except as otherwise provided in subsections (3) and [(4)] (5) of this section, all  
25 employers and eligible employees shall contribute to the Paid Family and Medical Leave Insurance  
26 Fund established under ORS 657B.430.

27 (b) Contributions shall be paid by employers and employees as a percentage of a total rate de-  
28 termined by the Director of the Employment Department.

29 (c) The total rate may not exceed one percent of employee wages, up to a maximum of \$132,900  
30 in wages.

31 (2)(a) Employer contributions shall be paid in an amount that is equal to 40 percent of the total  
32 rate determined by the director.

33 (b) An employer shall deduct employee contributions from the wages of each employee in an  
34 amount that is equal to 60 percent of the total rate determined by the director.

35 (3) When an employment agency is acting as an employer, the employer contributions required  
36 under this section shall be the responsibility of the employment agency.

37 **(4) When a worker leasing company furnishes workers to a client company, the employer**  
38 **contributions required under this section shall be the responsibility of the client company.**

39 [(4)(a)] (5)(a) Employers that employ fewer than 25 employees are not required to pay the em-  
40 ployer contributions under subsection (1) of this section.

41 (b) If an employer that employs fewer than 25 employees elects to pay the employer contribu-  
42 tions under subsection (1) of this section, the employer may apply to receive a grant under ORS  
43 657B.200.

44 [(5)] (6) Notwithstanding subsection (1) of this section, an employer may elect to pay the re-  
45 quired employee contributions, in whole or in part, as an employer-offered benefit.

1        [(6)] (7) Subject to ORS 657B.130 (2) and (3), a self-employed individual who has elected coverage  
2 under ORS 657B.130 (1) shall contribute to the fund, at a rate that may not exceed one percent of  
3 the individual's taxable income as determined by the director by rule, for a period of not less than  
4 three years from the date that the election becomes effective.

5        [(7)] (8) A tribal government that elects coverage under ORS 657B.130 and employees of the  
6 tribal government shall contribute to the fund in contribution amounts and at a rate that may not  
7 exceed one percent of employee wages, up to a maximum of \$132,900 in wages, as determined by the  
8 director by rule, for a period of not less than three years from the date that the election becomes  
9 effective.

10       [(8)] (9) The director shall set rates for the collection of payroll contributions consistent with  
11 subsection (1) of this section and in a manner such that:

12       (a) At the end of the period for which the rates are effective, the balance of moneys in the fund  
13 is an amount not less than six months' worth of projected expenditures from the fund for perform-  
14 ance of the functions and duties of the director under this chapter; and

15       (b) The volatility of the contribution rates is minimized.

16       [(9)] (10) For purposes of subsections (1)(c) and [(7)] (8) of this section, the director shall annu-  
17 ally adjust the maximum amount of employee wages by the percentage increase, if any, in the Con-  
18 sumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau  
19 of Labor Statistics of the United States Department of Labor, since the date of the previous deter-  
20 mination made under this subsection.

21       [(10)] (11) The director shall determine on an annual basis the amount of payroll contributions,  
22 timing of payroll contributions and maximum employee contributions sufficient to finance the costs  
23 related to the provisions of this chapter.

24       [(11)] (12) An employer shall hold any moneys collected under this section in trust for the State  
25 of Oregon and for the payment thereof to the Department of Revenue in the manner described in  
26 subsection [(12)] (13) of this section.

27       [(12)(a)] (13) An employer shall make and file a combined quarterly report of wages earned and  
28 contributions paid under this section on a form prescribed by the Department of Revenue.

29       (b) The report shall be filed with the Department of Revenue on or before the last day of the  
30 month following the quarter to which the report relates and shall be deemed received on the date  
31 of mailing.

32       (c) The report shall be accompanied by payment of any contributions due under this section in  
33 a manner determined by the Department of Revenue by rule.

34       [(13)] (14) Moneys collected under this section shall be deposited in the Paid Family and Medical  
35 Leave Insurance Fund established under ORS 657B.430.

36       [(14)(a)] (15)(a) If an employer ceases or discontinues operations or business, or sells out, ex-  
37 changes or otherwise disposes of the business or stock of goods, any payroll contribution payable  
38 under this section is immediately due and payable, and the employer shall, within 10 calendar days,  
39 pay the payroll contribution due. Any person who becomes a successor in interest to the business  
40 is liable for the full amount of the unpaid payroll contribution.

41       (b) The director shall adopt rules for compliance with this chapter with regard to contributions  
42 from an employer's successor in interest.

43       [(15)] (16) Benefits may not be denied to a covered individual solely because an employer failed  
44 to collect or remit the contributions required under this section.

45       **SECTION 6. Section 3 of this 2023 Act applies to employer contribution amounts paid by**

1 a worker leasing company on behalf of a client company before the effective date of this 2023  
2 Act.

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

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