

Enrolled Senate Bill 912

Sponsored by COMMITTEE ON LABOR AND BUSINESS (at the request of Employment Department)

CHAPTER

AN ACT

Relating to the family and medical leave insurance program; creating new provisions; amending ORS 657B.120, 657B.280, 657B.320 and 657B.410; and prescribing an effective date.

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

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

SECTION 2. Deduction of benefits paid in error not due to recipient fault; director discretion; civil action by director. (1)(a) If the Director of the Employment Department decides that a covered individual has been paid benefits to which the covered individual is not entitled because of an error not due to the covered individual providing a false statement or misrepresentation of a material fact or not disclosing a material fact, or because an initial decision to pay benefits is subsequently reversed by a decision finding that the covered individual is not eligible for the benefits, then the covered individual is liable to have the amount of any benefits paid in error deducted from any future benefits otherwise payable to the covered individual under this chapter for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.

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

(c) Any notice provided to a covered individual of the covered individual's liability for recovery of benefits under this section must include a description of:

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

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

(2) Subject to ORS 657B.410, a decision of the director under this section does not authorize the recovery of the amount of any benefits paid to a covered individual until the decision is final.

(3) The director may bring a civil action against a covered individual to recover amounts paid to the covered individual in excess of the maximum benefits allowable pursuant to this chapter.

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

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

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

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

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

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

(b) Be ineligible for benefits after the conviction until the person has reimbursed the Paid Family and Medical Leave Insurance Fund established under ORS 657B.430 for the full amount received as a result of the false statement or misrepresentation or of the failure to report a material fact.

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

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

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

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

(3) When in the judgment of the director the best interests of the Employment Department are served in an effort to settle accounts, the director may waive, reduce or compromise any part or all of the interest or penalty charged pursuant to ORS 657B.120. The director may determine that the amount of interest or penalty due and unpaid is uncollectible, and write off the amount. In making the determination that interest or a penalty is uncollectible, the director shall consider, among other factors:

(a) The administrative costs of continued collection efforts in relation to the amount due;

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

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

SECTION 6. Request for offset of moneys owed to debtor by Department of Revenue against certain amounts owed by debtor; fees. (1) The Director of the Employment Department may pay a fee charged by the Department of Revenue pursuant to ORS 293.250 for processing a request to offset against liquidated state debt a state tax refund owed to the debtor.

(2) The net amount received from the Department of Revenue after deduction of fees charged under subsection (1) of this section shall be offset against the debt.

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

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

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

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

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

(4) Monetary penalties collected under this section shall be deposited in the Paid Family and Medical Leave Insurance Fund established under ORS 657B.430.

(5) The decision of the director to assess a penalty under this section shall become final unless within 20 days following the date of the notice informing the employer of the penalty, the employer submits a written request for a hearing under ORS 657B.410 to review the director's decision. A decision of the director to assess a penalty under this section does not authorize the collection of the penalty until the decision becomes final.

SECTION 8. Authority of director to compromise or adjust debts or overpayments. When in the judgment of the Director of the Employment Department the best interests of the Employment Department are served, the director may:

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

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

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

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

(2) The Director of the Employment Department may assess a civil penalty in an amount not to exceed \$1,000 against an employer for each occurrence that violates subsection (1) of this section.

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

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

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

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

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

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

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

(c) Except as provided in paragraph (d) of this subsection, benefits described in paragraph (a) of this subsection may be collected for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.

(d) Notwithstanding paragraph (c) of this subsection, overpaid benefits subject to the penalty imposed under subsection (3)(b) of this section may be collected at any time.

(e) Notice provided to a covered individual of the covered individual's liability for recovery of benefits under this section must include a description of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Amounts in repayment of benefits;

(b) Amounts collected as interest under subsection (8) of this section; and

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

[7] **(11) The director shall adopt rules establishing standards and procedures for the repayment of benefits and payment of penalties and interest under this section.**

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

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

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

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

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

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

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

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

(f) An individual or an employer liable for any amounts due under this chapter.

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

(3) The lien shall be perfected and attach:

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

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

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

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

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

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

657B.320. (1) If an employer defaults with respect to any amount of contributions required to be made by the employer to the Paid Family and Medical Leave Insurance Fund established under ORS 657B.430 **or with respect to the repayment of any grant moneys awarded to the employer under ORS 657B.200 for which the employer was not eligible**, the unpaid amount, together with interest and penalties, shall be collected by the Director of the Employment Department in a civil action against the employer brought in the name of the director.

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

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

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

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

(b) Interest shall be paid at the same time contributions **or grant repayments** are required to be paid by the employer to the fund.

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

(5) If an employer is awarded grant moneys under ORS 657B.200 for which the employer was not eligible and the employer fails to repay the moneys to the Employment Department within 30 days after receiving notice from the department explaining the employer's obligation to repay the moneys, the employer shall be in default.

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

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

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

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

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

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

(B) The employer or former employer no longer conducts an active business and has insufficient net assets to pay the full amount of all contributions, **grant repayments**, interest or penalties due; and

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

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

(A) The name of the employer or former employer against whom the liability was assessed;

(B) The amount of the assessed liability;

(C) The amount of the liability paid;

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

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

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

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

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

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

(a) An employer may request a hearing to obtain review of a final decision of the director regarding **any of the following**:

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

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

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

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

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

(B) The weekly benefit amount payable to a covered individual as determined under ORS 657B.050; or

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

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

SECTION 13. Applicability. (1) Sections 2 to 5 of this 2023 Act and the amendments to ORS 657B.120 by section 9 of this 2023 Act apply to benefits paid on or after September 3, 2023.

(2) Section 6 of this 2023 Act applies to amounts owed by a debtor on or after January 1, 2023.

(3) Section 7 of this 2023 Act applies to penalties assessed on or after September 3, 2023.

(4) Section 8 of this 2023 Act applies to contributions due or paid on or after January 1, 2023.

(5) The amendments to ORS 657B.280 by section 10 of this 2023 Act apply to amounts due or liable to be repaid on or after January 1, 2023.

(6) The amendments to ORS 657B.320 by section 11 of this 2023 Act apply to grant moneys awarded on or after September 3, 2023.

(7) The amendments to ORS 657B.410 by section 12 of this 2023 Act apply to final decisions of the director issued on or after September 3, 2023.

SECTION 14. The section captions used in this 2023 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.

SECTION 15. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.

Passed by Senate March 23, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 9, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State