

B-Engrossed Senate Bill 999

Ordered by the Senate April 21
Including Senate Amendments dated April 4 and April 21

Sponsored by COMMITTEE ON LABOR AND BUSINESS

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.

Clarifies meaning of "one-year period" for purposes of determining amount of unpaid family leave that eligible employee is entitled to take within any given one-year period.

Requires Employment Department to adopt rules establishing factors for determining whether significant personal bond exists to determine individual's status as family member by reason of affinity for purposes of paid family and medical leave. For purposes of unpaid family leave, requires Commissioner of Bureau of Labor and Industries to adopt rules relating to affinity that are consistent with rules adopted by Employment Department.

Expands definition of "family member" for purposes of provisions related to unpaid family leave.

Clarifies employer obligations with respect to continuation of benefits during and after period of paid family and medical leave.

Clarifies employer obligations regarding job protection after period of protected paid family and medical leave or unpaid family leave.

Clarifies provisions related to coordination of leave taken under provisions related to paid family and medical leave program and provisions related to unpaid family leave.

Clarifies that provisions permitting employees to file administrative complaint with commissioner alleging violation of provisions relating to prohibited conduct do not apply if remedy for such violations is made available under other provisions of law related to paid family and medical leave.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to leave laws concerning time off from work; creating new provisions; amending ORS
3 657B.060, 657B.070, 659A.150, 659A.171 and 659A.186; and declaring an emergency.

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

OREGON FAMILY LEAVE ACT

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8 **SECTION 1. Sections 2, 4 and 5 are added to and made a part of ORS 659A.150 to 659A.186.**

9 **SECTION 2. (1) For purposes of determining the amount of family leave that an eligible
10 employee is entitled to take within a given one-year period, "one-year period" means:**

11 **(a) A period of 52 consecutive weeks beginning on the Sunday immediately preceding the
12 date on which family leave commences; or**

13 **(b) A consecutive 12-month period, such as a calendar year commencing on January 1
14 and ending on December 31 following, a fiscal year, the 12-month period that ends on the date
15 that the employee uses any family leave or the 12-month period that begins on the date on
16 which an employee commences a period of family leave.**

17 **(2) The Commissioner of the Bureau of Labor and Industries may adopt any rules nec-
18 essary to implement and administer this section.**

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 **SECTION 3.** Section 2 of this 2023 Act is amended to read:

2 **Sec. 2.** (1) For purposes of determining the amount of family leave that an eligible employee is
3 entitled to take within a given one-year period, “one-year period” means[:]

4 [(a)] a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date
5 on which family leave commences[; or].

6 [(b) *A consecutive 12-month period, such as a calendar year commencing on January 1 and ending
7 on December 31 following, a fiscal year, the 12-month period that ends on the date that the employee
8 uses any family leave or the 12-month period that begins on the date on which an employee commences
9 a period of family leave.*]

10 (2) The Commissioner of the Bureau of Labor and Industries may adopt any rules necessary to
11 implement and administer this section.

12 **SECTION 4.** In order to determine whether an individual qualifies as a family member
13 by reason of affinity, as that term is used in ORS 659A.150, consideration shall be given to
14 whether there exists a significant personal bond attributable to factors, established by the
15 Commissioner of the Bureau of Labor and Industries by rule, that, when examined in total,
16 resemble a family relationship.

17 **SECTION 5.** (1) The Commissioner of the Bureau of Labor and Industries shall adopt
18 rules necessary to implement and administer section 4 of this 2023 Act. The rules may in-
19 clude rules for developing and using an attestation form by which an employee may attest
20 to the affinity factors described in section 4 of this 2023 Act. Any rules adopted under this
21 section relating to the factors described in section 4 of this 2023 Act shall be consistent with
22 the rules established by the Employment Department under section 10 of this 2023 Act.

23 (2) The Commissioner of the Bureau of Labor and Industries shall adopt rules under this
24 section in time for the rules to become operative no later than September 3, 2023.

25 **SECTION 6.** ORS 659A.150 is amended to read:

26 659A.150. As used in ORS 659A.150 to 659A.186:

27 (1) “Covered employer” means an employer described in ORS 659A.153.

28 (2) “Eligible employee” means any employee of a covered employer other than those employees
29 exempted under the provisions of ORS 659A.156.

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

33 (4) “Family member” means [*the spouse of an employee, the biological, adoptive or foster parent
34 or child of the employee, the grandparent or grandchild of the employee, a parent-in-law of the employee
35 or a person with whom the employee was or is in a relationship of in loco parentis.*]:

36 (a) **The spouse of a covered individual;**

37 (b) **A child of a covered individual or the child’s spouse or domestic partner;**

38 (c) **A parent of a covered individual or the parent’s spouse or domestic partner;**

39 (d) **A sibling or stepsibling of a covered individual or the sibling’s or stepsibling’s spouse
40 or domestic partner;**

41 (e) **A grandparent of a covered individual or the grandparent’s spouse or domestic part-
42 ner;**

43 (f) **A grandchild of a covered individual or the grandchild’s spouse or domestic partner;**

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

45 (h) **Any individual related by blood or affinity whose close association with a covered in-**

1 **dividual is the equivalent of a family relationship.**

2 (5) "Health care provider" means:

3 (a) A person who is primarily responsible for providing health care to an eligible employee or
4 a family member of an eligible employee, who is performing within the scope of the person's pro-
5 fessional license or certificate and who is:

6 (A) A physician licensed under ORS chapter 677;

7 (B) A physician assistant licensed under ORS 677.505 to 677.525;

8 (C) A dentist licensed under ORS 679.090;

9 (D) A psychologist licensed under ORS 675.030;

10 (E) An optometrist licensed under ORS 683.070;

11 (F) A naturopath licensed under ORS 685.080;

12 (G) A registered nurse licensed under ORS 678.050;

13 (H) A nurse practitioner licensed under ORS 678.375;

14 (I) A direct entry midwife licensed under ORS 687.420;

15 (J) A licensed registered nurse licensed by the Oregon State Board of Nursing as a nurse prac-
16 titioner specializing in nurse midwifery;

17 (K) A regulated social worker authorized to practice regulated social work under ORS 675.510
18 to 675.600; or

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

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

25 (6) "Public health emergency" means:

26 (a) A public health emergency declared under ORS 433.441.

27 (b) An emergency declared under ORS 401.165 if related to a public health emergency as defined
28 in ORS 433.442.

29 (7) "Serious health condition" means:

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

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

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

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

38 **SECTION 7.** ORS 659A.171 is amended to read:

39 659A.171. (1) After returning to work after taking family leave under the provisions of ORS
40 659A.150 to 659A.186, an eligible employee is entitled to be restored to the position of employment
41 held by the employee when the leave commenced if that position still exists, without regard to
42 whether the employer filled the position with a replacement worker during the period of family
43 leave. If the position held by the employee at the time family leave commenced no longer exists, the
44 employee is entitled to be restored to any available equivalent position with equivalent employment
45 benefits, pay and other terms and conditions of employment. If an equivalent position is not avail-

1 able at the job site of the employee's former position, the *[employee may be offered]* **employer shall**
2 **offer the employee** an equivalent position at a job site located within [20] **50** miles of the job site
3 of the employee's former position, **if such a position is available. If equivalent positions are**
4 **available at multiple job sites, the employer shall first offer the employee the position at the**
5 **job site that is nearest to the job site of the employee's former position.**

6 (2) Except for employee benefits used during the period of leave, the taking of family leave under
7 ORS 659A.150 to 659A.186 shall not result in the loss of any employment benefit accrued before the
8 date on which the leave commenced.

9 (3) This section does not entitle any employee to:

10 (a) Any accrual of seniority or employment benefits during a period of family leave; or

11 (b) Any right, benefit or position of employment other than the rights, benefits and position that
12 the employee would have been entitled to had the employee not taken the family leave.

13 (4)(a) Before restoring an employee to a position under subsection (1) of this section, an em-
14 ployer may require that the employee receive certification from the employee's health care provider
15 that the employee is able to resume work. Certification under this subsection may only be required
16 pursuant to a uniformly applied practice or policy of the employer.

17 (b) This subsection does not affect the ability of an employer to require an employee during a
18 period of family leave to report periodically to the employer on the employee's status and on the
19 employee's intention to return to work.

20 (5)(a) Except as provided in paragraph (b) of this subsection, benefits are not required to con-
21 tinue to accrue during a period of family leave unless continuation or accrual is required under an
22 agreement of the employer and the employee, a collective bargaining agreement or an employer
23 policy.

24 (b) If the employee is provided group health insurance, the employee is entitled to the contin-
25 uation of group health insurance coverage during the period of family leave on the same terms as
26 if the employee had continued to work. If family member coverage is provided to the employee,
27 family member coverage must be maintained during the period of family leave. The employee must
28 continue to make any regular contributions to the cost of the health insurance premiums.

29 (c) Notwithstanding ORS 652.610 (3) and except as provided in paragraph (b) of this subsection,
30 if the employer is required or elects to pay any part of the costs of providing disability, life or other
31 insurance coverage for an employee during the period of family leave that should have been paid
32 by the employee, the employer may deduct from the employee's pay such amounts upon the
33 employee's return to work until the amount the employer advanced toward the payments is paid. In
34 no event may the total amount deducted for insurance under the provisions of this subsection exceed
35 10 percent of the employee's gross pay each pay period.

36 (6) Notwithstanding ORS 652.610 (3), if the employer pays any part of the costs of health, disa-
37 bility, life or other insurance coverage for an employee under the provisions of subsection (5) of this
38 section, and the employee does not return to employment with the employer after taking family
39 leave, the employer may deduct amounts paid by the employer from any amounts owed by the em-
40 ployer to the employee, or may seek to recover those amounts by any other legal means, unless the
41 employee fails to return to work because of:

42 (a) A continuation, reoccurrence or onset of a serious health condition that would entitle the
43 employee to leave for one of the purposes specified by ORS 659A.159 (1)(b) or (c); or

44 (b) Other circumstances beyond the control of the employee.

45 **SECTION 8.** ORS 659A.186 is amended to read:

1 (2)(a) During a period in which an eligible employee takes leave described under subsection (1)
2 of this section, the employer shall maintain any health care benefits the employee had prior to
3 taking such leave for the duration of the leave, as if the employee had continued in employment
4 continuously during the period of leave. **The employee must continue to make any regular**
5 **contributions to the cost of the health insurance premiums.**

6 (b) **Notwithstanding ORS 652.610 (3) and except as provided in paragraph (a) of this sub-**
7 **section, if the employer is required or elects to pay any part of the costs of providing disa-**
8 **bility, life or other insurance coverage for an eligible employee during the period of family**
9 **leave that should have been paid by the employee, the employer may deduct from the**
10 **employee's pay such amounts upon the employee's return to work until the amount the**
11 **employer advanced toward the payments is paid. In no event may the total amount deducted**
12 **for insurance under the provisions of this subsection exceed 10 percent of the employee's**
13 **gross pay each period.**

14 (3) An eligible employee who has taken leave described under subsection (1) of this section does
15 not lose any employment benefits, including seniority or pension rights, accrued before the date on
16 which the leave commenced.

17 (4) It is an unlawful employment practice to discriminate against an eligible employee who has
18 invoked any provision of this chapter.

19 (5) Nothing in this section entitles an eligible employee to accrue employment benefits during
20 a period of leave or to a right, benefit or position of employment other than a right, benefit or po-
21 sition to which the employee would have been entitled had the employee not taken leave.

22 (6)(a) Nothing in this section requires an employer to retain a temporary worker who was hired
23 to replace an eligible employee taking family leave, medical leave or safe leave after the eligible
24 employee has returned to work.

25 (b) A civil action may not be brought against an employer for taking any of the following actions
26 necessary to restore an eligible employee to the position of employment held by the employee as
27 required under subsection (1) of this section:

28 (A) Terminating the employment of a worker who was hired solely to temporarily replace an
29 eligible employee during a period of leave; or

30 (B) Removing an employee from a position to which the employee was transferred to temporarily
31 replace an eligible employee while the eligible employee was on leave, and returning the employee
32 to the position originally held by the employee prior to the transfer at the salary or rate of pay and
33 benefits associated with the position.

34 (c) An employer shall, either at the time of hire or before reassignment, inform a temporary
35 worker or an employee who is reassigned to a position to temporarily replace an eligible employee
36 during a period of leave of the information provided under this subsection.

37 (7) The protections provided under this section apply only to an eligible employee who was
38 employed by the employer for at least 90 days before taking leave described under subsection (1)
39 of this section.

40 **SECTION 13.** ORS 657B.070 is amended to read:

41 657B.070. (1) It is an unlawful employment practice for an employer to:

42 (a) Violate ORS 657B.060.

43 (b) Deny leave or interfere with any other right to which an eligible employee is entitled under
44 this chapter.

45 (c) Retaliate or in any way discriminate against an employee with respect to hire or tenure or

1 any other term or condition of employment because the employee has inquired about the rights or
2 responsibilities under this chapter.

3 (2)(a) An employee who alleges a violation of this section may bring a civil action under ORS
4 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in
5 the manner provided by ORS 659A.820.

6 (b) **This subsection does not apply if the process described in ORS 657B.410, or the
7 method established under ORS 657B.420, provides a remedy for the alleged violation.**

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9 **UNIT CAPTIONS**

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11 **SECTION 14. The unit captions used in this 2023 Act are provided only for the conven-
12 ience of the reader and do not become part of the statutory law of this state or express any
13 legislative intent in the enactment of this 2023 Act.**

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15 **EFFECTIVE AND OPERATIVE DATES**

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17 **SECTION 15. (1) Sections 4 and 10 of this 2023 Act and the amendments to ORS 657B.060,
18 657B.070, 659A.150, 659A.171 and 659A.186 by sections 6, 7, 8, 12 and 13 of this 2023 Act become
19 operative on September 3, 2023.**

20 (2) **The amendments to section 2 of this 2023 Act by section 3 of this 2023 Act become
21 operative on July 1, 2024.**

22 **SECTION 16. This 2023 Act being necessary for the immediate preservation of the public
23 peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect
24 on its passage.**