

Requested by Senator KNOPP

**PROPOSED AMENDMENTS TO  
SENATE BILL 881**

1 On page 1 of the printed bill, line 3, after “provisions” delete the rest of  
2 the line.

3 Delete line 4 and insert “and amending ORS 657B.010, 657B.150 and  
4 657B.360.”.

5 Delete lines 6 through 28 and delete pages 2 through 6 and insert:

6 **“SECTION 1. Section 2 of this 2023 Act is added to and made a part  
7 of ORS chapter 657B.**

8 **“SECTION 2. (1) A worker leasing company may amend a combined  
9 quarterly report filed with the Department of Revenue under ORS  
10 657B.150 detailing any employer contribution amounts paid by the  
11 worker leasing company on behalf of a client employer on or after  
12 January 1, 2023.**

13 **“(2)(a) If the department determines pursuant to an amended com-  
14 bined quarterly report submitted under subsection (1) of this section  
15 that a refund is due to a worker leasing company for employer con-  
16 tribution amounts required under ORS 657B.150 and paid on behalf of  
17 a client employer on or after January 1, 2023, the Director of the De-  
18 partment of Revenue shall issue a refund to the worker leasing com-  
19 pany.**

20 **“(b) The department may not allow or make a refund to a worker  
21 leasing company after three years from the date on which the worker**

1 **leasing company paid an employer contribution amount due under**  
2 **ORS 657B.150 on behalf of a client employer.**

3 **“SECTION 3.** ORS 657B.010, as amended by section 1, chapter 24, Oregon  
4 Laws 2022, and section 29, chapter 83, Oregon Laws 2022, is amended to read:

5 “657B.010. As used in this chapter:

6 “(1) ‘Alternate base year’ means the last four completed calendar quarters  
7 preceding the benefit year.

8 “(2) ‘Average weekly wage’ means the amount calculated by the Employ-  
9 ment Department as the state average weekly covered wage under ORS  
10 657.150 (4)(e) as determined not more than once per year.

11 “(3) ‘Base year’ means the first four of the last five completed calendar  
12 quarters preceding the benefit year.

13 “(4) ‘Benefits’ means family and medical leave insurance benefits.

14 “(5)(a) ‘Benefit year’ means, except as provided in paragraph (b) of this  
15 subsection, a period of 52 consecutive weeks beginning on the Sunday im-  
16 mediately preceding the date on which family leave, medical leave or safe  
17 leave commences.

18 “(b) ‘Benefit year’ means, in the event that the 52-week period described  
19 in paragraph (a) of this subsection would result in an overlap of any quarter  
20 of the base year of a previously filed valid claim, a period of 53 consecutive  
21 weeks beginning on the Sunday immediately preceding the date on which  
22 family leave, medical leave or safe leave commences.

23 “(6) ‘Child’ means:

24 “(a) A biological child, adopted child, stepchild or foster child of a cov-  
25 ered individual or of the covered individual’s spouse or domestic partner;

26 “(b) A person who is or was a legal ward of a covered individual or of  
27 the covered individual’s spouse or domestic partner; or

28 “(c) A person who is or was in a relationship of in loco parentis with a  
29 covered individual or with the covered individual’s spouse or domestic part-  
30 ner.

1       **“(7) ‘Client employer’ means an employer that enters into a con-**  
2 **tractual agreement with a worker leasing company.**

3       ~~“(7)~~ **(8) ‘Contribution’ or ‘contributions’ means the money payments**  
4 **made by any of the following under ORS 657B.150:**

5       “(a) An employer;

6       “(b) An eligible employee;

7       “(c) A self-employed individual;

8       “(d) A tribal government; or

9       “(e) An employee of a tribal government.

10       ~~“(8)~~ **(9) ‘Covered individual’ means any one of the following who quali-**  
11 **fies to receive family and medical leave insurance benefits:**

12       “(a) An eligible employee;

13       “(b) A self-employed individual; or

14       “(c) An employee of a tribal government.

15       ~~“(9)~~ **(10) ‘Domestic partner’ means an individual joined in a domestic**  
16 **partnership.**

17       ~~“(10)~~ **(11) ‘Domestic partnership’ has the meaning given that term in**  
18 **ORS 106.310.**

19       ~~“(11)~~ **(12) ‘Eligible employee’ means:**

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

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

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

27       ~~“(12)~~ **(13) ‘Eligible employee’s average weekly wage’ means an amount**  
28 **calculated by the Director of the Employment Department by dividing the**  
29 **total wages earned by an eligible employee during the base year by the**  
30 **number of weeks in the base year.**

1        “[~~(13)~~(a)] **(14)(a)** ‘Employee’ means:

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

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

5        “(b) ‘Employee’ does not include:

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

7        “(B) A participant in a work training program administered under a state  
8 or federal assistance program.

9        “(C) A participant in a work-study program that provides students in  
10 secondary or postsecondary educational institutions with employment op-  
11 portunities for financial assistance or vocational training.

12       “(D) A railroad worker exempted under the federal Railroad Unemploy-  
13 ment Insurance Act.

14       “(E) A volunteer.

15       “[~~(14)~~(a)] **(15)(a)** ‘Employer’ means any person that employs one or more  
16 employees working anywhere in this state or any agent or employee of such  
17 person to whom the duties of the person under this chapter have been de-  
18 legated.

19       “(b) ‘Employer’ includes:

20       “(A) A political subdivision of this state or any county, city, district,  
21 authority or public corporation, or any instrumentality of a county, city,  
22 district, authority or public corporation, organized and existing under law  
23 or charter;

24       “(B) An individual;

25       “(C) Any type of organization, corporation, partnership, limited liability  
26 company, association, trust, estate, joint stock company or insurance com-  
27 pany;

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

30       “(E) A trustee, trustee in bankruptcy or receiver; or

1 “(F) A trustee or legal representative of a deceased person.

2 “(c) ‘Employer’ does not include the federal government or a tribal gov-  
3 ernment.

4 “[~~(15)~~] **(16)** ‘Employment agency’ has the meaning given that term in ORS  
5 658.005.

6 “[~~(16)~~] **(17)** ‘Family and medical leave insurance benefits’ means the wage  
7 replacement benefits that are available to a covered individual under ORS  
8 657B.050 or under the terms of an employer plan approved under ORS  
9 657B.210, for family leave, medical leave or safe leave.

10 “[~~(17)(a)~~] **(18)(a)** ‘Family leave’ means leave from work taken by a covered  
11 individual:

12 “(A) To care for and bond with a child during the first year after the  
13 child’s birth or during the first year after the placement of the child through  
14 foster care or adoption; or

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

16 “(b) ‘Family leave’ does not mean:

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

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

19 “(C) Leave authorized under ORS 659A.093.

20 “[~~(18)~~] **(19)** ‘Family member’ means:

21 “(a) The spouse of a covered individual;

22 “(b) A child of a covered individual or the child’s spouse or domestic  
23 partner;

24 “(c) A parent of a covered individual or the parent’s spouse or domestic  
25 partner;

26 “(d) A sibling or stepsibling of a covered individual or the sibling’s or  
27 stepsibling’s spouse or domestic partner;

28 “(e) A grandparent of a covered individual or the grandparent’s spouse  
29 or domestic partner;

30 “(f) A grandchild of a covered individual or the grandchild’s spouse or

1 domestic partner;

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

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

5 “[~~(19)~~] **(20)** ‘Medical leave’ means leave from work taken by a covered  
6 individual that is made necessary by the individual’s own serious health  
7 condition.

8 “[~~(20)~~] **(21)** ‘Parent’ means:

9 “(a) A biological parent, adoptive parent, stepparent or foster parent of  
10 a covered individual;

11 “(b) A person who was a foster parent of a covered individual when the  
12 covered individual was a minor;

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

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

17 “(e) A parent of a covered individual’s spouse or domestic partner who  
18 meets a description under paragraphs (a) to (d) of this subsection.

19 “[~~(21)~~] **(22)** ‘Safe leave’ means leave taken for any purpose described in  
20 ORS 659A.272.

21 “[~~(22)~~] **(23)** ‘Self-employed individual’ means:

22 “(a) An individual who has self-employment income as defined in section  
23 1402(b) of the Internal Revenue Code as amended and in effect on December  
24 31, 2021; or

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

26 “[~~(23)~~] **(24)** ‘Serious health condition’ has the meaning given that term in  
27 ORS 659A.150.

28 “[~~(24)~~] **(25)** ‘Third party administrator’ means a third party that enters  
29 into an agreement with the Director of the Employment Department to im-  
30 plement and administer the paid family and medical leave program estab-

1 lished under this chapter.

2 “[~~(25)~~] **(26)** ‘Tribal government’ has the meaning given that term in ORS  
3 181A.940.

4 “[~~(26)~~] **(27)** ‘Wages’ has the meaning given that term in ORS 657.105.

5 **“(28) ‘Worker leasing company’ means a worker leasing company  
6 licensed under to ORS 656.855 that:**

7 **“(a) Pursuant to a contractual agreement and for a fee, furnishes  
8 workers to a client employer; and**

9 **“(b) Reports wages and pays contributions due under ORS 657B.150  
10 on behalf of a client employer.**

11 **“SECTION 4. ORS 657B.150 is amended to read:**

12 **“657B.150. (1)(a) Except as otherwise provided in subsections (3) [*and*  
13 (4)], (4) and (5) of this section, all employers and eligible employees shall  
14 contribute to the Paid Family and Medical Leave Insurance Fund established  
15 under ORS 657B.430.**

16 **“(b) Contributions shall be paid by employers and employees as a per-  
17 centage of a total rate determined by the Director of the Employment De-  
18 partment.**

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

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

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

26 **“(3) When an employment agency is acting as an employer, the employer  
27 contributions required under this section shall be the responsibility of the  
28 employment agency.**

29 **“(4) A worker leasing company is not responsible for paying the  
30 employer contribution amounts required under this section on behalf**

1 **of a client employer that employs fewer than 25 employees.**

2 “[4](a) **(5)(a)** Employers that employ fewer than 25 employees are not  
3 required to pay the employer contributions under subsection (1) of this sec-  
4 tion.

5 “(b) If an employer that employs fewer than 25 employees elects to pay  
6 the employer contributions under subsection (1) of this section, the employer  
7 may apply to receive a grant under ORS 657B.200.

8 “[5] **(6)** Notwithstanding subsection (1) of this section, an employer may  
9 elect to pay the required employee contributions, in whole or in part, as an  
10 employer-offered benefit.

11 “[6] **(7)** Subject to ORS 657B.130 (2) and (3), a self-employed individual  
12 who has elected coverage under ORS 657B.130 (1) shall contribute to the  
13 fund, at a rate that may not exceed one percent of the individual’s taxable  
14 income as determined by the director by rule, for a period of not less than  
15 three years from the date that the election becomes effective.

16 “[7] **(8)** A tribal government that elects coverage under ORS 657B.130  
17 and employees of the tribal government shall contribute to the fund in con-  
18 tribution amounts and at a rate that may not exceed one percent of employee  
19 wages, up to a maximum of \$132,900 in wages, as determined by the director  
20 by rule, for a period of not less than three years from the date that the  
21 election becomes effective.

22 “[8] **(9)** The director shall set rates for the collection of payroll contri-  
23 butions consistent with subsection (1) of this section and in a manner such  
24 that:

25 “(a) At the end of the period for which the rates are effective, the balance  
26 of moneys in the fund is an amount not less than six months’ worth of  
27 projected expenditures from the fund for performance of the functions and  
28 duties of the director under this chapter; and

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

30 “[9] **(10)** For purposes of subsections (1)(c) and [(7)] **(8)** of this section,



1 the director shall annually adjust the maximum amount of employee wages  
2 by the percentage increase, if any, in the Consumer Price Index for All Ur-  
3 ban Consumers, West Region (All Items), as published by the Bureau of La-  
4 bor Statistics of the United States Department of Labor, since the date of  
5 the previous determination made under this subsection.

6 “[~~(10)~~] **(11)** The director shall determine on an annual basis the amount  
7 of payroll contributions, timing of payroll contributions and maximum em-  
8 ployee contributions sufficient to finance the costs related to the provisions  
9 of this chapter.

10 “[~~(11)~~] **(12)** An employer shall hold any moneys collected under this sec-  
11 tion in trust for the State of Oregon and for the payment thereof to the  
12 Department of Revenue in the manner described in subsection [~~(12)~~] **(13)** of  
13 this section.

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

17 “(b) The report shall be filed with the Department of Revenue on or be-  
18 fore the last day of the month following the quarter to which the report re-  
19 lates and shall be deemed received on the date of mailing.

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

23 “[~~(13)~~] **(14)** Moneys collected under this section shall be deposited in the  
24 Paid Family and Medical Leave Insurance Fund established under ORS  
25 657B.430.

26 “[~~(14)(a)~~] **(15)(a)** If an employer ceases or discontinues operations or  
27 business, or sells out, exchanges or otherwise disposes of the business or  
28 stock of goods, any payroll contribution payable under this section is imme-  
29 diately due and payable, and the employer shall, within 10 calendar days, pay  
30 the payroll contribution due. Any person who becomes a successor in interest

1 to the business is liable for the full amount of the unpaid payroll contribu-  
2 tion.

3 “(b) The director shall adopt rules for compliance with this chapter with  
4 regard to contributions from an employer’s successor in interest.

5 “[~~(15)~~] **(16)** Benefits may not be denied to a covered individual solely be-  
6 cause an employer failed to collect or remit the contributions required under  
7 this section.

8 **“SECTION 5.** ORS 657B.360 is amended to read:

9 “657B.360. (1) Subject to subsection (2) of this section, for purposes of  
10 ORS 657B.060 and 657B.150, the Director of the Employment Department  
11 shall establish by rule a method to determine on an annual basis the number  
12 of employees employed by an employer. The method shall require that the  
13 determination be based on the average number of employees employed by the  
14 employer in the 12-month period immediately preceding the date on which  
15 the determination is made.

16 “(2) A replacement worker who is hired to temporarily replace an eligible  
17 employee during a period of family leave, medical leave or safe leave shall  
18 not be counted as an employee for purposes of determining the number of  
19 employees employed by an employer.

20 **“(3) For purposes of determining liability for employer contributions**  
21 **described under ORS 657B.150, with respect to a worker leasing com-**  
22 **pany, the Employment Department shall apply the method for making**  
23 **such a determination under subsection (1) of this section, based on the**  
24 **number of employees employed separately by each respective client**  
25 **employer with which the worker leasing company contracts.**

26 **“SECTION 6.** The amendments to ORS 657B.010, 657B.150 and  
27 **657B.360 by sections 3, 4, and 5 of this 2023 Act apply to employer**  
28 **contribution amounts paid by a worker leasing company on behalf of**  
29 **a client employer on or after January 1, 2023.**

30 **“SECTION 7.** (1) Section 2 of this 2023 Act and the amendments to

1 **ORS 657B.010, 657B.150 and 657B.360 by sections 3, 4 and 5 of this 2023**  
2 **Act become operative on July 1, 2024.**

3 **“(2) The Employment Department may take any action before the**  
4 **operative date specified in subsection (1) of this section that is neces-**  
5 **sary to enable the department to exercise, on and after the operative**  
6 **date specified in subsection (1) of this section, all the duties, functions**  
7 **and powers conferred on the department by section 2 of this 2023 Act**  
8 **and the amendments to ORS 657B.010, 657B.150 and 657B.360 by sections**  
9 **3, 4 and 5 of this 2023 Act.”.**

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