

Memorandum

PREPARED FOR: Senator Taylor
DATE: February 2, 2024
BY: Whitney Perez, LPRO Analyst
RE: Summary of Pending -2 Amendment to SB 1515



In response to a request made by Senator Taylor, Chair of the Senate Committee on Labor and Business, this memorandum provides a summary of the Pending -2 Amendment to Senate Bill 1515 (alignment of Paid Leave Oregon and the Oregon Family Leave Act) as well as a comparison of the measure with existing law. The Pending -2 Amendment to SB 1515 would replace the existing language in SB 1515. *Note: The -2 amendment had not been finalized when this memo was composed, so the version returned by Legislative Counsel may differ from the summary contained herein*

Senate Bill 1515 with Pending -2 Committee Amendment

The Senate Interim Committee on Labor and Business’s first measure is Senate Bill 1515. It has three components pertaining to the Oregon Family Leave Act (OFLA) and Paid Leave Oregon:

- Technical Fixes to Paid Leave Oregon,
- Administration and Oversight of Both Programs, and
- Concurrence and Alignment of Both Programs.

Technical Fixes to Paid Leave Oregon

Senate Bill 1515 with the Pending -2 Committee Amendment will address several technical issues within Paid Leave Oregon.

Table A: Technical Fixes Under SB 1515 with Pending -2 Committee Amendment

Existing Law	Fixes Proposed by SB 1515 with Pending -2 Committee Amendment
Workers’ Compensation Disqualification	
ORS 657B.030(3) (2021) disqualifies an employee from receiving Paid Leave Oregon benefits if the employee is eligible for workers’ compensation or unemployment benefits.	SB 1515 will clarify that only those persons who are eligible for unemployment benefits or workers’ compensation <i>time loss benefits</i> under ORS chapter 656 are disqualified from receiving Paid Leave Oregon benefits.
Definition of Tribal Government	

<p>Section 11, Chapter 292, Oregon Laws 2023 excludes tribal government from the definition of “employer” within Paid Leave Oregon. “Tribal government is defined within ORS 657B.010(26) (2023).”</p>	<p>SB 1515 with the Pending -2 Amendment will amend the definition of “tribal government” to include a federally recognized Indian tribe or a tribal government as defined in ORS 181A.940 (2023).</p>
<p>Garnishing Paid Leave Oregon Benefits</p>	
<p>There are currently no prohibitions for garnishing Paid Leave Oregon benefits.</p>	<p>SB 1515 with the Pending -2 Amendment will prohibit garnishment of Paid Leave Oregon benefits except for child support, spousal maintenance, and restitution on criminal convictions.</p>
<p>Exceptions to Employee Notice of Schedule Changes Requirements</p>	
<p>ORS 653.436 (2021) requires certain employers to provide employees with their work schedule in writing at least 14 calendar days before the first day of work. ORS 653.455(2) (2023) requires covered employers to provide compensation to their employees for each employer-requested work schedule change that occurs without the advance notice required in ORS 653.436 (2023). ORS 653.455(3) (2023) provides exceptions to this compensation requirement.</p>	<p>SB 1515 with the Pending -2 Amendment will add an additional exception to the compensation requirement for employer violations of the advance notice requirement when an employer is provided less than 14 days’ notice before the first day of the work schedule of the need for leave under Paid Leave Oregon or the protected leave provisions within ORS Chapter 659A, or of the return from the use of leave under the same leave programs, and the employer makes changes to another employee’s schedule to cover the specific shifts for the employee on protected leave.</p>
<p>Employee Discretion to Use Other Accrued Leave</p>	
<p>Currently, an employee on protected, unpaid leave under Oregon Family Leave Act (OFLA) can elect to use their accrued vacation, sick, personal business, or other paid leave. ORS 659A.285 (2021). In contrast, under Section 14, Chapter 292, Oregon Laws 2023, an employee’s ability to use accrued sick, vacation, or</p>	<p>SB 1515 with the Pending -2 Amendment will address this provision in a similar manner as OFLA by enabling the employee to determine whether to utilize paid accrued time in conjunction with Paid Leave Oregon benefits. However, employees will only be entitled to use paid accrued time only to the extent that</p>



<p>other paid leave in conjunction with Paid Leave Oregon benefits is at the employer’s discretion.</p>	<p>payments do not exceed full wage replacement while on Paid Leave Oregon unless the employer elects to allow an employee to use paid accrued time exceeding full wage replacement.</p>
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Administration and Oversight

Currently, employers administer OFLA and the Oregon Military Family Leave Act (OMFLA) on behalf of their employees. The Oregon Employment Department (OED) administers the Paid Leave Oregon program. The Oregon Bureau of Labor and Industries (BOLI) investigates employee complaints for violations of OFLA, OMFLA, and other protected leave provisions.

SB 1515 with the Pending -2 Amendment will require OED and BOLI to jointly report to an interim committee of the Legislative Assembly related to labor and business on the apportionment of duties between the two agencies on protected leave provisions under Paid Leave Oregon and [ORS Chapter 659A \(2023\)](#), which includes OFLA, OMFLA, and other protected state and federal leave provisions.

This joint report will include information on:

- the current roles and responsibilities of the two agencies for administration, rulemaking, education, and enforcement of these protected leave provisions;
- possible future roles and responsibilities for the two agencies relating to the protected leave provisions; and
- potential statutory changes that are necessary to clarify roles and responsibilities of the two agencies to enable the two agencies to provide the best support to employees and employers regarding protected leave.

OED will also be directed to report to an interim committee of the Legislative Assembly related to labor and business by September 15, 2024, on the payment of benefits under the Paid Leave Oregon program to seasonal employees and persons employed through Hiring Halls. OED will also be required to report on considerations of programmatic changes to Paid Leave Oregon.

Paid Leave Oregon and Oregon Family Leave Act (OFLA) Concurrence and Alignment

Contained in [ORS Chapter 657B](#) and enacted by the Legislative Assembly in 2019, the Paid Leave Oregon program allows eligible Oregon employees to take paid leave for specified family, medical, or safety-related reasons.



In contrast, OFLA permits employees to take protected, unpaid leave for several qualifying reasons, including parental leave, an employee’s serious health condition, a family member’s serious health condition, bereavement, pregnancy disability, and sick child leave.

Table B: Comparison of Existing Law under Paid Leave Oregon and OFLA

	Currently Under Paid Leave Oregon	Currently Under Oregon Family Leave Act (OFLA) (Unpaid Leave)
Involved Agencies	OED administers	Employers administer BOLI investigates
Required Participation	The program requires employers with 25 or more employees to contribute to the program’s fund. <i>Note: An employer may offer employees an equivalent plan approved by OED in lieu of participating in Paid Leave Oregon. Self-employed persons and independent contractors can elect to participate in the program.</i>	OFLA applies to employers with 25 or more employees.
Maximum Leave	A maximum leave duration of 12 weeks per benefit year for any qualifying leave reason, in any combination. ORS 657B.020(1) (2021) .	A maximum leave duration of 12 weeks within a benefit year for any of the qualifying leave reasons, in any combination.
Requirements for Additional Leave	An employee is allowed an <i>additional</i> two weeks, for a total of 14 weeks per benefit year, for pregnancy or childbirth related conditions. ORS 657B.020(3) (2021) .	An employee is allowed to take an <i>additional</i> 12 weeks of OFLA leave for “an illness, injury, or condition related to the employee’s own pregnancy or childbirth that disables the employee from performing any available job duties



		<p>offered by the covered employer.” ORS 659A.162(3)(a) (2021).</p> <p>An employee may be entitled to <i>additional</i> leave under the sick child/public health emergency qualifying purpose. OFLA leave is available here when an employee needs to “care for a child of the employee who is suffering from an illness, injury, or condition that is not a serious health condition but that requires home care or who requires home care due to the closure of the child’s school or child care provider as a result of a public health emergency.” ORS 659A.159(1)(d) (2021).</p> <p>Generally, the leave length for this sick child leave is limited to the total of 12 weeks of leave within a benefit year for any qualifying reason, in any combination. However, ORS 659A.162(3)(b) (2021) allows an employee to take an <i>additional</i> 12 weeks of leave for this purpose, in the same benefit year, when the employee has already taken 12 weeks of family leave to care for an infant, newly adopted child, or newly placed foster child.</p>
<p>Other Leave Provisions</p>	<p>There is an additional limitation on benefit leave duration within OFLA and Paid Leave Oregon. Once an employee takes Paid Leave, ORS 657B.020(2) (2021) limits the total amount of leave a person may take under both Paid Leave Oregon</p>	<p>Bereavement leave is allowed within OFLA to “deal with the death of a family member.” ORS 659A.159(1)(e) (2021). However, bereavement leave is limited to two weeks for each death of a family member up to a maximum of 12 weeks per benefit year according</p>



	<p>and OFLA programs combined for that benefit year to 16 weeks (up to 12 of which may be taken as Paid Leave).</p> <p>An employee may take an <i>additional</i> two weeks of Paid Leave for pregnancy or childbirth related conditions, bringing the total leave available for that benefit year up to 18 weeks.</p> <p>Administration and enforcement of this 16 (or 18) week maximum remains contingent on a person choosing to utilize Paid Leave Oregon benefits.</p>	<p>to ORS 659A.162(2)(a)-(b). Additionally, all bereavement leave taken counts toward the total 12 weeks of leave an employee is generally allowed to take per benefit year under OFLA. ORS 659A.162(2)(d).</p>
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Existing Maximum Leave Durations Maintained

SB 1515 keeps the existing maximum leave durations for Paid Leave Oregon of 12 weeks, or 14 weeks when there is a pregnancy or childbirth related condition. Leave weeks within OFLA may be taken in addition to leave weeks within Paid Leave Oregon.

Table C: Proposed Changes to Paid Leave Oregon and OFLA Under SB 1515 with Pending -2 Amendment

	<p>Currently Under Paid Leave Oregon</p>	<p>Currently Under Oregon Family Leave Act (OFLA) (Unpaid Leave)</p>
<p>Requirements for Additional Leave</p>	<p>An employee is allowed an <i>additional</i> two weeks, for a total of 14 weeks per benefit year, for pregnancy or childbirth related conditions. ORS 657B.020(3) (2021).</p>	<p>An employee is allowed to take an <i>additional</i> 12 weeks of OFLA leave for “an illness, injury, or condition related to the employee’s own pregnancy or childbirth that disables the employee from performing any available job duties offered by the covered employer.” ORS 659A.162(3)(a) (2021).</p>



		<p>An employee may be entitled to an <i>additional</i> 12 weeks of OFLA leave under the sick child/public health emergency qualifying purpose.</p> <p><i>See Table B for more details about this item.</i></p>
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SB 1515 with Pending -2 Amendment would

- clarify when employees become eligible to take pregnancy disability leave under OFLA;
- specify that an employee may begin OFLA leave without prior notice when the employee is taking pregnancy disability leave;
- amend the sick child/public health emergency leave type in OFLA to include all injuries, illnesses, or conditions that require home care of the employee’s child;
- eliminate several OFLA leave types;
- eliminate the *additional* sick child/public health emergency leave contained in OFLA at [ORS 659A.162\(3\)\(b\) \(2021\)](#);
- modify the definition of “family leave” in the Paid Leave Oregon program to include effectuating “the legal process required for placement of a foster child or the adoption of a child.” Paid Leave Oregon allows for protected paid leave to care for and bond with a child during the first year after the child’s birth or during the first year after placement of the child through foster care or adoption. OFLA currently has a similar parental bonding leave type that is eliminated with the -2 amendment. However, pursuant to rule, OFLA’s parental leave includes leave to effectuate the legal process required for placement of a foster child or the adoption of a child. [OAR 839-009-0230](#). Parental or family leave under Paid Leave Oregon does not include leave for this legal process. SB 1515 with the pending -2 amendment will amend the definition of “family leave” under Paid Leave Oregon to include leave taken for this legal process; and
- temporarily create a new leave type within OFLA that allows an employee to take up to two weeks of *additional* unpaid leave to effectuate the legal process required for placement of a foster child or the adoption of child and specifying the notice an employee must provide an employer when taking this leave. This provision would only be effective from July 1, 2024, to January 1, 2025.



<p>Other Leave Provisions</p>	<p>There is an additional limitation on benefit leave duration within OFLA and Paid Leave Oregon. Once an employee takes Paid Leave, ORS 657B.020(2) (2021) limits the total amount of leave a person may take under both Paid Leave Oregon and OFLA programs combined for that benefit year to 16 weeks (up to 12 of which may be taken as Paid Leave).</p> <p><i>See Table B for more details about this item.</i></p>	<p>Bereavement leave is allowed within OFLA to “deal with the death of a family member.” ORS 659A.159(1)(e) (2021). However, bereavement leave is limited to two weeks for each death of a family member up to a maximum of 12 weeks per benefit year according to ORS 659A.162(2)(a)-(b). Additionally, all bereavement leave taken counts toward the total 12 weeks of leave an employee is generally allowed to take per benefit year under OFLA. ORS 659A.162(2)(d).</p>
<p>SB 1515 with Pending -2 Amendment would</p> <ul style="list-style-type: none"> • remove the 16 (or 18 week) cap on maximum leave; • change bereavement leave to two weeks per qualifying event up to a maximum of four weeks in a benefit year; • specify a 12-week total cap for leave taken under OFLA for bereavement and sick child/public health emergency, and no more than four weeks of that 12-week cap may be for bereavement leave, as referenced immediately above; • specify that leave taken under OFLA is in addition to leave taken under Paid Leave Oregon; • modify provisions governing medical verification for leave when an employee takes leave under OFLA for sick child/public health emergency; and • clarify when two or more family members who work for the same employer may take protected leave concurrently under OFLA. 		

Proposed Changes Shown in Tables:

The tables in the appendix below capture existing law and the changes expected within the Pending -2 Amendment to SB 1515.

- Appendix Table 1 shows a comparison of leave duration and qualifying purposes for leave under existing law for OFLA, Paid Leave Oregon, the Family and Medical Leave Act (FMLA), and the Oregon Military Family Leave Act (OMFLA).



- Appendix Table 2 contains a comparison of leave duration and qualifying purposes for leave under existing law and the Pending -2 Amendment for the same programs.
- Appendix Table 3 shows leave durations and qualifying purposes under OFLA and Paid Leave Oregon should SB 1515 with the Pending -2 Amendment be enacted.

Please note: Appendix Tables 2 and 3 do not include the temporary additional two weeks of leave added to OFLA for the purposes of effectuating the legal process required for placement of a foster child or the adoption of a child. SB 1515 with the Pending -2 Amendment does not make any changes to federal FMLA or OMFLA. Appendix Tables 1 and 2 include this information for convenience and comparison.

Operative and Sunset Dates

SB 1515 with the Pending -2 Amendment will contain an emergency clause with delayed operative dates for almost all provisions of the bill. The section of the bill pertaining to the reporting requirement is not subject to an operative date and it will sunset on December 31, 2025.

The section of the bill amending the definition of “family leave” in Paid Leave Oregon to include effectuating the legal process required for placement of a foster child or the adoption of a child is operative on January 1, 2025. The provision of the bill creating the additional two weeks of leave within OFLA to effectuate the legal process required for placement of a foster child or the adoption of a child is operative on July 1, 2024 and will sunset on January 1, 2025, when this event will be covered under Paid Leave Oregon. All remaining sections of the bill have an operative date of July 1, 2024.



Appendix Table 1: Comparison of Leave Duration in Weeks (except where marked) Per Benefit Year¹ and Qualifying Purposes Under Current Law for Oregon Family Leave Act (OFLA), Paid Leave Oregon, Family and Medical Leave Act (FMLA), and Oregon Military Family Leave Act (OMFLA)

Leave Category	OFLA (Unpaid Leave)	Paid Leave	FMLA (Federal Unpaid Leave)	OMFLA (Family Military Unpaid Leave)
Family Leave:				
Birth, adoption, or foster placement	12	12	12	No
Family member's serious health condition	12	12	12	No
Medical Leave:				
Employee's own serious health condition	12	12	12	No
Safe Leave:				
Domestic violence, sexual assault, harassment, or stalking	No	12	No	No
Other Leave Types:				
Extended leave for pregnancy: Pregnancy or childbirth related condition	No	2	No	No
Extended leave for pregnancy: Pregnancy disability	12	No	No	No
Sick child leave/Public health emergency	12	No	No	No
Additional sick child/Public health emergency	12	No	No	No
Bereavement	2 per event/ max 12	No	No	No
Military leave: Deployment	No	No	No	14 days per event
Military leave: Qualifying exigency	No	No	12	No
Military leave: Caregiver	No	No	26	No

Source: Legislative Policy and Research Office (LPRO)

Data: OFLA Current Law: ORS 659A; Paid Leave Oregon Current Law: ORS 657B; OMFLA Current Law: ORS 659A; FMLA Current Law: 29 USC Ch. 28

1: Benefit year is defined in Paid Leave Oregon at [Section 29, Chapter 171, Oregon Laws 2023](#), and in OFLA, a benefit year is defined as a "one-year period" at [Section 2, Chapter 203, Oregon Laws 2023](#).



Appendix Table 2: Comparison of Leave Duration in Weeks (except where marked) Per Benefit Year¹ and Qualifying Purposes for Oregon Family Leave Act (OFLA), Paid Leave Oregon, Federal Family and Medical Leave Act (FMLA), and Oregon Military Family Leave Act (OMFLA) Under Current Law Compared to SB 1515 with Pending -2 Amendment (Proposed changes are highlighted in white boxes.)

Leave Category	OFLA		Paid Leave		FMLA		OMFLA	
	Current	SB 1515 -2	Current	SB 1515 -2	Current	SB 1515 -2	Current	SB 1515 -2
Family Leave:								
Birth, adoption, or foster placement	12	No	12	12	12	12	No	No
Family member's serious health condition	12	No	12	12	12	12	No	No
Medical Leave:								
Employee's own serious health condition	12	No	12	12	12	12	No	No
Safe Leave:								
Domestic violence, sexual assault, harassment, or stalking	No	No	12	12	No	No	No	No
Other Leave Types:								
Extended leave for pregnancy: Pregnancy or childbirth related condition	No	No	2	2	No	No	No	No
Extended leave for pregnancy: Pregnancy disability	12	12	No	No	No	No	No	No
Sick child/Public health emergency²	12	12	No	No	No	No	No	No
Additional sick child/Public health emergency	12	No	No	No	No	No	No	No
Bereavement	2 per event/ max 12	2 per event/ max 4	No	No	No	No	No	No



Military leave: Deployment	No	No	No	No	No	No	14 days per event	14 days per event
Military leave: Qualifying exigency	No	No	No	No	12	12	No	No
Military leave: Caregiver	No	No	No	No	26	26	No	No

Source: Legislative Policy and Research Office (LPRO)

Data: OFLA Current Law: ORS 659A; Paid Leave Oregon Current Law: ORS 657B; OMFLA Current Law: ORS 659A; FMLA Current Law: 29 U.S.C Ch. 28

Notes: Durations and qualifying purposes that will be amended by SB 1515 with the pending -2 amendment are marked in bold and italics. Excludes temporary leave type added to OFLA allowing for up to an additional 2 weeks of protected unpaid leave to effectuate the legal process required for placement of a foster child or adoption of a child.

1: Benefit year is defined in Paid Leave Oregon at [Section 29, Chapter 171, Oregon Laws 2023](#) and in OFLA a benefit year is defined as a "one-year period" at [Sections 2-3, Chapter 203, Oregon Laws 2023](#).

2: SB 1515 with the pending -2 amendment will amend the sick child/public health emergency leave type in OFLA to include all injuries, illnesses, or conditions that require home care of the employee's child. It will also specify a 12-week total cap for leave taken under OFLA for bereavement and sick child/public health emergency, and no more than four weeks of that 12-week cap may be for bereavement leave.



Appendix Table 3: If SB 1515 with Pending -2 Amendment is Enacted, Leave Duration in Weeks Per Benefit Year¹ and Qualifying Purposes for Oregon Family Leave Act (OFLA) and Paid Leave Oregon

Leave Category	OFLA SB 1515 -2	Paid Leave SB 1515 -2
Family Leave:		
Birth, adoption, or foster placement	No	12
Family member’s serious health condition	No	12
Medical Leave:		
Employee’s own serious health condition	No	12
Safe Leave:		
Domestic violence, sexual assault, harassment, or stalking	No	12
Other Leave Types:		
Extended leave for pregnancy: Pregnancy or childbirth related condition	No	2
Extended leave for pregnancy: Pregnancy disability	12	No
Sick child/Public health emergency ²	12	No
Additional sick child/Public health emergency	No	No
Bereavement	2 per event/max 4	No
Military leave: Deployment	No	No
Military leave: Qualifying exigency	No	No
Military leave: Caregiver	No	No

Source: Legislative Policy and Research Office (LPRO)

Data: Senate Bill 1515 (2024) Pending -2 Amendment

Notes: Leave weeks within OFLA may be taken in addition to leave weeks within Paid Leave Oregon. Excludes temporary leave type added to OFLA allowing for up to an additional 2 weeks of protected unpaid leave to effectuate the legal process required for placement of a foster child or adoption of a child.

1: Benefit year is defined in Paid Leave Oregon at [Section 29, Chapter 171, Oregon Laws 2023](#) and in OFLA a benefit year is defined as a “one-year period” at [Sections 2-3, Chapter 203, Oregon Laws 2023](#).

2: Sick child/ public health emergency leave type in OFLA will include all injuries, illnesses, or conditions that require home care of the employee’s child. OFLA will specify a 12-week total cap for leave taken for bereavement and sick child/public health emergency, and no more than four weeks of that 12-week cap may be for bereavement leave.

