



The Honorable Kathleen Taylor, Chair
Senate Committee on Labor and Business
Oregon State Legislature

February 8, 2024

Re: SB 1515-3, related to paid and unpaid family medical leave

Dear Chair Taylor and Committee Members:

On Behalf of Unum Group, I am submitting comments today as both an employer in the state of Oregon as well as a carrier that administers Paid Leave Oregon private plans and/or Oregon Family and Medical Leave Act (OFLA) leaves of absence for hundreds of Oregon employers. Unum Group provides workplace benefits to over 45 million Americans and is the nation's leading provider of disability insurance.

Our first concern is the amendment related to an employee's use of accrued paid leave:

"SECTION 5. ORS 657B.030 is amended to read:

"657B.030. (1) Family and medical leave insurance benefits are in addition to any paid sick time under ORS 653.606, vacation leave or other paid leave earned by an employee.

"(2)(a) [*An employer may permit an employee to use all or a portion of paid sick time, vacation leave or any other paid leave earned by the employee in addition to*] **Except as otherwise provided in paragraph (b) of this sub-section, an employee is entitled to use any accrued paid sick leave, accrued paid vacation leave or any other paid leave that is offered by the employer in addition to** receiving paid family and medical leave insurance benefits during a period of leave taken for family leave, medical leave or safe leave **to the extent that the total combined amount of accrued paid leave and benefits received by the employee does not exceed an amount equal to the employee's full wage replacement during the period of family leave, medical leave or safe leave.**

We understand that employees are entitled to use accrued paid leave today when eligible for OFLA. However, OFLA is unpaid leave and therefore, the accrued paid leave is the sole source of pay. With Paid Leave Oregon being a paid program, it changes the dynamic and introduces additional challenges for employers.

1. It is extremely difficult to calculate the number of hours or fractions of hours of paid time off that the employer should deduct from the employee's paid time off bank. Employers struggle with how to calculate the dollar value of the difference between Paid Leave Oregon benefits and full wage replacement and then convert that amount into paid time off. The process for determining the amount is invariably manual, time consuming and prone to error. This is further complicated by the fact that Paid Leave Oregon does not share benefit amounts with employers.
2. Many employers' paid leave policies have provisions that govern the increment of paid leave which employees can take. Some employer payroll systems are hardcoded to prevent time from being entered if it does not match the required increment. Collective Bargaining Agreements also often dictate the increment in which employees can use their paid time off. What happens when the calculation noted in issue #1 results in an amount of paid time off that does not match the employer's required increment? What if it results in several minutes being left in an employee's paid time bank and the policy and/or CBA prohibits the employee from using it? Forcing employers to allow use of time that is less



than their increment rule also impacts the employer's ability to use that increment for Family and Medical Leave since the FMLA requires employers to use the same increment for leave under FMLA that it allows for other forms of leave, provided it is not more than one hour. If an employer has a one-hour increment rule for FMLA and is forced to allow employees to take paid time off in less than one-hour increments to top up Paid Leave Oregon, the employer loses the ability to use the one-hour increment rule for all of the FMLA requests for all employees across the country, not just in Oregon.

3. Many employers have short-term disability policies that run concurrently with Paid Leave Oregon. It is common for employer policy to prohibit employees from using paid time off while on STD. Because of this, some employers have hard coded payroll systems that prevent any pay from being released to employees who are on STD. Since Paid Leave Oregon runs concurrently with STD when employees are on leave for their own medical condition, employers will be forced to change their policies and may be required to either reprogram or override their payroll systems.

We ask that you consider retaining the current statutory language which allows employers to have control over their own benefit policies including how and when to offer employees the ability to use accrued paid leave to supplement Paid Leave Oregon benefits. For those employers that allow employees to use accrued paid leave concurrently, they can continue to do so. But for those that do not, they can retain their current policies.

We also ask for clarity in the changes to OFLA. It appears the intent is to create two mutually exclusive leave programs (OFLA and Paid Leave Oregon) where leave reasons do not overlap. We support this intent as it eliminates the need to coordinate entitlements and administration. However, I'm not sure that's been fully accomplished.

The definition of Serious Health Condition has been removed from OFLA and the reason for leave related to a child with an illness or injury has been amended as follows:

- “[*d*] (a) 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.

This definition is now broad enough to encompass both a child with a minor illness (e.g. home from day care for 2 days with a cold) and a child with a much more serious condition (e.g. cancer). In the latter circumstance, the reason for leave will overlap with Paid Leave Oregon. The same is true for the 12 weeks of unpaid OFLA available to employees disabled by pregnancy (retained from current OFLA statute). The addition of 659A.162(1)(b) makes it clear the two programs are not to run concurrently. We assume the intent is that the employee will always have 12 weeks of leave available to care for a child with an illness or injury and/or their own incapacity due to pregnancy, even if they've used all their Paid Leave Oregon benefits or choose not to use those benefits. A few examples of how we see this playing out:

- Employee is pregnant and experiencing complications and is placed on bed rest three months prior to her due date. She uses all 14 weeks of Paid Leave Oregon but is still incapacitated due to childbirth. She would then have up to 12 weeks of unpaid OFLA until she is no longer incapacitated. This employee would have no leave available for bonding.
- Employee uses 12 weeks of Paid Leave Oregon to care for a sick parent. She then finds out she's pregnant and delivers without complications. She takes an additional two weeks of Paid Leave Oregon then transitions to unpaid OFLA until she is recovered. She has no leave available for bonding.



- Employee is pregnant and delivers without complications. She chooses to take 6 weeks of unpaid OFLA during her post-partum recovery. She then takes 12 weeks of Paid Leave Oregon to bond with her new child.
- In all the above examples, if the employee's new child (or another child of the employee) requires care for any illness or injury (serious or not), the employee would have up to 12 weeks of unpaid OFLA to care for that child.
- Employee uses 12 weeks of Paid Leave Oregon to care for a sick parent. Her adult child is then diagnosed with a serious illness. The employee would have 12 weeks of unpaid OFLA available to care for that child.

These examples are pretty straight-forward and assume the employee and employer are clear in their intent and "plan" to use leave. However, in real life, it doesn't always work that way. In particular, we see challenges when the employee is caring for a child with an illness or injury.

- For example, an employee calls out from work reporting their child can't go to day care because of a runny nose. This would fall under OFLA only and be administered by the employer. Two days later, the employee calls and says they've taken the child to the doctor and they have a double ear infection, have been placed on antibiotics, and will require care for the rest of the week. This now qualifies for Paid Leave Oregon. When the employee called the state to file an application for benefits, the entire leave of absence from day one will qualify for benefits. Is the employer then supposed to "undo" the application of OFLA to those early absences? In addition, if the employee received full pay for those days through the use of accrued paid leave, the employer may have additional burdens to recover the overpaid time.

In addition, something that will need to be considered is how to handle leaves of absence that occur over the effective date of the changes. If an employee is out of work on unpaid OFLA leave caring for a parent, does their leave immediately end as of the effective date? Is there a transition period allowing employees to make other arrangements or recover from a surgery they planned when they had a full entitlement of leave available?

Because of all the complexities mentioned above, we ask that the effective date be moved out to at least January 1, 2025. It will take time for regulating agencies to develop the appropriate guidance and for employers and administrators to code systems, update policies, and more.

Lastly, SB 999 passed last year which mandated that employers change their OFLA calculation method to match Paid Leave Oregon effective July 1, 2024. If the programs will no longer run concurrently in any way, we recommend repealing that mandate. That will be one less thing employers and leave administrators will have to work through, allowing them to continue administering OFLA using their current calculation methods consistent with the Federal FMLA (which frequently runs concurrently with OFLA).

We urge legislators to work closely with employers and leave administrators to determine how best to accomplish the goals of the legislation. We appreciate the opportunity to share our concerns and welcome the opportunity to discuss our concerns further should you so wish.

Sincerely,

A handwritten signature in black ink that reads "Umberto Speranza". The signature is written in a cursive, slightly slanted style.

Umberto Speranza
AVP, Government Affairs, Unum Group