

Enrolled Senate Bill 858

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CHAPTER

AN ACT

Relating to the administration of the family and medical leave insurance program; creating new provisions; amending ORS 657B.030, 657B.090, 657B.210, 657B.400 and 657B.410; and prescribing an effective date.

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

SECTION 1. ORS 657B.030, as amended by section 5, chapter 20, Oregon Laws 2024, 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) Except as otherwise provided in paragraph (b) of this subsection, 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.

(b) An employer may permit an employee to use accrued paid leave in addition to receiving paid family and medical leave insurance benefits such that the total combined amounts received by the employee may exceed the employee's full wage replacement amount as described in paragraph (a) of this subsection.

(3) Subject to the terms of any agreement between the employee and the employer or the terms of a collective bargaining agreement, the employer may determine the particular order in which accrued leave is to be used when more than one type of accrued leave is available to the covered individual.

(4) In any week in which an employee is eligible to receive workers' compensation time loss benefits under ORS chapter 656 or [*unemployment benefits under ORS chapter 657*] **wage replacement benefits under a state or federal unemployment benefits program**, the employee is disqualified from receiving family and medical leave insurance benefits.

SECTION 2. ORS 657B.090 is amended to read:

657B.090. (1) **Except as otherwise provided under this section**, family and medical leave insurance benefits are not payable to a covered individual unless:

(a) The individual submits a claim to the Director of the Employment Department in the manner determined by the director by rule; and

- (b) The director has made a decision to allow or deny the claim under ORS 657B.100.
- (2) If the director has made a decision to allow the claim, the director shall make a reasonable effort to issue the first payment of benefits to a covered individual within two weeks after receiving the claim.
- (3)(a) Benefits may be claimed for leave that is taken by a covered individual in increments that are equivalent to one work day or one work week as those terms are defined by the director by rule.
- (b) If a covered individual takes leave in increments that are equivalent to one work day, benefits may be claimed for leave that occurs in nonconsecutive periods of leave.
- (4) Benefit amounts, as determined under ORS 657B.050:
- (a) Must be prorated to increments that are equivalent to one work day; and
- (b) Must be paid in increments that are equivalent to one work week.
- (5)(a) If a covered individual dies or becomes incapacitated before submitting a claim to the director for payment of family and medical leave insurance benefits or before the director has made a final decision regarding the approval or denial of a pending or existing claim previously submitted to the director, an authorized agent may engage in any of the following activities on behalf of the deceased or incapacitated covered individual:**
- (A) Submit a claim for benefits to the director for a qualifying purpose under ORS 657B.020 and in the manner prescribed by the director by rule.**
- (B) Receive information about benefits due or paid by the director to the covered individual.**
- (C) Receive information concerning decisions regarding existing or pending claims previously submitted to the director.**
- (D) Request a hearing to obtain review of a final decision of the director regarding any of the matters provided in ORS 657B.410 (1)(b).**
- (E) Submit any additional information the director deems necessary to complete a claim for benefits.**
- (b) Actions taken on behalf of a deceased or incapacitated covered individual by an authorized agent under this subsection are binding on the covered individual.**
- (c) The payment of benefits by the director to an incapacitated covered individual under this section, or to the estate of a deceased individual in accordance with ORS 293.490, releases the director from any future liability with respect to such benefits.**
- (6) The director shall adopt rules to implement the provisions of this section. At a minimum, the rules must:**
- (a) Provide the requirements for the designation or authorization of an authorized agent.**
- (b) Establish when an authorized agent's authority to act on behalf of a deceased or incapacitated covered individual expires.**
- (7) As used in this section:**
- (a) "Authorized agent" means an individual who:**
- (A) Has been specifically designated by a covered individual in the manner prescribed by the director by rule to act on behalf of the covered individual; or**
- (B) Is authorized under rules adopted by the director to act on behalf of a covered individual.**
- (b) "Incapacitated" has the meaning given that term under ORS 125.005.**

SECTION 3. ORS 657B.210 is amended to read:

657B.210. (1)(a) An employer may apply to the Director of the Employment Department for approval of an employer-offered benefit plan that provides family and medical leave insurance benefits to the employer's employees.

(b) An employer that seeks approval of a plan shall submit an application to the director in the form and manner prescribed by the director by rule, accompanied by an application fee not to exceed \$250.

(2) The director shall review and approve an application for a plan if the director finds that:

(a) The plan is made available to all employees who have been continuously employed with an employer for 30 days.

(b) The benefits afforded to employees covered under the plan are equal to or greater than the weekly benefits and the duration of leave that an eligible employee would qualify for under this chapter.

(3) An employer may make a plan available to employees who have been employed by the employer for less than 30 days but in no event may an employer require an employee to have been employed by the employer for more than 30 days to be eligible for coverage under the plan.

(4) Neither an employer that provides benefits under an approved plan nor an employee covered under such a plan is required to make the contributions under ORS 657B.150 **for any calendar quarter that begins on or after the effective date of an approved plan, and thereafter, for the duration of the approved plan.**

(5)(a) An employer may assume all or a part of the costs related to a plan approved under this section.

(b) If an employer assumes only part of the costs, the employer may deduct employee contributions from the wages of employees to finance the costs related to the plan, except that any contribution amounts deducted may not exceed the amount that an employee would otherwise be required to contribute under ORS 657B.150.

(c) Employee contributions received or retained by an employer under this subsection must be used for plan expenses and are not considered to be a part of an employer's assets for any purpose.

(6) Any paid sick leave earned under ORS 653.606 is in addition to the benefits made available under a plan that has been approved under this section.

(7) An employee who takes leave pursuant to a plan approved under this section shall provide notice to an employer of such leave in the same manner as provided in ORS 657B.040.

(8) A plan approved under this section shall remain in effect for a period of not less than one year.

(9) Nothing in this section prohibits an employee who is otherwise eligible from applying for coverage under the program established under ORS 657B.340 or under a separate employer-offered plan that has been approved under this section.

(10) The director shall adopt rules that require that the benefits made available to an eligible employee who is covered under more than one plan shall be prorated under each respective plan.

(11) An employer that offers a plan approved under this section shall:

(a) Be subject to the same requirements provided in ORS 657B.060 and 657B.070;

(b) Maintain all reports, information and records relating to the plan, including payroll and account records that document employee contributions and expenses, in the manner established by the director by rule; and

(c) Provide written notice to employees that includes:

(A) Information about benefits available under the approved plan, including the duration of leave;

(B) The process for filing a claim to receive benefits under the plan;

(C) The process for employee deductions used to finance the costs of the plan, if any;

(D) An employee's right to dispute a benefit determination in the manner determined by the director under ORS 657B.420;

(E) The right to job protection and benefits continuation, if applicable; and

(F) A statement that discrimination and retaliatory personnel actions against an employee for inquiring about the family and medical leave insurance program established under ORS 657B.340, giving notification of leave under the program, taking leave under the program or claiming family and medical leave insurance benefits are prohibited.

(12) Benefits received under this section are considered wages for purposes of a wage claim under ORS chapter 652.

(13) An employer whose application for plan approval was denied by the director under this section or terminated by the director under ORS 657B.220 may request review of the decision as provided in ORS 657B.410.

SECTION 4. ORS 657B.400 is amended to read:

657B.400. (1) Except as provided in subsections (2) to (7) and (10) of this section, all information in the records of the Employment Department or a third party administrator pertaining to the administration of this chapter:

(a) Is confidential and for the exclusive use and information of the Director of the Employment Department in administering this chapter;

(b) May not be used in any court action or in any proceeding pending in the court unless the director or the State of Oregon is a party to the action or proceeding or unless the action or proceeding concerns the establishment, enforcement or modification of a support obligation and support services are being provided by the Division of Child Support of the Department of Justice or the district attorney pursuant to ORS 25.080; and

(c) Is exempt from disclosure under ORS 192.311 to 192.478.

(2) The Employment Department may disclose information:

(a) To the extent necessary for the payment of benefits or collection of contributions due under this chapter:

(A) To any claimant or employer; or

(B) To a legal representative, **an authorized agent described under ORS 657B.090** or *[other]* **another** designee authorized by a claimant or employer in accordance with any rules adopted by the director regarding the receipt of confidential information on behalf of a claimant or employer.

(b) Upon request to the United States Attorney's Office. Under this paragraph, the Employment Department may disclose an individual's employment and wage information in response to a federal grand jury subpoena or for the purpose of collecting civil and criminal judgments issued by a federal court, including restitution and special assessment fees. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the United States Attorney's Office.

(3) At the discretion of the director and subject to an interagency agreement, the Employment Department may disclose, upon request, information:

(a) To state or local child support enforcement agencies enforcing child support obligations for the purposes of establishing child support obligations, locating individuals owing child support obligations and collecting child support obligations from those individuals. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the child support enforcement agency.

(b) To agencies participating in an income and eligibility verification system for the purpose of verifying an individual's eligibility for benefits, or the amount of benefits, under a state or federal program such as unemployment insurance, temporary assistance for needy families, medical assistance, supplemental nutrition assistance, Supplemental Security Income, child support enforcement or Social Security. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the requesting agency.

(c) To officers and employees of the United States Department of Housing and Urban Development and to representatives of a state or local public housing agency for the purpose of determining an individual's eligibility for benefits, or the amount of benefits, under a housing assistance program. The information disclosed is confidential and may not be used for any other purpose. The costs of disclosing information under this paragraph shall be paid by the requesting agency.

(4) At the discretion of the director and subject to an interagency agreement, the Employment Department may disclose information secured from employers:

(a) To state agencies, federal agencies, local government agencies, public universities listed in ORS 352.002 and the Oregon Health and Science University established under ORS 353.020, to the extent necessary to properly carry out governmental planning, performance measurement, program

analysis, socioeconomic analysis or policy analysis functions performed under applicable law and at the discretion of the director and subject to an interagency agreement. The information disclosed is confidential and may not be disclosed by the agencies or universities in any manner that would identify individuals, claimants, employees or employers. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the agency or university requesting the information.

(b) As part of a geographic information system. Points on a map may be used to represent economic data, including the location, employer size and industrial classification of businesses in Oregon. Information presented as part of a geographic information system may not give specific details regarding a business's address, actual employment or proprietary information. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the party requesting the information.

(5) At the discretion of the director and subject to an interagency agreement, the Employment Department may disclose information received from an employer, an employee or a claimant:

(a) To public employees in the performance of their duties under state or federal laws relating to the payment of family and medical leave insurance benefits.

(b) Pursuant to an informed consent, received from the employer, employee or claimant, to disclose the information.

(c) To the Bureau of Labor and Industries for the purpose of performing duties under ORS 279C.800 to 279C.870, 658.005 to 658.245 or 658.405 to 658.511 or ORS chapter 652, 653 or 659A. The information disclosed may include the names and addresses of employers and employees, payroll data of employers and employees, and information obtained for an appeal from a determination under a plan approved under ORS 657B.210. The information disclosed is confidential and may not be used for any other purpose. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the bureau.

(d) To the Department of Revenue for the purpose of performing its duties under ORS 293.250 or under the revenue and tax laws of this state and identifying potential identity theft and fraud. The information disclosed may include the names and addresses of employers and employees, payroll data of employers and employees, and particulars, as defined in ORS 314.835. The information disclosed is confidential and may not be disclosed by the Department of Revenue in any manner that would identify an employer or employee except to the extent necessary to carry out the department's duties under ORS 293.250 or in auditing or reviewing any report or return required or permitted to be filed under the revenue and tax laws administered by the department. The Department of Revenue may not disclose any information received to any private collection agency or for any other purpose. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the Department of Revenue.

(e) To the Department of Consumer and Business Services for the purpose of performing its duties under ORS chapters 654, 656 and 731. The information disclosed may include, but is not limited to, the name, address, number of employees and standard industrial classification code of an employer and payroll data of employers and employees. The information disclosed is confidential and may not be disclosed by the Department of Consumer and Business Services in any manner that would identify an employer or employee except to the extent necessary to carry out the department's duties under ORS chapters 654, 656 and 731, including administrative hearings and court proceedings in which the Department of Consumer and Business Services is a party. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the Department of Consumer and Business Services.

(f) To the Construction Contractors Board for the purpose of performing its duties under ORS chapter 701. The information disclosed to the board may include the names and addresses of employers and status of their compliance with this chapter. If the information disclosed under this

paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the board.

(g) To the Department of Transportation to assist the department in carrying out its duties relating to collection of delinquent and liquidated debts, including taxes, under ORS 184.610 to 184.665, 184.670 to 184.733 and 805.263, ORS chapter 319 and the Oregon Vehicle Code, or in auditing or reviewing any report or return required or permitted to be filed under the revenue and tax laws administered by the department. The information disclosed may include the names and addresses of employers and employees and payroll data of employers and employees. The information disclosed is confidential and may not be disclosed by the Department of Transportation in any manner that would identify an employer or employee except to the extent necessary to carry out the department's duties relating to collection of delinquent and liquidated debts or in auditing or reviewing any report or return required or permitted to be filed under the revenue and tax laws administered by the department. The Department of Transportation may not disclose any information received to any private collection agency or for any other purpose. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the Department of Transportation.

(h) To the Department of Human Services and the Oregon Health Authority to assist the department and the authority in the collection of debts that the department and the authority are authorized by law to collect. The information disclosed may include the names and addresses of employers and employees and payroll data of employers and employees. The information disclosed is confidential and may not be disclosed by the Department of Human Services or the Oregon Health Authority in any manner that would identify an employer or employee except to the extent necessary for the collection of debts as described in this paragraph. The Department of Human Services and the Oregon Health Authority may not disclose information received under this paragraph to a private collection agency or use the information for a purpose other than the collection of debts as described in this paragraph. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the Department of Human Services or the Oregon Health Authority.

(i) To the State Treasurer useful for the purpose of performing the State Treasurer's duties under ORS 98.302 to 98.436, 98.992, 113.235 and 116.253. The information disclosed is confidential and may not be used by the State Treasurer for any other purpose. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the State Treasurer.

(6) At the discretion of the director and subject to an interagency agreement, the director may disclose information to a public official in the performance of the public official's official duties administering or enforcing laws within the public official's authority and to an agent or contractor of a public official. The public official shall agree to assume responsibility for misuse of the information by the public official's agent or contractor.

(7) At the discretion of the director, the director may disclose information to a contractor pursuant to a contract for actuarial services. The contractor shall agree to assume responsibility for misuse of the information by the contractor's agent.

(8) Any officer appointed by or any employee of the director who discloses confidential information, except with the authority of the director, pursuant to rules or as otherwise required by law, may be disqualified from holding any appointment or employment with the Employment Department.

(9) Any person or any officer or employee of an entity to whom information is disclosed by the Employment Department under this section who divulges or uses the information for any purpose other than that specified in the provision of law or agreement authorizing the use or disclosure may be disqualified from performing any service under contract or from holding any appointment or employment with the state agency that engaged or employed that person, officer or employee. The Employment Department may immediately cancel or modify any information-sharing agreement with an entity when a person or an officer or employee of that entity discloses confidential information, other than as specified in law or agreement.

(10) At the discretion of the director, the director may disclose information to an employee or officer within any division of the Employment Department as necessary to conduct research, compile aggregate data from the information received and any other purpose deemed necessary by the director to assist the director in carrying out the duties under this chapter or other duties under ORS chapter 657.

(11) The director may adopt any rules necessary to implement this section.

SECTION 5. 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 ORS 657B.925; or

(C) A determination made under ORS 657B.332.

(b) A covered individual **or an authorized agent, as defined in ORS 657B.090**, 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;

(C) Matters affecting the covered individual under ORS 657B.040 or 657B.332; or

(D) Benefit overpayments, including overpayments under ORS 657B.335.

(c) A self-employed individual or a tribal government may request a hearing to review a final decision of the director regarding elective coverage under ORS 657B.130.

(d) An employer may request a hearing:

(A) To review a final decision of the director regarding contributions under this chapter;

(B) Regarding decisions of the director regarding penalties under this chapter; or

(C) To review a final decision of the director regarding a grant made available under this chapter.

(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.

(3)(a) Notwithstanding any other law, a *[party to]* **person** in a proceeding described under this section may *[authorize a legal representative]* **be represented by legal counsel** or *[other person to represent the party in the proceeding in the manner]* **by any other representative that the person authorizes to represent the person as** prescribed by the director by rule. *[A legal representative]* **The legal counsel** or other *[person who is]* **representative** authorized to represent the *[party]* **person** in the proceeding must comply with any procedures or process regarding such representation established by the department by rule, including, but not limited to, a rule establishing the maximum amount that the legal *[representative]* **counsel** or other authorized *[person]* **representative** may charge for such representation.

(b) For purposes of this subsection, "person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies, this state and the political subdivisions of this state.

SECTION 6. The amendments to ORS 657B.030 by section 1 of this 2025 Act become operative on January 1, 2026.

SECTION 7. This 2025 Act takes effect on the 91st day after the date on which the 2025 regular session of the Eighty-third Legislative Assembly adjourns sine die.

Passed by Senate February 6, 2025

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Obadiah Rutledge, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 5, 2025

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Julie Fahey, Speaker of House

Received by Governor:

.....M.,....., 2025

Approved:

.....M.,....., 2025

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2025

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Tobias Read, Secretary of State