



Senate Bill 1515 Report

Apportionment of Duties between Bureau of Labor and Industries and Oregon Employment Department for OFLA & Paid Leave Oregon

September 2024

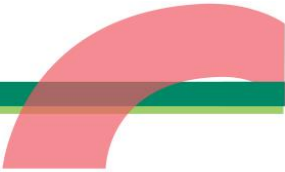
A future Oregon where individuals,
employers, and families
— of every kind —
have the time and support they need
to care for themselves and
their loved ones
during life's most
important moments.



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Executive summary

Paid Leave Oregon is primarily administered by the Oregon Employment Department (OED) and the Oregon Family Leave Act (OFLA) is administered by Oregon employers with 25 or more employees. The Oregon Bureau of Labor and Industries (BOLI) is responsible for enforcing OFLA, as well as similar worker protections applicable to Paid Leave Oregon, including anti-discrimination, anti-retaliation, anti-interference, job protections, and wage claims for unpaid benefits from employers who have equivalent plans that provide Paid Leave Oregon benefits.

As required by [Senate Bill \(SB\) 1515](#) (2024), OED and BOLI are sending a joint report on the apportionment of duties between OED and BOLI for Paid Leave Oregon and OFLA programs. This report provides a summary of Paid Leave Oregon and OFLA, describes the current roles and responsibilities of OED and BOLI with respect to these programs, proposes potential future roles for the agencies, and makes some recommendations for statutory changes. Paid Leave Oregon is new, and issues and concerns are always being raised so this report is not inclusive of all potential recommendations as they may not be identified yet or need further refinement. While there are many potential intersection points between Paid Leave Oregon and OFLA, and that is what this report focuses on, there are also potential intersection points with Family Medical Leave Act (FMLA), created by federal statute and therefore not further addressed in this report.

Summary of Paid Leave Oregon


The Oregon Legislature enacted Paid Leave Oregon in the 2019 Legislative Session,¹ directed OED to administer the program and provide benefits, and charged BOLI with enforcing related worker protections.

Paid Leave Oregon impacts every employee and employer in Oregon, both rural and urban, as well as racial and ethnic demographics, which intersects disability, employment, and income.

Paid Leave Oregon contributions began Jan. 1, 2023. Both employees and employers pay contributions to the Paid Leave Oregon Trust Fund. Employees pay 60%, and large employers (employers with 25 or more employees) pay 40% of the total

¹ [House Bill 2005](#) (2019), codified as Oregon Revised Statute (ORS) chapter 657B.





contribution rate² up to the social security wage base index³ for each employer. Employers collect employees' contributions from their paycheck. OED added Paid Leave Oregon to the employer's single quarterly payroll report, which also includes state income tax withholding, Unemployment Insurance, Workers Benefit Fund, and some local transit tax filings. Employers file a single quarterly payroll report, where they report employees' wages and send both the employee and employer (if applicable) Paid Leave Oregon contributions to OED.

Self-employed people and Tribal governments can choose to participate in Paid Leave Oregon. If they chose to participate, self-employed people pay contributions at the employee rate of 60% and Tribal governments pay contributions at the employer rate of 40% and collect 60% from their employees. Self-employed people pay their contributions to OED quarterly based on their Oregon net income from self-employment (income after expenses) on their previous tax return, up to the maximum of \$168,600 in net income from self-employment for 2024. They divide the annual amount to be paid to OED by four to get their quarterly payment amount. Tribal governments pay contributions on the single quarterly payroll report like other employers.

Paid Leave Oregon benefits began on Sept. 3, 2023, and generally allow up to 12 weeks of paid leave for eligible Oregonians⁴ to care for themselves when they have a serious health condition (medical leave), to care for a family member with a serious health condition (family leave), to bond with a new child (bonding leave), or to take leave as a survivor of sexual assault, domestic violence, harassment, bias crimes, or stalking (safe leave). The parent who gave birth may qualify for two additional weeks of leave for limitations related to pregnancy, bringing the maximum leave to 14 weeks in a benefit year. For most eligible employees, the law provides job protections and the continuation of health care benefits while the employee is using Paid Leave Oregon benefits.⁵


² Total contribution rate for 2023 and 2024 is 1%, which is the maximum statutory rate.

³ 2024 social security wage base index is \$168,600.

⁴ To be eligible for Paid Leave benefits, a person must work for an employer in Oregon, earn at least \$1,000 in their base year, and have a qualifying life event.

⁵ Job protections for taking Paid Leave Oregon, and the obligation of the employer to maintain the employee's health care benefits, only apply to employees who are employed by the employer for at least 90 consecutive days before taking leave. Notably, the Paid Leave Oregon job protection statute is not fully consistent with Paid Leave Oregon eligibility statute. Consequently, some Oregon employees may be eligible for Paid Leave Oregon benefits but may not have their job or their health care benefits protected during their leave.





Most employees⁶ in Oregon are eligible for Paid Leave Oregon benefits if they have experienced a qualifying event, have earned at least \$1,000 in their base year or alternate base year,⁷ are currently employed, and need to take leave from work due to their qualifying event. The dollar amount of benefits varies, with lower-wage earners receiving up to 100% of their average weekly wage. The percentage that individuals receive in benefits is based on a comparison of their average weekly wage and the state average weekly wage. There is a statutory minimum and maximum weekly benefit amount,⁸ with those amounts being indexed to overall average wages in Oregon.

Paid Leave Oregon doesn't have a statutory week-long waiting period, like Unemployment Insurance does, before an employee may receive benefits. However, individuals must take Paid Leave Oregon in full-day increments (from all employers if they have more than one job).

Employers can choose at any time to offer their own paid leave program to their employees through an equivalent plan instead of participating in OED's state-administered plan. The proposed equivalent plan must be equal to or better than the state plan.⁹

Summary of OFLA

OFLA was enacted in 1995 and consolidated several existing provisions of Oregon law that provided employees with protected, unpaid time off from work for family and medical reasons. To be eligible for OFLA, an employee must be employed by an employer with 25 or more employees and the employee must have worked an average of 25 hours per week in the 180 days before taking leave.¹⁰ However, during a public health emergency, employees may become eligible for OFLA if they have worked an average of 25 hours a week in the 30 days before taking leave (rather than 180 days). Each employer administers the program for their employees; however, BOLI enforces

⁶ A participant in a work training program administered under a state or federal assistance program, a participant in a work-study program, a railroad worker, a volunteer, a judge, a federal government employee, a member of the Legislative Assembly, and a holder of public office are not eligible for Paid Leave Oregon benefits.

⁷ The \$1,000 in earnings is measured either by a "base year" or by an "alternate base year." The base year is the first four of the last five completed calendar quarters before the start date of the benefit year. The alternate base year is used only if the individual does not have \$1,000 in the base year and is the last four completed calendar quarters before the start date of the benefit year.

⁸ From July 2024 to June 2025, the minimum weekly benefit amount is \$65.36, and the maximum weekly benefit amount is \$1,568.60.

⁹ An equivalent plan has the same or more benefits as the state-administered plan, covers all employees, and can't withhold more in employee contributions than the state-administered plan.

¹⁰ Employee eligibility for OFLA is therefore different than the eligibility for Paid Leave Oregon.





the law, adopts administrative rules, and provides technical assistance to employers and employees where needed.

As originally adopted, OFLA provided eligible employees with unpaid, protected time off to care for a sick child, to care for a family member with a serious health condition, to recover from or seek treatment for their own serious health condition, for bereavement leave, and to take leave for pregnancy disability. The amount of leave available was up to 12 weeks per leave year with an additional 12 weeks allowed for a sick child, and an additional 12 weeks for pregnancy disability.

OFLA was amended significantly in both the 2023 legislative session¹¹ and the 2024 legislative session.¹² Beginning July 1, 2024, the legislative changes limited the reasons someone can take OFLA to the following: to care for a sick child, bereavement leave, and leave for pregnancy disability, and added a temporary, additional two weeks to facilitate the legal process required for placement of a foster child or adoption.¹³ OFLA leave is capped at a combined total of 12 weeks for sick child and bereavement leave. Bereavement leave is further limited to two weeks per family member with a maximum of four weeks in a given leave year. OFLA provides up to 12 additional weeks for pregnancy disability. Employees can't take OFLA and Paid Leave Oregon at the same time. Unlike Paid Leave Oregon, employees can take OFLA leave in hourly increments from each employer separately.

Paid Leave Oregon administration

OED is charged with administering Paid Leave Oregon's contributions and benefits. OED makes sure that:

- Oregon employees can apply for and receive Paid Leave Oregon benefits.
- Employers can pay contributions for themselves and their employees.
- Self-employed individuals and Tribal governments can choose to participate in the program.
- Oregon employers who participate in the state-offered program or that have chosen to offer an equivalent plan, and their employees, are supported.

¹¹ [Senate Bill 999](#)

¹² [Senate Bill 1515](#)

¹³ This child placement leave remains with OFLA until December 31, 2024, at which point it will shift to Paid Leave Oregon.





BOLI is charged with enforcing provisions of Paid Leave Oregon, including but not limited to:

- Provisions prohibiting employers from discriminating or retaliating against employees who have applied for or asked about Paid Leave Oregon.
- Protecting employee's jobs and health insurance premiums while receiving Paid Leave Oregon benefits.
- Making sure equivalent plan employers have paid the proper wages related to benefits.

The Paid Leave Oregon Trust Fund, funded by contributions from employers and employees, pays for Paid Leave Oregon and its administration at OED; however, BOLI hasn't received any funding for their technical support to employers, questions BOLI fields from employees, or enforcement efforts for the program. BOLI's enforcement division, tasked with critical protections of Paid Leave Oregon, is facing substantial backlogs that are mostly unrelated to Paid Leave Oregon, with inquiries increasing by more than 110% since 2020. For Paid Leave Oregon and other Oregon laws to be truly accessible, the state must provide adequate resources for BOLI to enforce the protections captured in the law.

Administration: Contributions

The contribution rate for Paid Leave Oregon may not exceed 1% of the employee's wage, up to the social security wage base index amount.¹⁴ OED calculates the total contribution rate by November 15 each year. This rate is based on projections of the Paid Leave Oregon Trust Fund balance. The total contribution rate has stayed at 1% since Paid Leave Oregon began in January 2023, as the Paid Leave Oregon Trust Fund is still growing and has not yet reached the six months' worth of projected expenditures.

Employers report Paid Leave Oregon subject wages quarterly and pay contributions to OED on the single Oregon Combined Quarterly payroll report. It is the responsibility of employers to withhold the correct employee contribution amount from their employees' paycheck and to send the payment to OED along with any employer contributions they owe (if applicable). Any issues resulting from inaccurate quarterly payroll reports are handled directly by OED with the employer who made the error.

¹⁴ For 2024, the social security index is \$168,600.





Administration: Benefits

Oregon employees, who are covered by Paid Leave Oregon, apply for benefits with OED through the Frances Online system, by paper application, or by phone. OED staff process Paid Leave Oregon benefit claims. After receiving a benefit claim application, staff review the claimant's eligibility for Paid Leave Oregon benefits and if they have sent the required documentation to verify their qualifying life event. Staff tell claimants if OED has approved or denied their benefits. In addition, OED notifies employers when an employee is requesting leave – once when a claimant has applied for leave and again when the program approves or denies the leave. For approved leaves, OED also shares the length of leave with employers.

Once a claimant receives an approval for their benefits, OED issues weekly benefit payments based upon the claimant's income in the base year or alternate base year and the number of full days during the week they take leave. Claimants have the option to request consecutive or intermittent leave.¹⁵ If OED approves consecutive leave, OED automatically issues benefit payments each week. If OED approves intermittent leave, the claimant must file a weekly claim for benefits and will receive a benefit payment based on the number of leave days they take each week. OED currently doesn't report to the employer the amount of the Paid Leave Oregon benefits paid to the employee.

When staff find errors, OED has the responsibility to make sure that any incorrectly paid Paid Leave Oregon benefits are recovered through the pathways allowed under Paid Leave Oregon statutes and administrative rules. In a situation where the claimant or employer has potentially misrepresented themselves, OED investigates all aspects of the claim and payment of benefits to see if there is evidence to issue a fraud decision. This may result in penalties against the claimant or employer. Along with making sure benefit payments from the agency are accurate and benefit claims are filed by eligible employees with qualifying life events, OED has the responsibility to protect and safeguard the Paid Leave Oregon Trust Fund to make sure the program is solvent for the purpose of Oregonians claiming benefits and the needs of administering the program.

¹⁵ "Consecutive leave" means that the claimant takes leave from the start date to the end date of the leave, without working during that time. It might also be described as full-time leave. Under Paid Leave Oregon, "intermittent leave" means that the claimant takes leave occasionally in full days or weeks of leave between the start date and end date of the leave, but the claimant also works between the start and end dates of the leave.





Administration: Appeals

Claimants can appeal decisions issued by Paid Leave Oregon through OED, who works directly with the Office of Administrative Hearings (OAH). OED first tries to resolve the appeal request directly with the claimant or employer. If this isn't possible, the program refers the appeal to OAH. OED staff attend the administrative hearings as representatives of the agency. The OAH decision may also be appealed to the Oregon Court of Appeals. Contribution, equivalent plan, self-employed, and grant appeals are handled similarly to claimant appeals described above.

If the employer took an unlawful employment action relating to job protection, such as denying the employee the right to take Paid Leave Oregon, or discriminating or retaliating against the employee that took or wanted to take Paid Leave Oregon, or the equivalent plan employer does not pay the correct benefit amount after the OED dispute resolution process, the employee must file a complaint with BOLI or the civil courts, not OED.¹⁶

If BOLI receives a complaint and has the capacity to investigate, BOLI investigates it. Depending on the allegation, BOLI may request the OED Paid Leave Oregon decision. Should BOLI find a violation, BOLI will attempt to resolve the issue with the claimant and the employer; if that doesn't occur BOLI will issue an order that states the employer has been found in violation of the law, and the BOLI prosecutors will try the case before BOLI's in-house administrative law judges. Either party can then appeal the decision to the Court of Appeals. BOLI has no collections capacity and by statute will refer unpaid claims to the Oregon Department of Revenue for further collection efforts if the employer doesn't pay readily.


Administration: Equivalent plans

Along with the administration of Paid Leave Oregon benefits, OED is also responsible for approving and regulating equivalent plan applications. Equivalent plans are plans an employer chooses to provide a Paid Leave Oregon product, not administered through the state-offered program, equal to or better than the benefits offered through the state plan. Equivalent plans are separated into two categories, employer-administered plans and fully insured plans.¹⁷ OED staff are responsible for reviewing

¹⁶ ORS [657B.070](#)

¹⁷ "Employer-administered" means an equivalent plan that an employer offers their employees where the employer is responsible for all the financial risks, managing the benefits and administration, and paying the employee benefits when they take leave. "Fully insured" means an equivalent plan where the employer purchases an insurance policy from an insurance company approved to sell Paid Leave Oregon products by the Oregon Department of Consumer and Business Services (DCBS) Division of Financial Regulation and the benefits related to the plan are administered through the insurance policy.





and approving equivalent plan applications, as well as making sure that plans remain in compliance with the Paid Leave Oregon statute and administrative rules by performing compliance reviews and dispute resolution when necessary.

OED partners with the Department of Consumer and Business Services (DCBS) for their administration, review, and approval of insurance products relating to Paid Leave Oregon. This guarantees that all fully insured equivalent plan products provide equal or greater benefits to employees covered by equivalent plans.

Employers or administrators of equivalent plans are responsible for processing benefit applications and benefit payments for employees covered by an equivalent plan, rather than OED. If the employee disagrees with the employer or administrator's benefit decision, the employee can appeal to the employer or administrator. The employer or administrator is responsible for hearing the appeal and issuing a decision. If the employee still doesn't agree with the decision, they may appeal to OED. OED is responsible for providing a dispute resolution process between employees and employers to assist in resolving disputes between employers or administrators and employees regarding coverage and benefits provided under an employer's approved equivalent plan if the appeal to the employer didn't resolve the dispute. During the dispute resolution process, OED will review the dispute and supplemental information relating to the claim, request additional information if needed, and decide in favor of either the employee or the equivalent plan employer or administrator for the benefit amount. If OED finds that the equivalent plan should have approved a claim for Paid Leave Oregon benefits or should have paid a higher weekly benefit amount, OED will contact the employer or administrator. If the employer or administrator still doesn't pay the employee the proper benefit amount, the employee may file a wage claim with BOLI. BOLI will then try to collect the payment from the employer or administrator, creating an extended waiting period for the employee at a time when they're unlikely to have much economic stability.

Administration: Small employer assistance grants

OED also administers small employer assistance grants for employers with fewer than 25 employees who have employees using Paid Leave Oregon. Assistance grants are awarded in increments of up to \$1,000 as a reimbursement for wage-related costs while an employee is using Paid Leave Oregon benefits, or up to \$3,000 to cover the cost of hiring a temporary employee to replace a permanent employee during their leave. A small employer can receive up to 10 separate grants within a single year. OED reviews assistance grant applications and issues a grant approval or denial based on





the application information and if the application requirements are met. If the small employer receives a grant, they must pay the employer portion of the total contribution rate for eight quarters and provide job protection.

Administration: Self-employed individual and Tribal government elections

Along with the technical assistance provided to employers, OED staff also assist with elective coverage questions from self-employed individuals and Tribal governments. OED has established a pathway for self-employed individuals and Tribal governments to choose to participate in Paid Leave Oregon coverage. If they choose coverage, they must be in the program for at least three years. OED is responsible for processing their applications for coverage, accepting and processing the quarterly payment of contributions, and annually receiving the self-employed individuals' Oregon personal income tax return to calculate their net income from self-employed income for the quarterly contribution amount.

Administrative rulemaking

OED has broad authority to draft and update administrative rules necessary to administer and implement Paid Leave Oregon.¹⁸ To date, OED has adopted 119 administrative rules and made multiple amendments to some which provide guidance for employees, self-employed individuals, Tribal governments, employers, and equivalent plan administrators.

BOLI has the authority to adopt reasonable administrative rules necessary to carry out its statutorily assigned role in enforcing employee protections found in the Paid Leave Oregon statute. However, OED also has authority to adopt administrative rules which extend to those provisions of the law that *only* BOLI enforces. This granted authority has created some complicated dynamics as one agency that isn't tasked with enforcing that body of the law can propose and adopt rules that another agency is charged with enforcing. For example, OED adopted an administrative rule¹⁹ related to job protection and BOLI enforces the job protections.


Education and public assistance

OED has staff dedicated to providing outreach and education to employers and employees. These staff answer general questions through written and verbal communication and provide technical assistance for various inquiries and requests

¹⁸ ORS [657B.340](#)

¹⁹ OAR [471-070-1330](#)





within four business days. BOLI's Employer Assistance Unit provides free technical assistance to Oregon employers on the range of laws enforced by BOLI, including Paid Leave Oregon provisions related to anti-discrimination, anti-retaliation, anti-interference, and job protections.


In addition, both agencies offer continual education and outreach for free and communicate with Oregon employees, employers, and other interested parties, such as health care providers. Between July 2023 and through the end of May 2024, OED representatives have attended or hosted 941 community events to talk about Paid Leave Oregon, including business fairs, community celebrations, informational webinars, and more to make sure that the program is accessible and known to as many communities in Oregon as possible. In total, OED has connected with over 13,000 claimants, over 6,000 employers, nearly 1,500 independent contractors and self-employed individuals, and over 3,000 advocacy groups about Paid Leave Oregon through various outreach events. OED also does additional outreach for many other employment-related programs it administers.

Employer Assistance at BOLI has been co-hosting a free monthly training with OED about Paid Leave Oregon since September 2023. The joint trainings allow employers an opportunity to ask OFLA and Paid Leave Oregon questions at one event and have had nearly 2,500 attendees through July 2024. As a result, the Employer Assistance Unit at BOLI has not collected over \$230,000 in event registration fees that BOLI would typically charge for such events. In addition to the joint events, BOLI also has other trainings reaching 1,576 attendees/registrants.”

OED and BOLI receive questions from the public about Paid Leave Oregon and OFLA. While most contacts each agency receives are about the parts they administer, both agencies regularly get questions about topics that are more within the scope of the other agency. OED has received over 413,000 calls related to Paid Leave Oregon benefits between September 2023 and the end of July 31, 2024, and has anywhere from 40 to 100 staff answering telephones to help claimants with their questions. OED also receives written questions about claimants' Paid Leave Oregon benefits. From September 2023, through July 31, 2024, OED received over 281,000 written communications. OED also received over 22,000 calls from employers asking about Paid Leave Oregon.

The Employer Assistance Unit at BOLI also receives calls regarding Paid Leave Oregon. This unit has 4.5 full-time employees (FTE) dedicated to providing training and responding to employer inquiries. BOLI didn't expand the unit when the legislature





enacted Paid Leave Oregon. From December 2022, through May 2024, Oregon employers contacted BOLI approximately 3,000 times with Paid Leave Oregon related questions. BOLI received nearly 75% of those contacts during the current biennium, which represents almost 15% of the total requests the Employer Assistance staff receive.

During June 2024, BOLI received over 1,200 calls and emails from Oregon employees asking about their rights under Paid Leave Oregon. Approximately one-third of the calls and emails were related to OED's portion of the law and the other two-thirds were related to job protection, retaliation, discrimination, and how OFLA and Paid Leave work together. The calls and emails are increasing in complexity as employees navigate the challenges of alleged retaliation and discrimination when they return to work after receiving Paid Leave Oregon benefits. Often, BOLI investigators and managers are pulled away from their work to answer the more complex questions.

Without dedicated staff to help with these questions, individuals are often advised to file a complaint, which increases the Civil Rights Division's backlog and extends the time it takes to get an answer to the individual. Oregonians are used to coming to BOLI for questions about their rights at work, including those related to unpaid and paid leave laws. There is no reason to believe the volume of questions will decrease.

In addition to OED's and BOLI's active roles in education and outreach provided through the various webinars and community events, the agencies also provide education through staff who assist employees, employers, and interested parties with questions about their specific circumstances. OED also has its own translation team that includes 55 staff representing six languages to increase language access, transcreation, and customer service in first languages. OED and BOLI have produced joint fact sheets and frequently asked questions (FAQs) about how Paid Leave Oregon and OFLA work together and the difference between the two programs in eight different languages. While there are many potential intersection points between Paid Leave Oregon and OFLA, there are also potential intersection points with FMLA that the two agencies respond to and aren't broken out within this report.

OED strives to be inclusive by providing materials through its Paid Leave Oregon website in eight different languages, adapting the application process and benefits system to also be available in Spanish, and to have staff who are fluent in one or more of the eight different languages. This allows OED to serve a greater number of Oregonians.





Enforcement

The Paid Leave Oregon statute²⁰ provides job protection, requires that the employee's health care benefits be maintained during leave, and creates unlawful employment practices prohibiting discrimination and retaliation against, and interference with, the rights of employees taking Paid Leave Oregon. While OED is jointly authorized to draft administrative rules for job protection with BOLI, BOLI is the primary agency responsible for accepting complaints and enforcing these rules. OED helps both employees and employers by telling them about the job protection and unlawful employment requirements that statute and administrative rules have established and then referring them to BOLI if there are additional concerns.

BOLI is on track to receive about 600 Paid Leave Oregon complaints this calendar year.

Another prominent enforcement challenge for BOLI is related to the intersection of Paid Leave Oregon, OFLA, Oregon Sick Leave, and leave as a reasonable accommodation for a disability. There are circumstances where OED (or an equivalent plan administrator) will deem an employee not eligible for Paid Leave Oregon and the employer will take tangible (potentially unlawful) employment action against an employee. While the employer may have had good reason to believe their action didn't violate the law because they were told that the employee wasn't eligible for Paid Leave Oregon, the employee may still have grounds for a successful appeal of OED's decision or may have been eligible for another type of protected leave and, therefore, could have suffered unlawful conduct. In this situation, BOLI would likely find in favor of the employee. BOLI has taken steps to communicate precaution to employers when this situation may arise.

OFLA administration

Covered employers must administer OFLA for their employees by deciding if an employee qualifies for unpaid OFLA leave. BOLI makes sure these decisions are lawful by investigating and, when appropriate, adjudicating complaints filed by eligible employees. To help employers make lawful decisions, BOLI issues additional guidance through administrative rules, provides training for employers, and answers employer and employee questions. BOLI also enforces OFLA provisions that address anti-discrimination, anti-retaliation, and job protections.

²⁰ ORS [657B.060](#) and ORS [657B.070](#)





Administrative rulemaking

BOLI has the responsibility to adopt administrative rules necessary to administer and enforce OFLA. Following SB 999 (2023) and SB 1515 (2024), BOLI has had to undertake substantial rulemaking to make sure OFLA complies with statutory changes. This work involved high-level staff from across BOLI; first thinking through how to enforce concurrency, followed by efforts to implement the legislative direction to unwind the majority of OFLA (a nearly 30-year-old statute and legal framework) and implement administrative rules associated with the latest changes to paid and unpaid leave. All of this occurred without funding.

Education

BOLI's Employer Assistance Unit is largely self-funded; Employer Assistance can sustain their work in this model by charging to provide seminars, training, and the employment law composite posters many employers use.


BOLI's Employer Assistance Unit has created content for both joint and BOLI-only trainings on OFLA and, since 2019, Paid Leave Oregon.

The unit made the decision to not charge for the outreach and education work that BOLI was providing both alone and then along with OED about Paid Leave Oregon, as charging would create an incongruent and incomplete experience for the employer community (OED was not charging for this work, having received funding for outreach and education).

BOLI has long been Oregon employers' primary point of contact for information on OFLA and Oregon's sick time law. As OFLA is often interpreted consistently with the FMLA, BOLI has necessarily developed expertise in the interaction with that law as well. Employers are continuing to seek information and guidance from BOLI on the impacts of legislation related to Paid Leave Oregon. It bears repeating that BOLI has just 4.5 FTE budgeted for trainers to provide guidance on the entirety of Oregon's existing wage and hour, and civil rights protections. Due to the increase in questions to Employer Assistance related to Paid Leave Oregon, BOLI had to create an unbudgeted position to help employers understand their obligations.

BOLI does not currently have an Employee Assistance Unit. Consequently, when employees contact BOLI with OFLA-related questions, investigators are often pulled





from their active caseload to assist. This unfortunate but necessary process contributes to BOLI's existing backlog of cases.

Possible future roles and responsibilities

As a general proposition, OED and BOLI believe that the current division of roles and responsibilities appropriately leverages the respective core competencies of the two agencies. That is, OED has a long history of collecting payroll data and taxes and administering benefit programs and BOLI, when adequately funded, has a long history of enforcing Oregon leave and unlawful employment practice laws. Even though Oregon is a year into paying Paid Leave Oregon benefits, both agencies have had an opportunity to see the types of issues that come up, and the most recent legislation that addressed overlap between OFLA and Paid Leave Oregon eased administration and many areas of potential confusion for the public.

For these reasons, this report recommends a handful of incremental improvements in the administration of Paid Leave Oregon and OFLA but does not recommend substantial changes to the administrative roles for OED and BOLI.


Appeal and eligibility determinations

Oregonians are used to coming to BOLI when they believe their rights at work have been violated, especially relating to Oregon's protected leave laws, as BOLI has been providing technical assistance to both employers and employees for over 30 years.

Even though BOLI doesn't enforce the totality of Paid Leave Oregon, this doesn't change the reality of the situation – many employees will still come to BOLI with complaints because that is what they are used to, and those complaints will still be work volume that BOLI must review and process, regardless of the ultimate outcome.

This difficulty is compounded further by the fact that employees can and do file with BOLI before their eligibility for Paid Leave Oregon has a final decision or before they have filed an appeal with OED about the Paid Leave Oregon decision. For example, an employee could be denied Paid Leave Oregon and fired by their employer, then file a complaint with BOLI that would be dismissed due to OED's denial of Paid Leave Oregon benefits. However, the employee could have concurrently appealed the denial to OED and received a different decision on their eligibility. If the Paid Leave Oregon





appeal finds the employee was entitled to Paid Leave Oregon benefits, but the employer ended their employment based on OED's initial finding, an enforcement action with BOLI may be necessary to make sure the rights and responsibilities of both parties conform to the law.

OED and BOLI don't recommend a statutory change at this time as the two agencies will continue to work together to see how to best make it work when an employee files a complaint or appeal at both agencies. OED and BOLI should be able to work through most situations through administrative rules and ongoing interagency collaboration and information sharing.

Single point of contact

Employers and employees contact OED or BOLI, or both, with questions, but sometimes their questions pertain to the program they didn't call about and so individuals are referred to the other agency as neither agency should be advising on issues that the other agency enforces.


Both agencies tell Oregonians that they need to contact the other agency, including sending referrals back to the agency they originally contacted. This approach is counter to both agencies' commitment to quality service and belief that there should be no wrong door to government.

OED and BOLI will continue to work together to decide the best options for improvements to this process to increase quality customer service. Neither agency should be advising on issues that the other agency enforces; this approach would guarantee that Oregonians are getting prompt service and accurate answers with a single call. The agencies will continue to work together to more clearly set out a structure that allows individuals to have exceptional customer service and not be bounced between the two agencies. As previously stated, to date, BOLI has not received any resources to address Paid Leave Oregon related questions and will need funding to increase customer service and coordination with OED.

Statutory recommendations

Although OED and BOLI have worked well together, there are a few statutory changes that could provide additional clarity and allow the two agencies to provide the best support to employers and employees regarding protected leave. Some challenges that





existed in the past have been significantly eased due to past legislative action to further align OFLA and Paid Leave Oregon. Below are nine statutory proposals both agencies recommend for consideration.

Accrued leave


Employees receiving benefits from Paid Leave Oregon have the right to use any of their accrued paid sick leave, including sick leave that must be provided by statute, vacation leave, or any other paid leave offered by their employer at the same time they receive Paid Leave Oregon benefits – up to their full-wage replacement. Employers may, however, choose the order in which the employee may take their accrued leave and may choose to limit the use of an employee’s accrued leave to prevent the employee from exceeding 100% wage replacement while receiving Paid Leave Oregon benefits.

If an employer who chooses to cap wage replacement at 100% makes an error on the actual amount the employee should be paid by the employer, the law sides in favor of the employee whose accrued leave was not calculated at the correct rate – even though the employer would have had a very difficult time calculating the exact amount to pay. Employers are unaware of the actual amount of Paid Leave Oregon benefits an eligible employee receives at the time payroll is running which could create wage payment concerns. This is due to several reasons.

- **Estimated benefits not matching actual benefits** - OED has a benefit calculator on the website that allows the employee to estimate their weekly Paid Leave Oregon benefit amount. The employee will need to know the gross wages they earned for the last 12 months or their current gross wages. If the employee isn’t taking a full week off for Paid Leave Oregon reasons, their estimated benefit amount will need to be prorated for the number of days they took off during the week. The benefit amount is just an estimate, as the actual benefit amount is based on the employee’s wages earned and reported to OED in the base year compared to the state average weekly wage.
- **Delayed application for benefits** - Employees have up to 30 days before or after a qualifying leave event to apply for Paid Leave Oregon benefits.²¹ Once OED receives an application, the application takes time to process. Therefore, if an employee applies up to 30 days after the leave, the payroll from the employer

²¹ If the employee has a good cause reason, the application can be sent up to one year after the qualifying leave event.





for that time has likely passed as most employers do payroll weekly, bi-monthly, or monthly.

- **Benefit amount not provided to employer** - The employee receives a monetary decision letter after they apply for Paid Leave Oregon benefits that states the employee's weekly benefit amount if the employee takes off the full week. The weekly benefit amount is the amount the employee will receive if they take the entire week off; however, many employees take intermittent leave and don't take a full week off. This means that each week their benefit amount may be different depending on how many days they took off.
- OED doesn't currently give this amount to the employer but is exploring possible ways to do so in the future. Once OED makes Paid Leave Oregon benefit payments, the employee can get the actual benefit amount from their Frances Online account, but they don't have to share this information with their employer.

All these reasons create concerns around the employer's ability to exercise their right to limit the use of accrued leave to the full wage replacement amount. There are several ways the legislators could address this concern:

- Remove the full wage replacement language from the Paid Leave Oregon statute, although that would be a policy change from the recently enacted policy.
- Clarify that OED can share the benefit information with employers as needed for them to pay full wage replacement. OED believes it has authority to do this, but clarity could be helpful. It won't address that sometimes the information can't be shared before the employers' scheduled payday.


Tolling

The legislature may consider tolling the statute of limitations for job protections, retaliation and discrimination provisions found under Paid Leave Oregon when the claimant is pending a Paid Leave Oregon appeal with OED, OAH, or at the Court of Appeals. Without clear statutory direction on tolling, the claimant could lose their rights with BOLI for any adverse action they experienced while still trying to assert that they were eligible for Paid Leave Oregon.

Notice to employer

OFLA requires the employee to give written notice to the employer at least 30 days before beginning leave, unless the leave is unexpected. If the need for leave is





unexpected, employees must tell their employer within 24 hours of beginning leave and must provide written notice within three days after returning to work. If the employee doesn't provide notice, the employer may reduce the total period of OFLA leave by three weeks and the statute expressly provides that the employee may be subject to disciplinary action.²²

For Paid Leave Oregon, an employer can require an employee to give written notice to the employer at least 30 days before taking Paid Leave Oregon unless the leave is unexpected. If the leave is unexpected, the employee must tell the employer within 24 hours of the beginning of their leave and must give the employer written notice within three days of the beginning of their leave.²³ The notice given to the employer doesn't have to be proof that the employee applied for Paid Leave Oregon benefits. Unlike OFLA, Paid Leave Oregon statutes don't explicitly authorize the employer to impose a penalty if the employee doesn't provide notice to the employer as the employer has to protect the employee while they take Paid Leave Oregon benefits. OED can issue a penalty up to a 25% reduction for the first weekly benefit amount but after that there isn't penalty if the employee continues not to notify the employer for the day(s) they are out on Paid Leave Oregon.

This has created some confusion for employers when an employee is out on intermittent leave as the employee may not have given notice to the employer for each day they are out on intermittent leave after the employee gave the initial notice. This also creates difficulty for the employer as they know the employee has the right to Paid Leave Oregon but may not know what days the employee is taking Paid Leave Oregon benefits and if the employer must protect their job.

A solution to this challenge for employers would be to clarify in statute if employers should be allowed to require timely notification of intermittent leave use for Paid Leave Oregon purposes.

Sick child leave


SB 1515 expanded the ability to use sick child leave under OFLA to include children suffering from a serious health condition.²⁴ As a consequence, questions have come up about providing "home care" for a child who has a serious health condition. While

²² ORS [659A.165](#)

²³ ORS [657B.040](#). Notably, the obligation to provide written notice differs between the two programs, with Paid Leave Oregon requiring written notice within three days of the leave beginning, while OFLA requires written notice within three days after the employee has returned to work.

²⁴ ORS [659A.159](#)





we believe the intention is to have sick child leave also include doctors' visits and hospital stays, in addition to home care, the current statute could be clearer.

The legislature may consider clarifying sick child leave under OFLA to make it easier to implement. An option is to clarify that OFLA's sick child leave applies to doctor's visits and hospital stays and not just "home care." It could also provide consistency with pre-existing law and clarify that OFLA's sick child leave for school closures can be either foreseeable or unforeseeable.

Statutory sick time leave

Language within OFLA and Paid Leave Oregon²⁵ generally indicates that an employer may decide the order that employees use accrued leave when more than one type of leave is available. While the Paid Leave Oregon statute specifically mentions that Oregon statutory sick time leave²⁶ is included in the employer's decision-making ability, the OFLA statute does not. These wording differences suggest a different outcome in the employee's right to use statutory sick time leave, depending on if the employee is also taking Paid Leave Oregon or OFLA leave. The legislature may consider clarifying in statute that when taking OFLA and Paid Leave Oregon, the employer can't force the employee to take accrued statutory sick time leave in a specific order and the employee can use accrued statutory sick time leave first before using accrued vacation leave.

Medical verification

When an employee uses both statutory sick time leave and OFLA leave, it may be difficult for the employer to figure out when they can ask for medical verification. Under sick time leave the employer must wait three consecutive days or until they suspect abuse of leave²⁷ before asking for medical verification.

OFLA allows medical verification for sick child leave when an employee takes more than three days of leave in a one-year period.²⁸ The legislature may consider changing OFLA to align with sick time leave, by stating that medical verification can be


²⁵ ORS [659A.174](#); ORS [657B.030](#)

²⁶ ORS [653.601](#) to [653.661](#)

²⁷ ORS [653.626](#)

²⁸ ORS [659A.168](#)(2)





requested when the employee is gone for at least three consecutive days or if the employer suspects abuse of leave to align with the sick time leave laws.

Serious health condition

Prior to SB 1515 (2024), OFLA contained a statutory definition of “serious health condition” that was supplemented by a longstanding administrative rule. The serious health condition text from the OFLA statute was imported into the Paid Leave Oregon statute in 2019. Paid Leave Oregon also incorporated OFLA’s administrative rule text into their own administrative rule.²⁹ To make it explicit in statute and reduce the risk of litigation and uncertainty, the legislature may want to expand the serious health condition definition in the Paid Leave Oregon statute to clarify the intent of what is or isn’t included for a serious health condition for Paid Leave Oregon purposes instead of the agency defining it further by administrative rule. This recommendation would align the current statutory language with long-standing practice of how OFLA has been interpreted.

Rulemaking authority

Both programs believe reducing redundancy and allowing BOLI to have sole rulemaking authority over the statutes it enforces in Paid Leave Oregon is a better practice. The legislature may consider removing OED’s rulemaking authority over parts of Paid Leave Oregon over which BOLI has jurisdiction (anti-discrimination, anti-retaliation, wage claims under equivalent plans, and job protection³⁰).

Return to work certification

Under OFLA, an employer can require certification from the employee’s health care provider that the employee can resume work.³¹ Unlike OFLA, this isn’t expressly permitted under Paid Leave Oregon and could be understood to violate the job protection provisions of the statute.

The legislature may consider aligning OFLA and Paid Leave Oregon. Without a provision, an employer permitting a ‘fitness for duty’ certification could be risking a claim or complaint for failing to immediately reinstate an employee to their former position following a Paid Leave Oregon leave, or potentially risk liability for prematurely returning an employee to a safety sensitive position.

²⁹ OAR [471-070-1000\(21\)](#)

³⁰ ORS [657B.060](#) and ORS [657B.070](#)

³¹ ORS [659A.171\(4\)\(a\)](#)





Conclusion

The division of labor for OFLA and Paid Leave Oregon created by the Legislative Assembly in 2019 is a logical one that allows both OED and BOLI to play to their strengths, the prudent administration of a work-related benefit and enforcement of workplace protections, respectively. As subsequent legislation has more closely aligned OFLA and Paid Leave Oregon, this has resolved confusion for the public and potential conflicting application of the law between agencies. Although the unfunded mandate for BOLI to enforce protections found in Paid Leave Oregon remains a significant obstacle, OED and BOLI have effectively collaborated on many aspects of these programs, including outreach and education and the adoption of administrative rules. This report ultimately suggests statutory changes that the agencies believe would provide clarity and allow the agencies to provide the best support to employers and employees regarding protected leave.

