



Oregon Paid Family & Medical Leave (OR PFML) FAQ - Overview

On August 9, 2019 Governor Kate Brown signed House Bill 2005 into law. This new law establishes a comprehensive paid family and medical leave program. All employers with one or more eligible employees working in Oregon must provide paid job protected time away from work for family, medical or safe leaves to eligible employees beginning September 3, 2023.

Oregon will be the first state to require that low-income workers be paid 100% of their wages while on leave. Additionally, higher earning employees may use vacation or sick time to supplement their weekly benefit amount, up to 100% of their wages.

Oregon becomes the eighth state (after Connecticut) to require PFML for eligible employees. The other states currently offering PFML are California, Massachusetts, New Jersey, New York, Rhode Island, and Washington, in addition to the District of Columbia.

The new law creates the Paid Family and Medical Leave Insurance (PFMLI) Program, modeled after Oregon's unemployment insurance program, and paid leave will be funded with payroll contributions. The PFMLI Program will be administered by the Oregon Employment Department.

Who is Covered? Almost all Oregon employees are covered if they received at least \$1,000 in wages during the base period. Self-employed individuals and Tribal government employers can opt into the program and make contributions as the same rate as other employers.

How much does OR PFML Cost and When do Payroll Deductions Initiate? The cost of OR PFML has been set at 1% of a covered individual's wages up to \$132,900, adjusted annually by CPI West Region beginning in 2019. The cost will be 60% employee paid and 40% employer paid.

Employers with fewer than 25 employees are not required to pay the employer portion of the premium under the state plan. If an employer with fewer than 25 employees does elect to pay the employer portion of the cost, they may be eligible for state grants to help cover the cost of replacement workers.

Payroll deductions must begin as of January 1, 2023.

Are OR PFML Private Plans Permitted? Yes, employers can apply to the Director of the Employment Department for approval to provide private plan OR PFML benefits so long as benefits are equal to or exceed the state plan benefits and are extended to all employees who have been employed by the employer for 30 days or more. An approved private plan is effective for one year. An application fee of up to \$250 will apply. Private plans require reapproval annually for the first three years with a fee of \$150 when no changes or non-substantive changes are made to the plan and a fee of \$250 applies when substantive changes are made. After the first three annual reapproval periods a \$250 reapproval fee is required. Final rules will be established by September 1, 2022, which will outline details associated with private plan applications, substance and administration.

Private plans can be either fully insured or self-funded.

What is the Maximum Amount of the OR PFML Benefit?

For employees earning equal to or less than 65% of the state's average weekly wage (SAWW), the weekly OR PFML benefit equals 100% of the covered individual's average weekly wage.

For employees who earn more than 65% of the SAWW, the OR PFML benefit amount is:

- 65% of the SAWW plus
- 50% of the covered individual's average weekly wage that is above 65% of the SAWW.

The SAWW from July 1, 2023 through June 30, 2024 is \$ \$1,269.69. The maximum benefit cannot exceed 120% of the SAWW.

Is there a Minimum Weekly OR PFML Benefit? Yes, the minimum benefit is 5% of the SAWW.

What is the Maximum OR PFML Duration? OR PFML requires employers to provide their workers with a maximum of 12 weeks of paid leave per year for family, medical and/or safe leaves. For serious pregnancy related health conditions, the law provides up to 14 weeks of paid benefits.

Employees can take combination of up to 16 weeks of paid and unpaid leave for which they may be eligible under ORS 659A.156 in a year (or up to 18 weeks for women who experience complications due to pregnancy or childbirth).

What is a Medical Leave? Medical leave means leave from work taken by a covered individual that is made necessary by the employee's own serious health condition.

What is a Family Leave? Family leave means leave from work taken by a covered individual to care for and bond with a child during the first year after the child's birth or during the first year after the placement of the child through foster care or adoption; or to care for a family member with a serious health condition.

What is a Safe Leave? Safe leave is defined under ORS 659A.272. It includes leave a covered individual can access to seek law enforcement assistance or remedies, medical treatment, counseling victim services or relocate for issues or injuries arising from domestic violence, sexual assault, harassment or stalking of the covered individual, the covered individual's minor child or dependent. To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to or harassment or stalking of the eligible employee or the employee's minor child or dependent.

What is a Serious Health Condition? Serious health condition is defined in ORS 659A.150. It includes conditions:

- that require hospitalization, hospice or placement in a residential medical care facility;
- that pose imminent danger of death, are terminal in prognosis, or require constant care*; or
- disabilities due to pregnancy

*Note: "constant care" has been interpreted by Oregon's courts and Bureau of Labor & Industries as being consistent with the broader federal law. This means that if a covered individual or his or her eligible family member has a condition that requires continuing treatment, that condition is considered a serious health condition.

Who is a Family Member? The definition of family member is defined below. It is an expansive definition, and it is important to note that individuals whose close relationship are the equivalent of family are included.

Family member means:

- The spouse of a covered individual;
- A child of a covered individual or the child's spouse or domestic partner;
- A parent of a covered individual or the parent's spouse or domestic partner;
- A sibling or stepsibling of a covered individual or the sibling's or stepsibling's spouse or domestic partner;
- A grandparent of a covered individual or the grandparent's spouse or domestic partner;
- A grandchild of a covered individual or the grandchild's spouse or domestic partner;
- The domestic partner of a covered individual; or
- Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.

Is Intermittent Leave Available? Yes, OR PFML benefits may be taken in increments that are equivalent to one work day or one work week. Further definition of these terms is expected when regulations are promulgated in the future.

Can Employers Require Employees to Give Notice of OR PFML? Yes, employers can require that employees give 30 days' written notice prior to taking family or medical leave, and can require an explanation of the need for leave.

When 30 days' notice is not possible because of unforeseeable circumstances, covered individuals or their representatives must give verbal notice within 24 hours of starting leave, and must then provide written notice within three days of starting leave.

If an employee fails to give proper notice, the employee's first weekly benefit amount may be reduced by up to 25%. For safe leaves, employees must provide "reasonable advance notice", unless giving the advance notice is not feasible.

Is Employer Notice to Covered Individuals Required? Yes, employers will be required to provide all covered individuals a written notice of their rights under the program and the procedures by which to file a claim. The Director of the Employment Department will provide a model notice meeting these requirements.

Is OR PFML Job Protected Time away from Work? Yes. Covered individuals who worked at least 90 days for their employer before taking OR PFML are entitled to be restored to the position of employment held when the leave commenced. If the position held by the employee at the time leave commenced no longer exists, the employee is entitled to be restored to any available equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

For employers with less than 25 employees, if the position held by an eligible employee when the employee's leave commenced no longer exists, an employer may, at the employer's discretion based on business necessity, restore the eligible employee to a different position with similar job duties and with the same employment benefits and pay.

Is an Employer required to maintain Health Insurance for an Employee while on OR PFML? Yes, if the employer has more than 25 employees, it must maintain any health care benefits the employee had prior to the leave for the duration of the leave as if the employee had continued in employment during the leave.

How is OR PFML Coordinated with other Leaves? Any family leave or medical leave taken under OR PFML must be taken concurrently with any leave taken under Oregon family leave law or under the federal Family and Medical Leave Act of 1993 for the same purposes.

How does OR PFML Interact with other Paid Leave? OR PFML benefits are in addition to paid sick time (including Oregon state required paid sick time), vacation leave or other paid leave earned by an employee.

An employer may permit an employee to use paid sick time, vacation leave or any other paid leave earned by the employee in addition to receiving paid family and medical leave insurance benefits to replace an employee's wages up to 100 percent of the eligible employee's average weekly wage during a period of leave taken for family leave, medical leave or safe leave.

What about Workers Compensation and Unemployment? If a covered individual is eligible for workers' compensation or unemployment benefits, the covered individual is disqualified for that period for OR PFML benefits.

Impact on Collective Bargaining Agreements (CBAs)? The law does not require the reopening or renegotiation of a CBA entered into before September 29, 2019 (the effective date of the Oregon PFML law). CBAs that are reopened or renegotiated on or after September 29, 2019 must conform to the PFML law.

Are there Consequences for Non-Compliance? Yes, some of the consequences are shown here.

- Employees who believe they are discriminated or retaliated against for invoking their rights under the new law will be able to bring a civil action or file an administrative complaint for any alleged interference.
- Employers that fail to file required reports or pay contributions will face a penalty of up to 1% of all employee wages. Corporate officers, LLC members, and partners can also be held personally liable for amounts due and could face criminal misdemeanor charges for violations.
- The Director of the Employment Department can also bring civil actions, assess further penalties, settle disputes over delinquent amounts, and bring criminal misdemeanor charges against individual corporate officers.
- The Employment Department has the authority to issue a warrant to collect on delinquent accounts. The warrant can be enforced by a sheriff in the same manner as a civil judgment.

*This is not a comprehensive list. The description provided in this document is an overview and intended for informational purposes only. Information may change. This document does not provide legal advice or a legal opinion. You are urged to consult a lawyer concerning your own situation and any specific questions you may have regarding your obligations under the new Act. The Standard assumes no responsibility for any circumstances arising out of the use, misuse, interpretation or application of any information supplied in this document.

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