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Paid Family & Medical Leave Insurance Coming to Oregon in 2023

By Nicole Elgin & Marley Masser

In 2019, Oregon lawmakers passed House Bill 2005 to create the Paid Family & Medical Leave Insurance (PFMLI) program—one of the nation's most progressive leave policies. The program will soon offer eligible employees paid family medical leave. Initially scheduled for rollout in 2022, the program received approval to delay its implementation until 2023. Under the amended timeline, employer and employee contributions are scheduled to begin in January 2023, with benefits available to employees starting September 2023.

Who is Eligible for the PFMLI Program?

The primary purpose of PFMLI is to allow eligible employees to take paid time away from work related to family medical leave, including:

- Welcoming the birth or arrival of a new child, including adoptive and foster children;
- Treating or recovering from a serious health condition;
- Caring for a family member with a serious health condition; and
- Tending to a safety concern or harm related to domestic violence, harassment, sexual assault, or stalking.

To be eligible for PFMLI, employees must earn $1,000 or more in the year prior to claiming benefits. Independent contractors, tribal government employees, and federal government employees are not covered by the program. However, self-employed individuals and tribal governments may choose to opt into the program.

What Benefits Are Included?

Eligible employees are entitled to weekly benefit payments during qualifying periods of family, medical, or safety leave, the amount of which will be determined by comparing the employee's average weekly wage (or "AWW") to the state's AWW (to be calculated by the Oregon Employment Department (OED)). For example, if an eligible employee's AWW is equal to or less than 65% of the state's AWW, the employee's weekly benefit payment is 100% of the employee's AWW. However, if the employee's AWW is greater than 65% of the state's AWW, the employee is only entitled to partial wage replacement, not to exceed 120% of the state AWW.

Eligible employees may receive weekly benefit payments for up to 12 weeks to care for themselves or a family member, and up to two additional weeks for pregnancy, childbirth, or related circumstances. In some situations, employees may qualify for another four weeks of *unpaid* leave, totaling 18 weeks of available leave in a single benefit year. Additionally, PFMLI benefits must be used concurrently with unpaid leave taken under the state and federal Family and Medical Leave Act (FMLA and OFLA). Employers may also allow employees to use any sick, vacation, or other paid leave to reach 100% wage replacement. However, in any week in which an employee is eligible to receive workers' compensation or unemployment benefits, the employee is disqualified from receiving PFMLI benefits.

If the employer has employed an eligible employee for at least 90 days prior to the employee commencing use of PFMLI benefits, the employee's position and benefits with the employer, including rights to pension and healthcare, are protected while the employee is on leave. However, employers with fewer than 25 employees may have more flexibility with regard to reinstatement if the employee's position no longer exists upon conclusion of the leave period.

How Will the PFMLI Program Be Funded and Administered?

The PFMLI program will be funded by a payroll-based contribution of up to 1%, with 60% paid for by employees and 40% covered by employers. Employers with fewer than 25 employees are not required to pay the 40% contribution; however, if they choose to do so, they are eligible to receive up to 10 assistance grants per year, limited to one grant per employee. Both the contribution rate and taxable wage limit will be determined annually by OED, and employers will file quarterly returns with OED to report covered wages and contributions.

While all Oregon employers are required to provide PFMLI benefits to eligible employees, employers may elect to provide an equivalent plan with the same or superior benefits as those provided under the PFMLI program. If OED approves the employer's equivalent plan, the employer and their employees will not fund or receive benefits from the state PFMLI program. Instead, employees will receive benefits directly from the employer-provided plan. While not required, employers may make deductions from employees' pay in order to fund the employer-provided program. However, the amount withdrawn may not exceed the amount employees would otherwise pay under the state program, and the funds must be used exclusively for plan expenses. Employers providing equivalent plans must also apply for reapproval annually for three years after initial plan approval, and may be subject to review by the State to ensure compliance with threshold plan requirements.

After benefits are made available in September 2023, OED anticipates the need for a substantial period of stabilization, refinement, and continual improvement of systems and policies to ensure that the intended benefits of the PFMLI program are fully realized. Accordingly, employers should take careful note of the OED's updates and recommendations leading up to and after the program's implementation.

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