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# Electronic Alert

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## Oregon Employment Department Finalizes Paid Leave Oregon Rules Regarding Contributions

By Amy Angel & Stacie Damazo

Yesterday, the Oregon Employment Department ("OED") announced the adoption of nine new permanent rules that relate to contribution requirements under Paid Leave Oregon. As a reminder, Paid Leave Oregon is a family, medical, and sick leave insurance program that was created to provide eligible employees compensated time off from work for qualifying reasons. Contribution requirements under Paid Leave Oregon begin January 1, 2023.

Here are some key highlights from the new final rules:

**Deductions of Employee Contributions:** Starting January 1, 2023, employers are responsible for deducting from an employee's subject wages 60% of the total contribution rate for the PFMLI Fund. Employers who deduct too much may be subject to penalties. Employers who deduct too little are considered to have elected to pay that portion of the employee's contribution and are liable to pay that portion of the employee share unless the employer corrects the mistake within the quarter.

**Employers May Elect to Pay Employees' Share:** Employers who elect to pay all or part of their employees' share must provide a written notice, policy, or procedure to the employee specifying that the employer is electing to pay the employee contribution. If an employer decides to stop paying or reduce the amount of the employee share it elected to pay, it must provide an updated written notice, policy, or procedure to employees at least one pay period prior to any change.

**Place of Performance Test:** Employers who operate in both Oregon and Washington, or that have employees who work from or within both states, must understand which state's paid leave program applies to each employee. Pursuant to the final rules, eligibility under Paid Leave Oregon will depend, at least in part, on where the employee performs services and whether those services are considered "incidental." Failure to contribute to the correct program may result in the assessment of penalties and interest or give rise to a civil lawsuit. The rules provide several examples to help clarify which wages are subject to Oregon contributions. Employers with doubts as to which paid leave program applies to an employee should consult with counsel to determine their obligations (if any) under both states' programs.

**Successors in Interest:** Under certain circumstances, business acquisitions may result in total or partial liability for any unpaid contributions due under Paid Leave Oregon. An employer who acquires a trade or business as a "total" successor in interest may be liable for the full amount of unpaid payroll contributions under Paid Leave Oregon. Unpaid contributions assessed to a total successor in interest will be due immediately upon assessment.

**Penalties for Failure to Timely Report Contributions:** Finally, the OED has clarified that an employer's failure to file timely reports required under Paid Leave Oregon will result in a penalty that amounts to 0.02% of the total amount of that employer's employees' subject wages or $100, whichever is more. Employers may receive a waiver of the penalty if they are able to establish good cause for the failure to file the report(s) at issue.

While we wait for the OED to issue the remaining final rules, employers should start their Paid Leave Oregon preparations now to ensure a smooth transition. Visit our September 27 E-Alert, Paid Leave Oregon Poster Now Available: What Every Employer Needs to Do Now, for more information.

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