

# Electronic Alert

Volume 26, Issue 19

May 31, 2023

## Alignment of Paid Leave Oregon with the Oregon Family Leave Act

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When Paid Leave Oregon was enacted in 2019, stakeholders noted conflicts with the Oregon Family Leave Act (“OFLA”), raising many questions regarding compliance and administration. Senate Bill 999, which amends both Paid Leave Oregon and OFLA, attempts to provide some answers. SB 999 has passed both the Senate and the House and, once signed by Governor Kotek, will take immediate effect.

Below is an overview of the key amendments:

Alignment of Leave Years: SB 999 amends OFLA to incorporate Paid Leave Oregon’s forward-looking definition of “benefit year” beginning on the Sunday before an employee’s first day of leave. Employers may update their OFLA leave year now, or beginning September 3, 2023, when Paid Leave Oregon begins, such that leave under both laws will run concurrently according to the same leave year. Beginning July 1, 2024, employers will be required to administer OFLA according to this forward-looking definition.

Expanded Definition of “Family Member”: OFLA’s definition of “family member” now aligns with Paid Leave Oregon and adds siblings, step-siblings, and the spouse or domestic partner of a sibling, step-sibling, grandparent, or grandchild, as well as any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family member. The amendment also (1) directs BOLI to adopt factors by September 3, 2023, to determine whether an individual qualifies as a family member by reason of affinity, and (2) grants BOLI authority to develop and use an attestation form by which an employee may attest to the affinity factors adopted by BOLI.

Expansion of Employee Job Protections: Both OFLA and Paid Leave Oregon now require employers to offer employees returning from leave equivalent positions at job sites within 50 miles of the job site of the employee’s former position, if the position previously held by the employee no longer exists and an equivalent position is not available at the same jobsite.

Affirmation of Concurrency: In an attempt to address concerns relating to the potential “stacking” of leave available under OFLA and Paid Leave Oregon, OFLA is amended to affirm that leave taken under OFLA that qualifies as protected leave under FMLA or Paid Leave Oregon must be taken concurrently with, and not in addition to, any leave under FMLA and Paid Leave Oregon.

Employee Contributions to Health Insurance Premiums: Paid Leave Oregon now aligns with OFLA and requires employees to continue making any regular contributions to the cost of health insurance premiums during periods of leave. Additionally, employers who pay any employee-portion of insurance premiums during a leave may deduct up to 10% of the employee's gross pay each pay period to recover those amounts upon the employee returning to work.

### **What You Can Do Now:**

1. Align your leave years, to the extent possible. While employers also covered under FMLA will not be able to fully align leave years under all three leave laws, the closer you can get to alignment, the more likely protected leave will run concurrently. To change the leave year, employers must give employees 60 days' notice. To be effective when Paid Leave Oregon benefits begin on September 3, 2023, employers should determine whether they would like to change their OFLA or FMLA leave year to a rolling-forward benefit year and provide employees notice by July 5, 2023.
2. Revise your OFLA policy to ensure it is in alignment with SB 999, including the change in definition of "family member."
3. Be on the lookout for future E-Alerts that highlight administrative rule changes.

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