

Electronic Alert

Volume 26, Issue 29

July 31, 2023

Paid Leave Oregon: It's a Go!
**What You Need to Know About Legislative Amendments & Key Policy Changes
to Implement Before Employees Start Applying for Benefits on August 14**

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As required by [Senate Bill 31](#), the Oregon Employment Department (“OED”) recently issued a [press release](#) stating that, based on current data and projections, the Paid Leave Oregon trust fund is ready for benefits to begin as planned on September 3, 2023. Covered individuals may begin applying for Paid Leave Oregon benefits via the OED’s online platform, Frances Online, on August 14, 2023. In addition to the OED affirming the program’s solvency, the Oregon Legislature has passed (and Governor Kotek has signed) three bills that impact employers’ Paid Leave Oregon policies and procedures: Senate Bills [912](#), [913](#), and [999](#). Below is an overview of recent amendments to Paid Leave Oregon under Senate Bills 912 and 913. For an overview of Senate Bill 999, see our [May 31 E-Alert](#) on the alignment of Paid Leave Oregon and OFLA.

Senate Bill 913:

- Replaces the former place of performance test, which was intended to help employers determine whether to report employees’ wages to Oregon as compared to another state in which the employee may work in, report to, or reside, with language that mirrors Washington’s localization test.
- Expressly provides that an employer may permit an employee to use all or a portion of paid sick time, vacation leave, or any other paid leave earned by the employee in addition to Paid Leave Oregon benefits during a period of leave taken under Paid Leave Oregon. This language replaces the former requirement that an employee must only be brought up to 100% of their average weekly wage. This change allows employers to permit employees to use paid leave while waiting for their Paid Leave Oregon benefits to be processed and paid and will allow for more flexibility for employers who permit employees to “top off” their benefits.
- Adds eligibility requirements for self-employed individuals and tribal government employees, such as a requirement that the individual has earned at least \$1,000 in taxable income during the base or alternate base year.
- Removes the former \$132,900 cap on employee wages (and self-employed individuals’ taxable income) subject to contributions under Paid Leave Oregon and, instead, aligns the maximum amount of wages subject to contributions with the Social Security contribution and benefit base limit established by the United States Social Security Administration.

Senate Bill 912:

- Allows the OED to recover overpaid benefits from covered individuals for up to five years following the date the decision establishing the overpayment became final. The methods by

which the OED may recover overpaid benefits differ, depending on whether the overpayment was the result of the covered individual's false statement or misrepresentation.

- Authorizes the OED to assess penalties against employers with non-compliant equivalent plans. The OED may waive collection of a penalty assessed, if (1) the employer corrects the violation within 30 days of receiving a notice of the violation, and the notice is for a first violation; or (2) the OED determines the violation to be an inadvertent error by the employer.
- Incorporates a penalty that may be assessed against assistance grant recipients who obtained the grant by fraud or misrepresentation. The penalty will amount to 50% of the total amount of the grant award.

What to Do Before September 3:

1. Update your Paid Leave Oregon, OFLA, and Oregon Sick Time policies to align with the amended definitions of "family member."
2. Align your Paid Leave Oregon, OFLA, and FMLA leave years, to the extent possible. For more information, please see our [May 31 E-Alert](#).
3. Determine whether and to what extent you will permit employees to use other paid benefits during a period of leave taken under Paid Leave Oregon. Note that an employee has the right to use other paid time off during any period in which an employee's Paid Leave Oregon benefits run concurrently with leave taken pursuant to OFLA.
4. Confirm your required Paid Leave Oregon notice is posted and be prepared to share information with employees about how to apply for benefits.
5. Keep an eye out for forthcoming administrative rule changes.

For assistance drafting or revising your Paid Leave Oregon policy or assistance preparing for Paid Leave Oregon administration, contact Amy Angel at (503) 276-1212 or aangel@barran.com, or Stacie Damazo at (503) 276-2121 or sdamazo@barran.com.