

New law brings aspects of Paid Leave Oregon and OFLA into alignment

Since Paid Leave Oregon was first enacted in 2019, stakeholders – particularly those also covered under the Oregon Family Leave Act (OFLA), the Family and Medical Leave Act (FMLA), or both – have raised many questions relating to the interplay (or lack thereof) between Paid Leave Oregon and other leave laws.

Specifically, Paid Leave Oregon and OFLA had different definitions of key terms such as “family member,” and differed in the way each law defined a “benefit year,” significantly complicating the simultaneous tracking and administration of leave under both laws. Senate Bill 999, however, attempts to remedy this confusion by bringing Paid Leave Oregon and OFLA further into alignment.

SB 999, signed into law by Gov. Tina Kotek on June 7, 2023, amends both Paid Leave Oregon and OFLA to resolve some of their differences. Here is an overview of these amendments, as well as guidance on what employers can do now to prepare for Paid Leave Oregon taking effect on Sept. 3, 2023.

Changes to OFLA's benefit year

Under Paid Leave Oregon, the benefit year is forward-looking. In other words, the benefit year measures forward, beginning on the Sunday immediately preceding the date on which the qualifying leave begins. However, employers covered under OFLA, FMLA, or both may have defined their benefit year in terms of, for example, a calendar year or on a rolling backward basis. SB 999 permits an employer to use Paid Leave Oregon's definition of benefit year effective immediately. While SB 999 also affirms that employers may continue to define their benefit year under OFLA in the old ways, beginning July 1, 2024, SB 999 will require the OFLA benefit year to



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match Paid Leave Oregon's definition.

Expanded definition of family member

When enacted, Paid Leave Oregon incorporated a much broader definition of “family member” than OFLA. SB 999 now aligns OFLA's definition with Paid Leave Oregon to include 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.

Expanded employee job protections

Prior to the enactment of SB 999, OFLA already required an employer to restore an eligible employee returning to work after taking OFLA leave to the position of employment held by the employee when the leave commenced. If that position no longer existed, the employer was required to restore the employee to any available equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. If, however, an equivalent position also did not exist, the employer could offer that employee an equivalent position at a job site located within 20 miles of the job site of the employer's former position.

Beginning Sept. 3, 2023, if the employee's former position no longer exists and

there is no equivalent position available at the same job site, employers shall offer the employee an equivalent position at a job site located within 50 miles of the job site of the employee's former position. In addition, if equivalent positions are available at multiple job sites, the employer shall first offer the employee the position at the job site nearest to the job site of the employee's former position. SB 999 also incorporates these reinstatement requirements into Paid Leave Oregon.

Affirmation of concurrency

SB 999 amends OFLA to confirm that, if the reason for leave taken under OFLA is also a qualifying reason for leave under Paid Leave Oregon, then such leave must be taken concurrently.

Contributions to health insurance premiums

SB 999 also adds to Paid Leave Oregon a requirement that employees must continue to make any regular contributions to the cost of health insurance premiums during a period of leave taken under Paid Leave Oregon. If an employer is required or elects to pay any part of the employee's contribution during a period of leave that should have been paid by the employee, the employer may deduct from the employee's pay such amounts upon

the employee's return to work. However, in no event may the total amount deducted for insurance exceed 10 percent of the employee's gross pay each pay period.

To prepare for these amendments, employers should update their OFLA and Paid Leave Oregon policies. In addition, employers should evaluate whether to change their OFLA leave year in advance of the July 2024 requirement to do so.

It is important to note that employers also covered under FMLA will not be able to achieve perfect alignment of their benefit years under all three leave laws. Even so, the closer an employer can get to alignment under all three leave laws, the more likely protected leave will run concurrently. Employers covered under FMLA are required to provide employees with 60 days' notice of a change in benefit year. To be effective when Paid Leave Oregon benefits begin on Sept. 3, 2023, employers should provide employees with notice on or before July 5, 2023.

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