

# EMPLOYMENT LAW SUMMARY

## Oregon Paid Family and Medical Leave



In 2019, Oregon passed [legislation](#) establishing a statewide paid family and medical leave program, funded through a mandatory payroll tax on employees and employers with at least 25 workers, beginning in 2023.

The program allows eligible employees to take up to 12 weeks of protected paid leave per year for certain family and medical reasons, also starting in 2023. Employees who experience a pregnancy-related serious health condition that results in incapacity are eligible for up to 14 weeks of paid family and medical leave.

Beginning Jan. 1, 2023, employers must provide written notice to employees of their right to benefits under the law. This deadline was initially set for an earlier date, along with other program implementation dates. The rollout of the program was [delayed](#) as a result of the COVID-19 pandemic.

### Covered Employers

In Oregon, all private employers with at least one employee must comply with the paid family and medical leave requirements. State and local government employees are also covered.

Employers with fewer than 25 employees are not required to contribute to the program, but they must withhold and remit their employees' required contributions to the state. Employer size is determined by the employer's average number of employees for the preceding 12-month period. It is based on the number of employees on the employer's payroll for the pay period that includes the 12th of each month.

Self-employed individuals and tribal governments may opt in to the program.

### Eligible Employees

Virtually all employees working in Oregon are covered individuals eligible for paid family and medical leave benefits, provided they have:

- Earned at least \$1,000 in wages during the base year; or
- Earned at least \$1,000 in wages during the alternate base year.

For this purpose, the "base year" means the first four of the last five completed calendar quarters preceding the benefit year. The "alternate base year" means the last four completed calendar quarters preceding the benefit year. In most cases, the "benefit year" is the 52-week period beginning on the Sunday immediately preceding the date on which leave begins.

### Qualifying Reasons for Paid Family and Medical Leave

Under the amended timeline for the program, beginning **Sept. 3, 2023**, Oregon employees will be able to use paid family and medical leave for the following reasons:

1. To care for and bond with a child during the first year after the child's birth, or during the first year after the child's placement through foster care or adoption;
2. To care for a family member with a serious health condition;
3. Due to the employee's serious health condition; or
4. To seek assistance, medical treatment, counseling or victim services, or to relocate due to domestic violence, harassment, sexual assault or stalking (safe leave).

An employee's **family member** includes the employee's:

- Spouse or domestic partner;
- Child or child's spouse or domestic partner (including a biological child, adopted child, stepchild, foster child or legal ward of the employee or of the employee's spouse or domestic partner);
- Parent or parent's spouse or domestic partner (including a biological parent, adoptive parent, stepparent, foster parent, former foster parent, or legal guardian of the employee or of the employee's spouse or domestic partner);
- Sibling or stepsibling (or the sibling's or stepsibling's spouse or domestic partner);
- Grandparent (or the grandparent's spouse or domestic partner);
- Grandchild (or the grandchild's spouse or domestic partner); or
- Any individual related by blood or affinity whose close association with an employee is the equivalent of a family relationship.

<p><b>Serious Health Condition:</b> For purposes of Oregon's paid family and medical leave program, a serious health condition means:</p>	<ul style="list-style-type: none"> <li>• An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice, nursing home or residential medical care facility;</li> <li>• An illness, disease or condition that, in the medical judgment of the treating health care provider, poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care;</li> <li>• Any period of disability due to pregnancy or period of absence for prenatal care; or</li> <li>• Any period of absence for the donation of a body part, organ or tissue, including preoperative or diagnostic services, surgery, post-operative treatment and recovery.</li> </ul>
---	--

A person standing *in loco parentis* (in place of a parent) to the eligible employee (or who stood *in loco parentis* to the eligible employee when the employee was a child) is also included in the definition of family member.

### Duration of Paid Family and Medical Leave

The paid family and medical leave program provides the following leave amounts per benefit year:

<b>Paid Family and Medical Leave</b>	Up to 12 weeks (any combination of family leave, medical leave and safe leave)
<b>Paid and Unpaid Family and Medical Leave Combined</b>	Up to 16 weeks (12 weeks of which may be paid)
<b>Pregnancy Disability Leave</b>	Two additional paid weeks (for a total of up to 18 weeks, 14 of which may be paid)

### Applying for Paid Family and Medical Leave

Employees apply for leave benefits online at [paidleave.oregon.gov](http://paidleave.oregon.gov) (or by requesting a paper application from the Oregon Employment Department), up to 30 days before or after the start of leave.

Employers are notified of the approval or denial of the employee's application for leave and the dates of any approved leave. Employees, but not employers, have the right to appeal claim decisions.

Employees must provide documents verifying their reason for leave to the program when applying.

## Using Paid Family and Medical Leave

Employees may take paid leave in one-day or one-week increments. Leave may be taken consecutively or nonconsecutively. Consecutive leave is taken in one block of time due to a single qualifying event, such as a surgical procedure. Nonconsecutive leave is taken in separate blocks of time due to a single qualifying reason, such as chemotherapy.

Employers cannot require employees to take sick leave, vacation leave, or other accrued leave before accessing paid leave benefits. However, paid family and medical leave must be taken concurrently with any [Oregon family leave](#) or leave taken under the [federal Family and Medical Leave Act](#) for the same purposes.

## Notice Obligations of Employers

Covered employers are required to post a [notice](#) about the program by **Jan. 1, 2023**, at each building or worksite, in an area accessible to and regularly frequented by employees. Covered employers must also provide the notice to covered employees at the time of hire and each time the policy or procedure changes. The notice must be in the language the employer typically uses to communicate with employees. Employers must provide the notice to remote-work employees by hand delivery, electronic delivery or regular mail, when the employee is hired or assigned to remote work.

## Notice Obligations of Employees

Employers may require that employees provide them with notice of leave, including an explanation of the need for the leave and the anticipated timing and duration of leave, if this requirement is in the employer's written policies and procedures. Employers can require **30 days' advance written notice of foreseeable leave and oral notice within 24 hours after starting emergency leave**. The employer may further require written notice of the emergency leave within three days after leave starts.

Foreseeable leave includes events such as an expected birth, planned placement of a child or a scheduled medical treatment for a serious health condition of the eligible employee or family member of the eligible employee. Emergencies include events such as an unexpected serious health condition of the eligible employee or family member of the eligible employee, a premature birth, an unexpected adoption, an unexpected foster placement by or with the eligible employee, or for safe leave.

An employee's failure to provide the notice required by their employer may result in a 25% reduction of their first weekly benefit amount.

A copy of the employer's written policy and procedure requiring notice of leave from employees must be provided to all eligible employees at the time of hire and each time the policy and procedure changes, in the language that the employer typically uses to communicate with the employee. The policy and procedure must include a description of the penalties that may be imposed by the department for not complying with the employer's notice requirements.

## Amount of Family and Medical Leave Benefits

While on family and medical leave, employees will be paid as follows:

- If the employee's average weekly wage is equal to or less than 65% of the state average weekly wage, the employee's weekly benefit amount is 100% of their average weekly wage.
- If the employee's average weekly wage is greater than 65% of the state average weekly wage, the employee's weekly benefit amount is the sum of: (1) 65% of the state average weekly wage; and (2) 50% of the part of their average weekly wage that is greater than 65% of the state average weekly wage.

An employee's weekly benefit amount will be set at a minimum of 5% of the state average weekly wage and capped at 120% of the state average weekly wage.

Employers may allow employees to use paid sick time, vacation leave or any other paid leave in addition to receiving paid family and medical leave insurance benefits, to receive up to their full wage during their leave. In any week in which an employee is eligible to receive workers' compensation or unemployment benefits under Chapter 656 or 657 of the Oregon Revised Statutes, the employee is disqualified from receiving family and medical leave insurance benefits.

Benefits will be available beginning **Sept. 3, 2023** (delayed from an initial availability date of Jan. 1, 2023).

## Maintenance of Health Benefits

Employers must maintain employees' health benefits during leave. The employer can require that the employee pay their share of health premiums while on leave.

## Paid Leave Funding

The paid family and medical leave program is funded by a **mandatory payroll tax on employees and employers with at least 25 workers**, beginning **Jan. 1, 2023**. Employers must begin withholding employee contributions on that date, and hold those contributions in trust until they are paid to the department through the combined payroll reporting process. Quarterly reports are due on or before the last day of the month following the close of the quarter.

Contributions are made to the department through the combined payroll reporting process. Quarterly reports are due on or before the last day of the month following the close of the quarter.

Domestic employers may file an Oregon Annual Report detailing wages and employee contributions for paid family and medical leave if they have, on average, less than 25 employees, as calculated under Oregon Administrative Rules 471-070-3160. Annual contributions are due on or before Jan. 31 of the following calendar year.

The department sets the paid family and medical leave contribution rate annually, up to a cap of 1% of employee wages. **The rate will start at 1% in 2023**. Employers are required to contribute 40% of the rate, but they may deduct the remaining 60% from each employee's wages. Employers may also pay the employee's portion as an employer-offered benefit.

## *Contributions: Place of Performance*

An employee's wages are subject to paid family and medical leave contributions if they are earned for service performed entirely within Oregon or performed within and outside Oregon, but the service performed outside of Oregon is **incidental** to the employee's service performed within Oregon. Services performed outside of Oregon are incidental to the service performed in Oregon if:

1. The majority of the employee's service is performed within Oregon and the service outside of Oregon is **temporary or transitory** or consists of **isolated transactions**, and the employee's service is not covered by a paid leave program in any other state or territory. Factors that the department may consider in determining whether service is temporary or transitory in nature include:
  - Length of service with the employer within Oregon compared to outside Oregon;
  - Whether the service is an isolated situation or a regular part of the employee's work;
  - Whether the employee will return to performing services in Oregon on completion of the services performed outside of Oregon; and
  - Whether the service performed outside of Oregon are of the same nature as those performed in Oregon.
1. Item (1) above does not apply, the employee's service is not covered by a paid leave program in any other state or territory and the employee's base of operations is in Oregon. (Base of operations is an established location from where the employee starts work and customarily returns to perform services under the terms of the contract with the employer.)
2. Neither (1) or (2) above apply, the employee's service is not covered by a paid leave program in another state or territory, and the place from which the service is directed or controlled is in Oregon. (Direction and control means basic authority and overall control rather than immediate supervision by a manager or foreman.)
3. Neither (1), (2) or (3) above apply, the employee's service is not covered by a paid leave program in another state or territory, and the employee's residence is in Oregon.

Paid family and medical leave [regulations](#) provide examples for determining place of performance.

Oregon and Washington state have issued a joint [letter](#) providing guidance on which of the two state's paid family and medical leave program applies in specific scenarios.

### Small Employers

Employers with fewer than 25 employees are **exempt** from paying the employer portion of the contribution. However, small employers who elect to pay into the program are eligible for grants to help cover the cost of replacement workers. Even if small employers decline to contribute, their eligible employees must still pay the employee contribution and are eligible for paid family and medical leave.

### Employer Size

Employer size is determined each year on September 30, based on the average employee headcount over the previous four quarters, using payroll reports. The number of employees for each quarter includes Oregon and out-of-state employees, but the count excludes any replacement workers hired to cover for employees taking paid leave. The department will provide a size determination notice to employers by Nov. 15 for the next calendar year.

For 2023, the number of employees reported for the first quarter report (January-March 2023) determines employer size for the calendar year. The program decides employer size after the employer submits the quarterly report. Employers can calculate their employer size by adding the number of Oregon employees to the number of out-state employees and pay employer contributions if they have 25 or more employees in the quarter.

For 2024, employer size will be determined on Sept. 30, 2023, based on the average employee count for the first and second quarter reports (January to March 2023 and April to June 2023).

### Job Protection

Employees who have been employed for at least **90 calendar days** are entitled to return to the position they held before the start of leave, if that position still exists. Employees are entitled to return to their position even if the position has been renamed or reclassified, or if a replacement worker has been hired or reassigned to cover the employee's position.

If the position no longer exists (and has not simply been renamed or reclassified), job protections depend on the size of the employer:

- Employers with 25 or more employees must provide the employee with a position equal to the position they held before they took leave, with equal employment benefits, pay and other terms and conditions of employment.
- Employers with fewer than 25 employees may, at the employer's discretion based on business necessity, restore the employee to a different position with similar job duties and the same employment benefits and pay.

Employers are **not** required to restore an employee's position if the employee gives clear notice of intent not to return to work from leave, except as required by other state or federal law.

Failure to provide job protections is an unlawful employment practice subject to civil action by the employee or action on a complaint made to the Oregon Bureau of Labor and Industries (BOLI).

### Equivalent Plans

Employers may apply to the department for approval to meet their obligations under the law through an equivalent employer-offered benefit plan, which can be employer-administered or fully insured. An employer's equivalent plan must provide all of the same rights, protections and benefits as provided under the paid family and medical leave law. This means, among other things, that equivalent plans must cover all employees who have been continuously employed by the employer for at least 30 days, and the plans must not require employee contributions greater than those required by the state plan.

Employers can submit applications for equivalent plans starting in September 2022. The application fee is \$250, and the review process is expected to take at least 30 days. Employers must reapply for approval for their equivalent plans annually, but only for the first three years. After that, the equivalent plans will remain in place until withdrawn or terminated.

[Regulations](#) issued by the department establish procedures for employers to obtain approval for their private plans, and the department has issued a [fact sheet](#) on the topic. To be exempt from contributions for the first quarter (which starts Jan. 1, 2023), employers must apply for approval by **Nov. 30, 2022**. Exemptions from contributions for later quarters have later application deadlines, which run through June 30, 2023.

Applications after that result in employers paying all contributions for the year. For a plan to be approved by the effective date of Sept. 3, 2023—when benefits begin—the application for approval must be submitted by **May 31, 2023**.

### Recordkeeping

Employers must maintain payroll records, including records documenting employee contributions and expenses. Employment records must reflect the total hours worked by all employees and the amount of paid family and medical leave taken by employees for the last three calendar years.

### Enforcement

Employers are prohibited from retaliating or discriminating against employees who exercise their rights under the paid family and medical leave law, and from denying or interfering with those rights. Employees alleging a violation may bring a civil action or file a complaint with BOLI.

Employers that fail to make required contributions are subject to civil action by the department to collect the unpaid amount plus interest and penalties.

### Grant Assistance for Small Employers

Grants are available for employers with **fewer than 25 employees** who commit to pay employer contributions for eight calendar quarters and do not have any delinquent reports, contributions or unpaid penalties. Employers that hire a replacement worker for an employee on paid family and medical leave are eligible for grants of up to \$3,000. Grants of up to \$1,000 apply for employers with significant wage-related costs as a result of leave, such as paying additional wages to an existing employee or additional training costs.

Grants are limited to 10 annually per employer, one per employee.

Employers may apply for a grant only after an eligible employee is approved for qualifying paid leave. The employer has up to four months after the end of the employee's leave to apply for a grant. Grant applications will be available starting September 2023.

### More Information

The department has made resources about the program available on its website, including [fact sheets](#), [FAQs](#) and an [employer guidebook](#). Contact Oak Tree Insurance for more information about the Oregon paid family and medical leave law.