Legal Update Article

Oregon Passes Paid Family and Medical Leave Law

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July 12, 2019

Meet the Authors

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Disability, Leave and Health Management

Oregon has joined a growing number of states to require employers to provide their workers paid family and medical leave.

Employers in Oregon must provide up to 12 weeks of such paid leave to eligible employees beginning January 1, 2023, under the bill (HB 2005) passed by the state legislature. Governor Kate Brown has said she intends to sign the bill.

Oregon becomes the eighth state (after Connecticut) to require paid family and medical leave for eligible employees. The other states currently offering paid family and medical leave are California, Massachusetts, New Jersey, New York, Rhode Island, and Washington, in addition to the District of Columbia.

The state, however, has the distinction of being the first to require that low-income workers be paid 100% of their wages while on leave — up to 65% of the state average weekly wage (calculated at $1,044.40 for the period July 1, 2019, to June 30, 2020), with benefits capped at 120% of the state average weekly wage. HB 2005 creates the Family and Medical Leave Insurance (FAMLI) Program, modeled after Oregon's unemployment insurance program, and paid leave will be funded with payroll contributions. The FAMLI Program will be administered by the Oregon Employment Department.

The Oregon Senate voted to approve HB 2005 just hours before the constitutionally-mandated end of Oregon's state legislative session (June 30 at midnight). The House of Representatives had approved the bill 10 days earlier, but it was held up temporarily when Oregon Senate Republicans walked out that same day (to deny Senate Democrats a quorum in opposition to a cap-and-trade climate change bill), leaving many bills in legislative limbo.

Eligibility and Benefits

The new law requires employers to provide their workers with a maximum of 12 weeks of paid leave, with total paid and unpaid leave capped at 16 weeks (or up to 18 weeks for women who experience complications due to pregnancy or childbirth).

Eligible employees must have received at least $1,000 in wages during the base year to be eligible for the FAMLI Program. Eligible employees may begin to receive benefit payments beginning January 1, 2023.

Benefits will be provided as follows:

- An employee's weekly benefit amount is capped at 120% of state average weekly wage (approximately $1,254) with a floor of 5% (approximately $50).
- Employees who earn less than 65% of the state average weekly wage (approximately $679) will receive 100% of their average weekly wage.
- Employees who earn more than 65% of the state average weekly wage will receive 65% of the state average weekly wage plus 50% of the amount by which the employee's average weekly wage exceeds the state average weekly wage.

Additionally, employees may use vacation or sick time to supplement their weekly benefit amount, up to 100% of their wages.

Timing of Rules, Contributions, Notice

- On or before September 1, 2021: The Employment Department will issue rules governing administration of the FAMLI Program.
- January 1, 2022: Employee payroll contributions begin.
- January 1, 2022: Employers must provide written notice to employees of their rights under the FAMLI Program.

Contributions

Funding for the FAMLI Program will be provided through a payroll tax, the rate to be determined by the Director of the Employment Department (not to exceed 1% of the employee's wages).

The law provides that:

- Employers will contribute 40% of the total rate set by the Director, while deducting the remaining 60% from each employee's wages. Employers may pay the employee's portion as an employer-offered benefit.
- Employers with fewer than 25 employees are exempt from paying the employer portion of the contribution. However, such employers who elect to pay into the program will be eligible for grants to help cover the cost of replacement workers. Regardless of whether such an employer elects to contribute, its eligible employees still will be assessed the employee contribution and be eligible for paid family leave benefits.

Self-employed individuals and tribal government employers can opt into the program and make contributions at the same rate as other employers.

Other Key Provisions

The law provides job protections for employees who utilize the program.

Employers that establish a benefits plan equivalent to the FAMLI Program, subject to approval from the Employment Department, are deemed compliant with the paid leave law.

Certain of an employer's officers, members, or partners may be held personally liable for violations of the law, which carry both civil and criminal penalties.

The Employment Department has the authority to issue a warrant to collect on delinquent accounts. The warrant can be enforced by a sheriff in the same manner as a civil judgment.

Finally, beginning January 1, 2025, employees may sue employers for violating the program (potential damages include back pay, compensatory damages, and punitive damages).

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We will continue to monitor and provide updates on any developments in this area, including any proposed rulemaking from the Oregon Employment Department.

For guidance on leave management issues, please contact a Jackson Lewis attorney.

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