Cascade Employers Association

Building better workplaces through compliance, culture, connection

An Employer's Guide to Paid Leave Oregon

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GENERAL OVERVIEW

What is Paid Leave Oregon?

Paid Leave Oregon (PLO) is a state-mandated program that provides paid family, medical, and safe leave to eligible workers in Oregon. Eligible employees can take up to 12 weeks of paid leave per year with some exceptions. Paid Leave Oregon is funded through employer and employee contributions.

What are Equivalent Plans?

An employer may also choose to have an equivalent plan in lieu of participating in the state plan. An equivalent plan must provide paid leave benefits that are equal to or greater than the state plan and must be approved by the Employment Department.

Employers with equivalent plans are not required to submit employee and employer contributions to the state. Instead, they may withhold employee contributions to fund the equivalent plan. However, the contributions withheld may not be more than what would be contributed under the state plan. Contributions withheld from employees must be held separately from other employer funds and may only be used for equivalent plan expenses.

Is My Employee Covered?

Paid Leave Oregon (PLO) covers most employees who work in Oregon including seasonal, full-time, and part-time employees. Employees are not eligible for paid leave benefits if they are eligible or are receiving workers' compensation or unemployment benefits.

Employees: To be eligible, an employee must have:

- ❖ Earned at least $1,000 in wages* in the year prior to taking leave;
- ❖ Contributed to the PLO Fund in the base year or alternate base year;
- ❖ Experienced a qualifying event;
- ❖ Submitted an application for benefits; and
- ❖ Not be eligible for workers' compensation or unemployment insurance benefits during the same period the employee is seeking benefits.
- ❖ For equivalent plans, employees are not eligible until after 30 days of employment unless the Equivalent Plan Provider allows eligibility prior to 30 days of employment.

***Wages include, but are not limited to:**

- ❖ Commission or Guaranteed Wages
- ❖ Compensatory Pay
- ❖ Dismissal or separations allowances
- ❖ Holiday Pay
- ❖ Paid Time Off
- ❖ Bonuses

***Wages do not include:**

- ❖ Incidental Expenses
- ❖ Jury Pay
- ❖ Pensions
- ❖ Remunerations other than cash

Base Year

Although employees must earn $1,000 in the base year or alternative base year to be eligible for benefits, these wages do not need to be earned with the same employer. Since Paid Leave Oregon is a state program, eligibility and benefits are not tied to a single employer. Therefore, the $1,000 in wages is a combined amount between all employers.

The base year is the first four of the last five completed calendar quarters preceding the leave and the alternative base year is the last four completed calendar quarters preceding the leave.

Paying Into Contributions

Employees must be paying into the Paid Leave Oregon program in order to be eligible for leave. While Oregon employees are required to contribute a portion of their wages to the fund, generally an out-of-state employee is not. Therefore, out-of-state employees would not be eligible for Paid Leave Oregon benefits.

Qualifying Reasons

Employees may only take paid leave if they experience a qualifying reason; if they do not have a qualifying reason, they are not eligible to take benefits. Reasons for leave is discussed below.

Leave Entitlement

There is a limited amount of paid leave available under Paid Leave Oregon. If an employee has already taken the maximum amount of paid leave allowed under the Paid Leave Oregon program for that benefit year, then they are no longer eligible for paid leave until the new benefit year.

What are the Reasons an Employee Can Take Leave?

There are three main reasons for leave defined under Paid Leave Oregon:

1. **Family Leave**: To care for a family member with a serious illness or injury, or to bond with a new child after birth, adoption, or foster care placement. Family leave DOES NOT include bereavement or sick child leave for non-serious illness or injuries.
2. **Medical Leave**: An employee's own serious health condition.
3. **Safe Leave**: For survivors of sexual assault, domestic violence, harassment, bias crimes or stalking.

Family Leave

Family leave refers to caring for and bonding with a child. This leave is limited to the first year after the child's birth or the placement of the child through foster care or adoption.

Effective January 1, 2025, family leave will also cover leave needed to effectuate the legal process required for the placement of a foster child or the adoption of a child.

Paid Leave Oregon differs from the Oregon Family Leave Act (OFLA) in that it does not cover bereavement or care for a sick child, unless the child has a serious health condition.

Medical Leave

Medical leave refers to an employee's own serious health condition or their need to care for a family member with a serious health condition. A serious health condition is an illness, injury, impairment, or physical or mental condition that involves one or more of the following:

- Inpatient care
- Chronic Conditions
- Pregnancy
- A period of incapacity for more than three consecutive days and includes:
    - An inability to perform at least one essential job function or perform regular daily activities AND
    - Two or more treatments from a medical provider OR
    - One treatment from a medical provider and a regimen of continuing care
- Any period of disability due to pregnancy, childbirth, miscarriage or stillbirth, or period of absence for prenatal care
- Donation of a body part, organ, or tissue, including preoperative or diagnostic services, surgery, post-operative treatment, and recovery

Safe Leave

Safe leave applies when an individual or an individual's dependent is a victim of domestic violence, harassment, sexual assault, bias crimes or stalking. It also includes when an individual is seeking legal remedies, medical treatment, counseling or victim services, or relocating to take other steps to secure safety.

How Much Leave Can an Employee Get?

Eligible employees may take:

- Up to 12 weeks of protected, paid leave per benefit year to care for themselves or a family member.
- Up to an additional 2 weeks of additional paid protected leave for pregnancy, childbirth, or related circumstances.

What about Remote Out-of-State Employees?

Coverage under Paid Leave Oregon is determined by where work is performed. If a remote employee works out-of-state and either performs no work in Oregon or rarely performs work in Oregon, they are generally not covered by Paid Leave Oregon.

Does PLO Require Verification of Leave?

The Oregon Employment Department (OED) requires employees to submit verification of the reason for which they are taking leave. This verification is submitted directly to the Employment Department and not the employer unless the employer is administering an equivalent plan.

Leave to Care for or Bond with a Child

If the employee is requesting leave to care for and bond with a child there are several forms of verification they may provide. For the birth of a child, an employee may submit the following:

- The child's birth certificate
- A Consular Report of Birth Abroad
- A document issued by a health care provider of the child or pregnant parent
- A hospital admission form associated with delivery

Leave to Care for or Bond with a Child After Foster or Adoption Placement

If the employee is requesting leave to care for and bond with a child after placement through foster care or adoption, they may provide the following verification:

- A copy of a court order verifying the placement
- A letter signed by the attorney representing the employee that confirms the placement of the child
- A document from the foster care, adoption agency, or social worker involved in the placement that confirms the placement
- A document for the child issued by the United States Citizenship and Immigration Services

Leave for a Serious Health Condition – Employee or Family Member

If the employee is requesting leave due to a serious health condition, whether that health condition is the employee's or a family member's, the verification they provide must include the following information:

- The health care provider's first and last name, type of medical practice/specialization, and their contact information, including mailing address and telephone number
- The patient's first and last name
- The employee's first and last name if it is different than the patient's
- The approximate date when the serious health condition began or created the need for leave, and an estimation of the duration of the condition or the recovery period
- Information that establishes that the employee or family member has a serious health condition

Safe Leave

If the employee is requesting safe leave, an employee may provide the following:

- A copy of a federal agency or state, local, or tribal police report indicating that the employee or employee's child was a victim of domestic violence, harassment, sexual assault or stalking
- A copy of a protective order or other evidence from a federal, state, local, or tribal court, administrative agency, or attorney that the employee or employee's child appeared in or was preparing for a civil, criminal, or administrative proceeding related to domestic violence, harassment, sexual assault, or stalking

- Documentation from an attorney, law enforcement officer, health care provider, licensed mental health professional or counselor, member of the clergy, or victim services provider that the employee or employee's child was undergoing treatment or counseling, obtaining services, or relocating as a result of domestic violence, harassment, sexual assault, or stalking

Additionally, if an employee has good cause for not providing one of the above forms of documentation for safe leave, they may provide a written attestation that they are taking eligible safe leave. Examples of good cause include but are not limited to difficulty obtaining verification due to a lack of access to services or concerns for the safety of the employee or child.

CONTRIBUTIONS

Paid Leave Oregon provides leave with pay to employees on medical, family, or safe leave.

Paid Leave is funded through a payroll contribution, of no more than one percent, shared by employers and employees. However, employers have the option to pay some or all of their employees' portion as a benefit. Employers choosing to pay some or all of the employee portion must provide a written notice, policy, or procedure to employees stating that contributions will be paid by the employer.

Who Contributes?

All employers, except federal and tribal governments, are required to participate in the paid leave program. Tribal governments can choose to provide coverage through the program. All employees, except employees of the federal and tribal governments, are covered by Paid Leave Oregon and are required to participate in the paid leave program. Employees of tribal governments participate if their tribal government has elected coverage. Self-employed individuals and independent contractors can also choose to participate.

What about Employee's Working in Multiple Location?

Employees working entirely in Oregon, or employees who primarily work in Oregon but perform incidental work outside of Oregon, are generally covered by Paid Leave Oregon and are required to pay contributions.

Employees working in multiple states, including Oregon, and the base of operations is in Oregon are generally covered by Paid Leave Oregon and are required to pay contributions.

Employees working in multiple states, including Oregon, and work is controlled or directed from Oregon are generally covered by Paid Leave Oregon and are required to pay contributions.

Employees working in multiple states, including Oregon, and neither the base of operations nor the direction or control of the work is from Oregon are covered by Paid Leave Oregon if the employee's residence is in Oregon and are required to pay contributions.

Employees covered by a paid leave program in another state are generally not covered by Paid Leave Oregon and are not required to pay contributions.

Contribution Rate

The contribution rate is set annually by the Oregon Employment Department. It will not exceed one percent of employee wages, up to an amount that is equivalent to the Social Security contributions and base limit as established by the Social Security Administration on an annual basis.

Employers pay into the state benefits trust fund and contribute 0.004 percent of an employee's gross wages.

Employees contribute 0.006 percent of their gross wages through a payroll deduction.

For example, if the contribution rate is 1%, and an employee made $1,000 in wages, the employee would pay $6 and the employer would pay $4 for this paycheck. Employers may choose to pay the employee portion as a benefit for their employees.

Contributions are calculated on an employee's gross wages and taken out of an employee's pay post-tax. They are included in wages subject to Oregon income tax withholding.

Small Employer Exception

Small employers with 25 or fewer employees do not have to pay the employer contribution. However, if a small employer applies for and is approved for a grant, it must pay contributions for at least eight calendar quarters, starting with the first calendar quarter that begins after the date the most recent grant is approved. Grants are for one employee, up to 10 grants per year.

Grants include:

- Up to $3,000 toward the cost of hiring temporary workers to replace employees on leave.
- Up to $1,000 to reimburse for significant additional wage-related costs incurred while an employee is on leave.

Equivalent Plan Exception

If an employer has an Equivalent Plan approved through the Oregon Employment Department, the employer does not need to pay the employer contribution into the state benefit trust fund. However, employers may use employee contributions for equivalent plan administrative expenses or employee equivalent plan benefits. The contributions deducted may not exceed the amount required by the state.

BENEFITS

How Much Do Employee's Receive in Benefit Payments?

Eligible employees will receive a weekly benefit payment. The amount of pay an employee receives while they are on leave is based on their weekly wage compared to Oregon's average weekly wage. Oregon's average weekly wage is the amount calculated as the state average weekly wage and is set for each year beginning on July 1st and ending on June 30th.

If an employee's weekly wage is equal to or less than 65 percent of the state average weekly wage, then the employee will receive the full amount of their weekly wage while they are on leave. However, if an employee's weekly wage is more than 65 percent of the state average weekly wage, then their weekly earnings while on leave are calculated differently. In this case, the employee will receive 65 percent of the state average weekly wage in addition to half of the amount remaining when the 65 percent of the state average weekly wage is subtracted from the employee's weekly wage.

Example

From July 1, 20XX to June 30, 20XX, the state average weekly wage is $ $1,331.40. The employee's weekly wage is $2,000. The weekly wage of $2,000 is compared to 65 percent of the average weekly wage, which is $865.41. Since $2,000 is greater than $865.41, the employee will receive $865.41 plus 50 percent of the difference between $2,000 and $865.41: $567.30. Therefore, the employee would receive approximately $1,432.71 as their weekly benefit while they are on leave.

However, there is a maximum to the weekly amount that an employee may receive while on leave. Employees may not receive more than 120 percent of the state average weekly wage. If an employee made $3,000 per week, for example, their weekly benefit amount would equal $1,912.65 when calculating it using the method for when an employee's average weekly wage is more than 65 percent of the state average weekly wage. Since $1,932.71 is more than 120 percent of the state weekly wage, however, they would instead receive a weekly amount of 120 percent of the state average weekly wage – currently $1,597.68 – while they are on leave.

Taxes

Benefits received from Paid Leave Oregon are generally taxable and must be reported on an employee's personal income tax return. Family and safe leave benefits are fully taxable. Medical leave is taxable based on the ratio of employer contributions to total employer and employee contributions. Employees may indicate on their Paid Leave Oregon leave application that they would like taxes withheld from their weekly benefits. The Unemployment Department will issue a 1099 Form to individuals who receive benefits.

Wage Replacement

An employee is entitled to use part of their paid sick time, vacation leave, or any other paid leave earned by the employee to supplement their paid family and medical leave insurance benefits up to 100% of the employee's average weekly wage. Employers may be more generous and allow employees to use the full amount of their company-provided accrued paid leaves while receiving PLO benefits. An employer, however, may not require an employee to use sick time, vacation or paid leave to supplement Paid Leave Oregon benefits.

Are there Job Protections?

Employers must provide job protection to employees taking paid leave. Employees qualify for job protection once they have been employed for at least 90 consecutive calendar days before taking leave.

Employees must be returned to their former position even if that position is being filled by a replacement worker during the employee's absence. An employee's former position is defined as the position held by the employee at the time their leave began, even if the job has been renamed or reclassified. This includes being returned to the same rate of pay, same shift, and same benefits.

If the employee's position has been eliminated, then there are two different requirements, depending on whether the employer is a large or small employer.

Large Employers

If the employer is a large employer, meaning that they have 25 or more employees, then they must return the employee to a position that is virtually identical to the employee's former position. This means that the benefits, pay, and working conditions must be virtually identical to that of the position the employee held when they began their leave. Additionally, the duties and responsibilities must be substantially the same or similar to their previous position.

If an equivalent position is not available at the worksite of the employee's former position, the employer must offer an equivalent position at a job site within 50 miles of the former job site. If an equivalent position is available at multiple job sites within 50 miles, the employer must offer the position at the site closest to the former job site.

Small Employers

If the employer is a small employer, meaning that they have less than 25 employees, then the employee may be returned to a different position at the employer's discretion and based on business necessity. However, the different position must have the same benefits, pay, and working conditions and must have similar job duties and responsibilities as the former position.

Do We Need to Maintain an Employee's Health Insurance?

An employee's health care insurance must be maintained for the duration of the leave. Employers may require employees to pay the same share of premium costs during the leave that they would have been required to pay if they were not on leave. Employers may not require the employee to pay more than what they would have paid if not on leave.

If an employer pays insurance premiums, including premiums for health, disability, life, or other insurance coverage, that should have been paid by the employee during a period of family leave, the employer may generally deduct the amounts from the employee's pay upon their return. The employer may deduct up to 10 percent of the employee's gross pay each pay period until the amount that should have been paid by the employer is repaid in full.

Are there Notice Requirements?

While employees apply with OED for paid leave, employees are also required to provide notice of leave to their employer. In the case of foreseeable leave, an employer may require an employee to provide written notice at least 30 calendar days prior to beginning the leave. A foreseeable leave may include an expected birth, planned placement of a child, or a scheduled medical treatment for a serious health condition.

If the leave is unforeseen, such as an unexpected serious health condition, a premature birth, or safe leave, then the employee is required to give verbal notice to the employer within 24 hours of beginning the leave, and then provide written notice within three days after the leave begins. Additionally, any other person may provide the verbal notice on behalf of the employee.

Employers may require written notice to include the employee's name, the type of leave, the explanation of the need for leave, and the anticipated timing and duration of leave. Written notice may be provided in a form that is consistent with an employer's policies and must be sent to the proper individual. This may include handwritten or typed notices and electronic communications such as text messages or emails. Employers requiring a written notice are required to outline notice requirements in the employer's written policies and procedures. All eligible employees must receive a copy of the written policies and procedures upon hire and each time the policies and procedures change. Additionally, the written policies and procedures must include a description of the penalties that the Oregon Employment Department may impose if the employee does not follow the notice requirements.

Employers will receive a notice from the department when an employee has applied for leave; this notice will request information on whether the employee has provided notice to the employer in compliance with the employer's written policies and procedures. Employers have 10 days from the date of the notice to respond to the department.

What is the Application Process?

Employees apply for paid leave with the OED, unless the employer has an equivalent plan. Applications may be submitted up to 30 days before beginning paid leave or 30 days after beginning leave. An employee may apply through Frances Online, by paper application, or by phone, and must include information about the employee, the employer, and the leave the employee is requesting. If an employee has more than one employer, their application should include information for all employers, unless the employer has an equivalent plan. This information includes:

- Employee name
- Date of birth
- Social Security Number or Individual Taxpayer Identification Number and documentation verifying the employee's identity
- Contact information
- Business name and dates of employment
- Business contact information
- Average number of days worked per week

- Any current breaks from work or anticipated breaks from work that are not related to paid family leave
- Whether notice was provided to employers
- Employer from which the employee will be taking leave
- Anticipated leave dates
- Whether the leave will be intermittent or a period of time
- The type of leave
- Verification of the reason for leave
- Eligibility for workers' compensation for unemployment benefits

If an employee's employer has an equivalent plan, they must apply for leave in compliance with the employer's equivalent plan procedures. In the case that an employee works for multiple employers with equivalent plans, or an employer covered by the state plan and an employer with an equivalent plan, they must apply separately with all plans.

EQUIVALENT PLANS

Employer Equivalent Plan Overview

An equivalent plan is a private paid family and medical leave insurance plan approved by the Oregon Employment Department which provides equal or greater benefits than the state plan. There are two types of equivalent plans:

1. ***Employer-Administered Equivalent Plan*** – The employer assumes all financial risk associated with the benefits and administration of the equivalent plan, whether the plan is administered by the employer or a third-party administrator.
2. ***Fully Insured Equivalent Plan*** – The employer purchases an insurance policy from an insurance company, and the benefits related to the plan are administered through the insurance policy.

An Equivalent Plan Must

1. **Cover** all Oregon employees who the employer has employed for at least 30 calendar days, including full-time, part-time, temporary, and replacement employees. New employees who were covered by an equivalent plan with their previous employer are immediately covered for paid family leave by the new employer.
2. **Ensure** that employee contributions are not greater than what would be charged under the state plan.
3. **Provide** benefits that are at least equivalent to state plan benefits by:
    a. Allowing leave for family, medical, and safe-leave reasons.
    b. Beginning January 1, 2025: Allowing leave to effectuate the legal process required for the placement of a foster child or the adoption of a child.
    c. Providing up to 12 weeks of paid leave for family, medical, or safe leave, plus two additional weeks for medical conditions related to pregnancy or childbirth and allowing employees to take paid leave one day at a time or consecutively.

d. Note: Employers may choose to be more generous than the state plan benefits. Employees are not eligible for paid leave if they are eligible to receive workers' compensation or unemployment benefits.

Compensation

Compensation for employees on an equivalent plan is the same as Paid Leave Oregon, and it is based on the state's average weekly wage. If the employee's average weekly wage is equal to or less than 65 percent of the state's average weekly wage, they must be paid 100 percent of their average weekly wage while they are on approved paid family leave.

If the employee's average weekly wage is more than 65% of the state's average weekly wage, then they must be paid the 65 percent of the state's average weekly wage plus 50% of the portion of their average weekly wage that is greater than the state's average weekly wage, not to exceed 120 percent of the state's average weekly wage.

Contributions

Employers may withhold contributions from employees or they can make the entire employee contribution themselves without a payroll deduction; contribution rates are set annually by the Oregon Employment Department and may be up to 1% of employee wages. Employees contribute at 60% of the contribution rate and employers contribute 40% of the contribution rate.

Application Process

Employers are required to submit their equivalent plan to the Oregon Employment Department for approval. Plan applications may be submitted through the Frances System.

An employer must submit an equivalent plan application for each separate Business Identification Number (BIN). In addition to basic employer information, such as business name, address, and contact information, the application must include:

- A copy of the employer administered equivalent plan or a copy of the insurance policy or product for a fully insured equivalent plan
- A completed questionnaire stating the plan meets all equivalent plan requirements

Equivalent plan non-refundable application fees are the following:

- For initial equivalent plan applications: $250
- For reapproval or amendments of a plan that contains substantial changes: $250
- For reapproval of a plan that has no changes or unsubstantial changes: $150

Administering an Equivalent Plan

Employee Benefit Claim Notifications

Employees must be notified in writing whether their claim has been approved. Employers may provide a physical notification or, if the employee has opted into electronic communications, an electronic notification.

Notifications must include the amount of leave that has been approved and the weekly amount of pay the employee will receive or, if the claim is denied, the reason for denial, an explanation of the employee's right to appeal, and instructions on how to appeal the decision.

Establishing an Employee Appeal Process

Employers must provide an appeal process to review benefit claim decisions with the following requirements:

- The employee must have at least 20 days from the date of the written denial to request an appeal of the decision with the employer or third-party administrator. More than 20 days may be acceptable if there is good cause for a delay in the request.
- The employee and employer or third-party administrator have 20 days from the date of appeal to resolve the appeal. More than 20 days may be acceptable if there is good cause for a delay in resolution. The employer or administrator must issue a written determination letter to the employee; if the appeal is denied, the determination letter must include an explanation of the Oregon Employment Department's dispute resolution process.
- When an employee appeal is unable to be resolved, the employee may bring the appeal to the Oregon Employment Department for dispute resolution assistance. Employees must submit the request for dispute resolution to the Oregon Employment Department within 20 days of the appeal decision, unless there is good cause for a delay.
- The Oregon Employment Department will review the request and issue a decision within 20 days of the request. If the employer does not comply with the decision, the employee has the right to submit a wage claim to the Oregon Bureau of Labor and Industries.

Paying the Benefits

All reasonable attempts should be made to issue the first payment to an employee whose claim has been approved within two weeks of receiving the claim or the start of the leave, whichever is later.

General Employee Notifications

Employers must provide all employees with a written policy and procedure for their equivalent plan upon hire and each time the plan or procedure changes.

Recordkeeping

The following records must be retained for six years from the effective date of the equivalent plan:

- Oregon Quarterly Tax Reports
- Plan Amendments
- Financial information relating to administrative costs, maintenance, and claim documentation for the plan
- Copies of any written notices given to employees about the plan
- Employee benefit applications and the status of pending, approved, or denied and the reason for the denial
- Dispute and appeal information
- Records including the leave each employee has taken, plus any benefits paid or denied and the reason for the denial

All records must be available to the Oregon Employment Department upon request. The Oregon Employment Department must provide reasonable notice to the employer but may request to review the records at any time.

Proof of Solvency

Employers that self-administer their plans and do not have a third-party administrator must provide the Oregon Employment Department with proof of their ability to financially support the equivalent plan. This proof of solvency may be a bond, proof of assets, or irrevocable letter of credit and must be submitted with the initial application, reapproval, or any substantive amendments.

The proof of solvency must cover the amount, or an estimate of the amount, of contributions due from both employee and employer for three calendar quarters.

The State May Terminate an Equivalent Plan

The Oregon Employment Department may cancel an employer's equivalent plan for reasons including, but not limited to:

- Misuse of employee contributions
- Failure to follow the approved equivalent plan or submit substantive plan changes to the Oregon Employment Department
- Failure to file for plan reapproval
- The inability to provide proof of financial ability to support the plan
- Termination of insurance policy by a third-party administrator
- Failure to respond to the Oregon Employment Department's requests for information

If an employer's plan is terminated, they may not reapply for a new equivalent plan for three years after the plan's termination date.

Employer Withdrawal

Employers may withdraw from an equivalent plan after the plan has been in effect for one year. When withdrawing from a plan, employers need to submit a withdrawal form to the Oregon Employment Department 30 days in advance of the date of withdrawal. The date of withdrawal may be the later date of the following:

- The last day of the calendar quarter following the 30-day notice of withdrawal
- The date the plan has been in effect for one year

All plan requirements must continue to be met until the withdrawal date, and employees that were approved for or were on leave by the last day of the plan must receive or continue to receive payments until the entire claim is paid, the leave ends, or the benefit year ends, whichever is first. Employees must receive 30 days' notice prior to the end date of the plan.

Employers are required to send all required reporting information to the Oregon Employment Department within 30 days of the end of the plan. They must also submit any contributions withheld from employees, except for amounts still due to employees on leave or administrative expenses. Employers must begin to submit employee and employer contributions to the Oregon Employment Department on the first day after the plan withdrawal date.

SMALL EMPLOYERS

Who is Considered a Small Employer?

An employer whose employer size is less than 25 employees is a small employer.

Calculations

An employer's size is determined by the employer's average number of employees for a 12-month period. The monthly employee count used to calculate the average will be based on the number of employees on payroll during the pay period that includes the 12th of the month. The count includes the number of employees in Oregon and the number of out-of-state employees; replacement employees hired to temporarily replace employees out on Paid Leave Oregon are not included.

The employer size is determined annually for each calendar year based on the average number of employees from January to December of the previous year. Employer size may be verified by the Oregon Employment Department at any time through employer audits.

Employee Job Protections

There are no undue hardship exceptions for small employers. Therefore, if an employee is employed for 90 days before taking Paid Leave, they must be returned to their same position, unless it no longer exists and then to an available equivalent position.

If, however, an employer is a small employer and the position no longer exists, the small employer, may, at its discretion, offer another position with similar job duties and the same pay and benefits.

With all employers, health benefits must be maintained, and employees cannot be retaliated or discriminated against. If an employer pays insurance premiums, including premiums for health, disability, life, or other insurance coverage, that should have been paid by the employee during a period of family leave, the employer may generally deduct the amounts from the employee's pay upon their return. The employer may deduct up to 10 percent of the employee's gross pay each pay period until the amount that should have been paid by the employee is repaid in full.

Moreover, employees taking leave may not lose any employment benefits, including seniority or pension rights, accrued before the date on which their leave commenced. However, employers are not required to allow an employee to continue to accrue such benefits during a leave period.

Employer Contributions

All employers, except small employers, must contribute 60 percent of the contribution rate and employees must contribute 40 percent of the contribution rate. Although small employers are exempt from paying the employer portion of the contribution rate, they may choose to do so. Employees must continue to pay the employee portion of the contribution rate.

Grants

Assistance Grants: Small employers who pay the employer portion of contributions are eligible to receive assistance grants to help with the costs of hiring a replacement worker or other significant wage-related costs**.** To receive a grant, small employers must commit to paying employer contributions (40% of the total rate) for at least eight calendar quarters after receiving approval for the most recent grant. They must complete an application and submit documentation that a replacement worker was hired or wage-related costs were incurred. Assistance grants are generally taxable.

Assistance grants are available to small employers who meet the following requirements:

- An employee is on state-approved paid family, medical, or safe leave for seven or more working days
- The employer completes an assistance grant application
- The employer commits to pay employer contributions for eight calendar quarters
- The employer does not have any delinquent reports or contributions or any unpaid penalties or interest under Paid Leave Oregon

Two types of grants are available:

1. A $3,000 grant for a replacement worker who is working in the place of an employee taking paid family leave.

2. A grant of up to $1,000 to help alleviate significant Paid Leave Oregon wage-related costs, such as:

    - Paying additional wages to an existing employee
    - Outsourcing costs
    - Certification
    - Equipment purchases
    - Training costs

Repayment of Grants: Assistance grants must be repaid to the OED if, within three years of receiving the grant, previous wage reports are amended and the employer is no longer considered a small employer at the time of the grant or the grant application contained inaccurate or fraudulent information.

DEFINITIONS

In General

- **Child** – A biological, adopted, step, or foster child of an employee or their spouse or domestic partner; a legal ward of an employee or their spouse or domestic partner; or a person who is or was in a relationship of in loco parentis with an employee or their spouse or domestic partner.
- **Domestic partner** – An individual joined in a registered domestic partnership.
- **Employee count** – The headcount of all of an employer's employees paying Paid Leave Oregon contributions plus all out-of-state employees. Replacement employees hired to replace employees taking paid leave are excluded.
- **Employer size** – The average number of employees for a 12-month period. The monthly employee count used to calculate the average will be based on the number of employees on payroll during the pay period that includes the 12th day of the month.
- **Family member** – An employee's spouse or domestic partner, the child of an employee or the child's spouse or domestic partner, the parent of an employee or employee's spouse or domestic partner, the sibling or stepsibling of an employee or employee's spouse or domestic partner, the grandparent of an employee or employee's spouse or domestic partner, the grandchild of an employee or employee's spouse or domestic partner, or any individual related by blood or affinity whose close association with an employee is equivalent of a family relationship.
- **Large employer** – An employer whose employer size is 25 or more employees.
- **Small employer** – An employer whose employer size is less than 25 employees.
- **Care** – Physical or psychological assistance for a family member with a serious health condition.
- **Parent** – A biological, adoptive, step, or foster parent of an employee or employee's spouse or domestic partner; a legal guardian from when the employee was a minor; or a person with whom a covered individual was or is in a relationship on in loco parentis.
- **Physical assistance** – Assistance attending to a family member's basic medical, activities of daily living, safety, or nutritional needs when that family member is unable to attend to those needs themselves, or transporting the family member to a health care provider when the family member is unable to transport themselves.

- **Psychological assistance** – Providing comfort, reassurance, companionship to a family member, or completing administrative tasks for the family member, or arranging for changes in the family member's care, such as transfer to a nursing home.

Benefits

- **Average weekly wage** – The amount calculated by the department as the state average weekly wage set from July 1 to June 30 every year
- **Benefit year** – A period of 52 consecutive weeks beginning on the Sunday immediately preceding the day that family, medical, or safe leave commences for the employee
- **Work day** – Any day on which an employee performs any work for an employer and is an increment of a workweek. The number of work days in a workweek is based on the average number of work days worked by an employee at all employment. There are a maximum of seven work days in a workweek. If a work day spans two work days, such as a shift beginning on day one at 10 p.m. and ending on the next day at 5 a.m., the work day will count on the calendar day in which the shift began.
- **Workweek** – Seven days beginning on a Sunday at 12:01 a.m. and ending on the following Saturday at midnight. If an employee works a variable or irregular schedule, the number of work days in a workweek is determined by counting the total number of work days worked in the preceding 12 workweeks and dividing the total by 12 and rounding down to the nearest whole number.