



# COMPLIANCE BULLETIN

## HIGHLIGHTS

- Beginning in 2023, eligible employees may take up to 12 weeks of paid family and medical leave per year.
- The paid family and medical leave program will be funded through a mandatory payroll tax on employees and employers with more than 25 workers.

## IMPORTANT DATES

### January 1, 2022

The payroll tax to fund family and medical leave benefits takes effect.

### January 1, 2023

Workers may begin receiving paid leave benefits.

### January 1, 2022

Employers must notify employees of their right to benefits under the law.

Provided By:

Lawley

## Oregon Enacts Paid Family and Medical Leave Law

### OVERVIEW

On Aug. 9, 2019, Oregon Governor Kate Brown signed [HB 2005](#) into law, establishing a statewide paid family and medical leave program, effective in 2023. This new paid family and medical leave program will be funded through a **mandatory payroll tax on employees and employers with more than 25 workers**, beginning in 2022.

Beginning in 2023, eligible employees may take **up to 12 weeks** of protected paid leave per year for certain family and medical reasons. Employees who experience a pregnancy-related serious health condition that results in incapacity will be eligible for **up to 18 weeks** of paid family and medical leave.

Beginning Jan. 1, 2022, employers must provide written notice to employees of their right to benefits under the law.

### ACTION STEPS

Employers in Oregon should keep track of developments related to the new paid family and medical leave program. The law requires the Director of the Oregon Employment Department to adopt regulations to enforce and administer the paid family leave program no later than Sept. 1, 2021.

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## Covered Employers

In Oregon, all private employers with one or more employees must comply with the paid family and medical leave requirements. In addition, state and local government employees are covered.

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

***In Oregon, all private employers with one or more employees must comply with the paid family and medical leave requirements.***

## Eligible Employees

Virtually all employees working in Oregon will be covered individuals who are 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. The “benefit year” is a 12-month period as determined by the Director of the Oregon Employment Department, and will be defined further in future regulations.

## Qualifying Reasons for Paid Family and Medical Leave

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).

For purposes of paid family and medical leave, an employee’s **family member** includes the employee’s:

- ✓ Spouse or domestic partner;
- ✓ Child or the child’s spouse or domestic partner (including a biological child, adopted child, stepchild, foster child or legal ward of the covered individual or of the covered individual’s spouse or domestic partner);

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- ✓ Parent or the parent's spouse or domestic partner (including a biological parent, adoptive parent, stepparent, foster parent, former foster parent, or legal guardian of the covered individual or of the covered individual'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 a covered individual is the equivalent of a family relationship.

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.

**Serious Health Condition:** For purposes of Oregon's paid family and medical leave program, a serious health condition is defined similarly to that under the federal Family and Medical Leave Act (FMLA). In general, it refers to:

- (1) An illness, injury, impairment, or physical or mental condition that requires inpatient care in a hospital, hospice, nursing home or residential medical care facility;
- (2) 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; or
- (3) Any period of disability due to pregnancy or period of absence for prenatal care.

## Duration of Paid Family and Medical Leave

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

<b>Paid Family and Medical Leave</b>	<b>Up to 12 weeks</b>
<b>Paid and Unpaid Family and Medical Leave Combined</b>	<b>Up to 16 weeks</b>
<b>Pregnancy Disability Leave</b>	<b>Two additional weeks (for a total of up to 18 weeks)</b>

## Employee Notification Requirements

An employer may require its employees to provide at least **30 days' notice** of the intent to take leave. The employer may also require its employees to include an explanation of the need for the leave. However, an eligible employee may begin leave without 30 days' advance notice if the leave is not foreseeable (such as an

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unexpected serious health condition, premature birth or unexpected placement for adoption or foster care). In these circumstances, the employee must provide:

- ✓ Oral notice to the employer **within 24 hours** of the start of the leave; and
- ✓ Written notice to the employer **within three days** after the start of leave.

An eligible employee who takes safe leave must give the employer reasonable advance notice of his or her intention to take safe leave, unless giving the advance notice is not feasible.

If an eligible employee fails to give notice as required, the Director of the Oregon Employment Department may reduce the first weekly benefit amount payable to the employee by **up to 25%**.

## Employer Notification Requirements

**Effective Jan. 1, 2022**, employers must provide written notice to employees of their right to benefits under the law. The Director of the Oregon Employment Department is expected to adopt regulations that will provide further information on this notification requirement, as well as make a model notice available for employers to use for this purpose.

## Amount of Family and Medical Leave Benefits

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

- ✓ If the eligible 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 the employee's average weekly wage.
- ✓ If the eligible 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 employee's 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.

## Paid Leave Funding

The paid family and medical leave program is funded by a **mandatory payroll tax on employees and employers with more than 25 workers**, beginning in 2022. The rate will be set by the Director of the Oregon Employment Department in future regulations, but will not exceed 1% of the employee's wages. Employers are required to contribute 40% of the total rate set by the Director, but may deduct the remaining 60% from each employee's wages. However, 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, small employers who elect to pay into the program will be eligible for grants to help cover the cost

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of replacement workers. Regardless of whether small employers elect to contribute, its eligible employees will still be assessed the employee contribution and will be eligible for paid family leave benefits.

## Private Plans

Employers may apply to the Director of the Oregon Employment Department for approval to meet obligations under the law through a private employer-offered benefit plan. An employer's private plan must provide all of the same rights, protections and benefits as provided under the paid family and medical leave law.

## Future Regulations

The law requires the Director of the Oregon Employment Department to adopt regulations to enforce and administer the paid family leave program no later than **Sept. 1, 2021**. These regulations are expected to:

- ✓ Establish an outreach plan for the program to receive input from, and disseminate information to, employers and eligible employees;
- ✓ Establish a process by which employers may apply for approval of an employer-offered benefit plan; and
- ✓ Establish alternatives by which an employer may determine a benefit year period, including on a calendar year and non-calendar year basis.