

OREGON PAID LEAVE

Frequently Asked Questions

GENERAL QUESTIONS

When do payroll deductions begin?

For employers using the State plan, payroll deductions will begin on January 1, 2023.

When do benefits begin?

The first benefits are scheduled to begin paying out September 3, 2023.

How are benefits calculated?

For employees earning equal to or less than 65% of the State's average weekly wage (SAWW), the weekly Oregon Paid Leave benefit will be 100% of the individual's Average Weekly Wage (AWW).

For employees earning more than 65% of the SAWW, the benefit is 65% of the SAWW plus 50% of the employee's average weekly wage above 65% of the SAWW, up to a maximum of 120% of the SAWW.

Once an employee has filed for Paid Leave, their benefit amount is set for the duration of the benefit year.

Note: The State's Average Weekly Wage will be adjusted every July.

What does the State constitute as Wages?

Wages include but are not limited to commission or a guaranteed wage, compensatory pay, dismissal or separation allowances, holiday pay, paid time off, sick pay, stand-by pay, tips or gratuities, corporate officer and shareholder dividends, and vacation pay. Wages also include compensation other than cash including room and board (except for agricultural and domestic employees) as well as fringe benefits such as company vehicles, company paid parking, and dependent care assistance.

It does not include money paid to the employees to reimburse them for meal expenses in the event employees are required to perform work after their regular hours; amounts paid to employees to reimburse them for traveling or other expenses actually incurred by them while performing service for the employer.

Is the employer or the State responsible for calculating the employee's Average Weekly Wage (AWW)?

The Employment Department is responsible for determining the employee's AWW.

What is the maximum Oregon Paid Leave duration?

Oregon Paid Leave provides employees with a maximum of 12 weeks of paid leave per year, however, for serious pregnancy-related health conditions the law provides an additional 2 weeks of paid leave.



GENERAL QUESTIONS

How is the Benefit Year calculated?

The Benefit Year will be based on a rolling 52-weeks beginning the Sunday immediately preceding the date of the approved leave.

Are there any exemptions for certain industries or company sizes?

No, there are no exemptions from the program for employers with at least one employee working in Oregon. However, tribal governments are excluded from the program by default but can participate if they choose.

Does Oregon Paid Leave provide job protection while on leave?

Yes, so long as the employee has worked for the employer for a minimum of 90 days before taking Oregon Paid Leave. Employees can expect to be restored to the position held when they first went out on leave. If the position no longer exists, the employee must be placed in any available equivalent role with equivalent employment benefits, pay, and other terms and conditions of employment.

Employers with less than 25 employees have slightly more flexibility with job protection in that if a job no longer exists, they can place the employee in a different position with similar job duties and the same employment benefits and pay.

Oregon employers can hire temp employees to fill in for those on a covered leave and there is no obligation to continue the temporary replacement worker's employment once the leave period ends.

Note: Oregon Paid Leave says it's unlawful to deny leave or interfere with the right to leave as well as to retaliate or discriminate against an employee for asking about the right to take leave.

How is the size of an employer determined? *Updated 1/13/2023*

Per a temporary rule, which is currently being considered for permanent adoption, employer size for 2023 is determined by the average number of employees for the preceding 12 month period based on the number of employees on payroll for the pay period that includes the 12th of each month. All employees, regardless of where they work and live, are included in the count with the only exception being for temporary workers hired specifically to replace employees out on PFML.

Are there any common ownership rules for Paid Leave Oregon?

No, so long as the entities each have their own Business Identification Number (BIN), they will be considered separate business for purposes of Paid Leave Oregon despite any degree of common ownership.

Are Collective Bargaining Agreements (CBA) effected?

The law does not require the reopening or renegotiation of a CBA entered into, or before, September 29, 2019 (the effective date of the Oregon Paid Family Medical Leave). CBAs that are reopened or renegotiated after September 29, 2019 must conform to the PFML law.



GENERAL QUESTIONS

Can employers require employees to take PTO or other paid time while on ORPFML?

Oregon Paid Leave benefits are in addition to any paid sick time, vacation leave, or other paid leave that an employee receives. Employers cannot require employees to utilize their company-provided paid time alongside the Oregon Paid Leave program or in lieu of it. Employers may allow employees to use their company provided paid leave alongside the Oregon Paid Leave benefits to earn up to 100% of their Average Weekly Wage should the employee choose to do so.

Will the contributions be pre- or post-tax? Updated 1/13/2023

The State has provided [guidance](#), but has noted that they have not heard from the IRS and that any options issued by the IRS at a later date may supersede the State's guidance. The current guidance says that Paid Leave Oregon contributions made by the employee are considered to be made post-tax and are therefore included in wages subject to Oregon tax withholding. Paid Leave Oregon contributions paid by the employee will be reported in box 14 of the W-2.

Any employer-elected payments of the employee's portion of the contribution responsibility are considered taxable wages to the employee.

Paid Leave Oregon contributions are not allowed as an Oregon itemized deduction.

If an employer pays the employee portion, is that taxable income to the employee?

The State does not yet have an answer to this question.

Will employers be required to post notices/posters? Updated 1/13/2023

Yes, employers will need to post notices in frequently trafficked areas of their workplace no later than January 1st 2023. This applies to both employers participating in the State plan as well as those opting out for an Equivalent Plan.

Employers using the State plan can find a copy of the model notice [here](#).

Employers using an Equivalent Plans can ask their broker to contact the carrier to ask for a branded notice or they can complete the State provided model notice template [here](#).

What are the penalties for non-compliance?

Employers who fail to file all of the required reports or pay all of the contributions that are due will be notified by the State on or before June 30th of each year. If, prior to September 1st of that year, an employer has failed to file all required paperwork and contributions, they will face a penalty equal to 1% of wages in the preceding calendar year. Furthermore, corporate officers, LLC members, and partners may face the risk of being held personally liable for amounts due and could face criminal misdemeanor charges. The Employment Department has been further authorized to collect on delinquent accounts through warrants enforceable by the sheriff.

Additionally, employers that willfully make false statements or fail to report a material fact may be assessed a penalty up to \$1,000 per occurrence.



ELIGIBILITY

Who is eligible to be covered by Paid Leave Oregon:

Any employee who has made at least \$1,000 in total wages in either the Regular or Alternate Base Year regardless of whether they are full-time, part-time, seasonal, or temporary.

Self-employed individuals, independent contractors, and tribal government employees are excluded by default but may opt in. Federal government employees are not eligible.

How do the Regular Base Year and Alternate Base Year Determinations Work?

The Regular Base Year is the first four of the last five completed quarters. If the employee is not eligible using that standard, then the State will use the alternate base year which looks at the most recent four completed quarters.

REGULAR BASE YEAR									
Oct	Jan	Apr	Jul		Jan				
Nov	Feb	May	Aug		Feb				
Dec	Mar	Jun	Sep		Mar				
	Jan	Apr	Jul			Apr			
	Feb	May	Aug	Oct		May			
	Mar	Jun	Sep	Nov		Jun			
	Jan	Apr	Jul	Oct	Jan		Jul		
	Feb	May	Aug	Nov	Feb		Aug		
	Mar	Jun	Sep	Dec	Mar		Sep		
	Jan	Apr	Jul	Oct	Jan	Apr		Oct	
	Feb	May	Aug	Nov	Feb	May		Nov	
	Mar	Jun	Sep	Dec	Mar	Jun		Dec	
Previous Year	Last Year				This Year				

Regular Base Year shown by shaded months

ALTERNATING BASE YEAR									
Oct	Jan	Apr	Jul	Oct	Jan				
Nov	Feb	May	Aug	Nov	Feb				
Dec	Mar	Jun	Sep	Dec	Mar				
	Jan	Apr	Jul	Oct	Jan	Apr			
	Feb	May	Aug	Nov	Feb	May			
	Mar	Jun	Sep	Dec	Mar	Jun			
	Jan	Apr	Jul	Oct	Jan	Apr	Jul		
	Feb	May	Aug	Nov	Feb	May	Aug		
	Mar	Jun	Sep	Dec	Mar	Jun	Sep		
	Jan	Apr	Jul	Oct	Jan	Apr	Jul	Oct	
	Feb	May	Aug	Nov	Feb	May	Aug	Nov	
	Mar	Jun	Sep	Dec	Mar	Jun	Sep	Dec	
Previous Year	Last Year				This Year				

Alternate Base Year shown by shaded months

If an employee works remotely, full time, from home in Vancouver, WA for an OR based employer, would they be eligible for Paid Leave?

For employees who perform all or most of their work outside the State of Oregon, their wages would not be subject to Paid Leave. As of now, only wages for work performed either entirely within the State of Oregon are subject to Paid Leave and covered under the program.



TYPES OF LEAVE COVERED

What types of leave are covered under Paid Leave Oregon:

Paid Leave Oregon provides paid time off for three types of leave: Medical Leave, Family Leave and Safe Leave.

What is Safe Leave?

Safe Leave is intended for covered individuals, or their dependents, who are seeking assistance from law enforcement, medical treatment, counseling victim services, or relocating due to issues or injuries resulting from domestic violence, sexual assault, harassment or stalking.

What is a Serious Health Condition?

Serious Health Conditions are defined under ORS 659A.150 and include the following conditions:

- Require hospitalization, hospice, or placement in a residential medical care facility
- Pose imminent danger of death, are terminal in prognosis, or require constant care;
- Disabilities due to pregnancy

Who is considered a Family Member?

Oregon Paid Family Leave employs an incredibly broad definition of family to include:

- The spouse of a covered individual
- A child of a covered individual or the child's spouse or domestic partner;
- A sibling or step-sibling of a covered individual or the sibling's or the step-sibling's spouse or domestic partner;
- A grandparent of a covered individual or the grandparent's spouse or domestic partner;
- A grandchild of a covered individual or the grandchild's spouse or partner;
- The domestic partner of a covered individual; or
- Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship



APPLYING FOR BENEFITS

What information will an employee need to provide in their application for benefits?

Claimants must submit an application that will require, but not limited to, the following information:

1. Name, date of birth, Social Security Number or TIN.
2. Contact information including mailing address and telephone number.
3. Documentation verifying the claimants identity.
4. Information about their current employment including the business name(s) and dates of employment, business address and contact information, average number of work days per week, any current breaks from work or anticipated future breaks from work that are unrelated to PFMLI.
5. Information about the notice given to the employer and the date(s) notice was given.
6. Anticipated leave dates, whether the leave is to be taken in consecutive or nonconsecutive periods, what type of leave the claimant is taking: Family, Medical, or Safe.
7. Verification for the reason for leave, including:
 - a. Family Leave to care for or bond with a child – verification consistent with OAR 471-070-110.
 - b. Family Leave to care for a family member with a serious health condition – verification consistent with OAR 471-070-1120 and an attestation that the claimant has a relationship equal to “family member” under ORS 657B.010 and is caring for a family member with a serious health condition.
 - c. For Medical Leave verification consistent with OAR 471-070-1120.
 - d. For Safe Leave verification consistent with OAR 471-070-1130.
 - e. If the claimant is requesting up to two additional weeks of leave for limitations related to pregnancy, childbirth, or a related medical condition, documentation that the claimant is currently pregnant or was pregnant within the year prior to the state of leave.
8. A written or electronically signed statement declaring under oath that the information provided in support of the application for PFMLI benefits is true and correct to the best of the individual’s knowledge.

A complete application for Paid Leave may be submitted to the department up to 30 calendar days prior to the start of leave and up to 30 days after the start of leave.

Can an employer deny a Paid Leave request?

If the employer is using the State plan then the approval process will be determined by Oregon Employment Department (OED). If the employee is self-administering an Equivalent Plan then the employer would make the determination. However, if the employer is administering the plan they must include a process for appeal and the employee can request dispute resolution from the OED.

What is the expected turnaround time for claims by the state?

The State has stated that they are anticipating making payments within 2 weeks of receiving a claim.



EQUIVALENT PLANS

Are Private Plans permitted?

Yes, employers can apply for approval to offer a private plan that is equal to, or exceeds, the state plan benefits and is extended to all employees who have been employed by the employer for 30 days or more. An approved private plan is effective for one year. Private plans can be fully insured or self-funded.

Do employers who submit a Declaration of Intent still need to set money aside beginning January 1st?

While employers who submit a Declaration of Intent by November 30, 2022 will still be exempt from remitting payment to the State, newly finalized plan rules require employers using a Declaration of Intent hold funds equal to 60% of the State's set rate – meaning 0.6% of covered wages – in a separate account until their Equivalent Plan Application has been approved. That 0.6% can either be deducted from employees pay beginning January 1st, or employers can put money aside into the account on behalf of the employees.

Employers should keep in mind:

1. They are not required to deduct anything from employees, the employers can put aside the employee portion using their own funds on behalf of the employees if they so choose.
2. They are not remitting anything to the State – in other words, they are still avoiding paying premiums – they simply have to put money aside until their Equivalent Plan is approved.
3. They do not have to set aside the employer portion of the premium, just the 0.6% the employee is responsible for – some people have mistakenly stated that the employer needs to set aside 1%, but the new rule says employers are “not required to pay employer contributions or remit the withheld employee contributions”.
4. They do not need to place these funds in a trust – the State has confirmed that the funds just need to be placed in a separate account.
5. Once their Equivalent Plan is approved, the employer can reimburse the money from that account back to themselves or the employees if they did decide to do deductions.

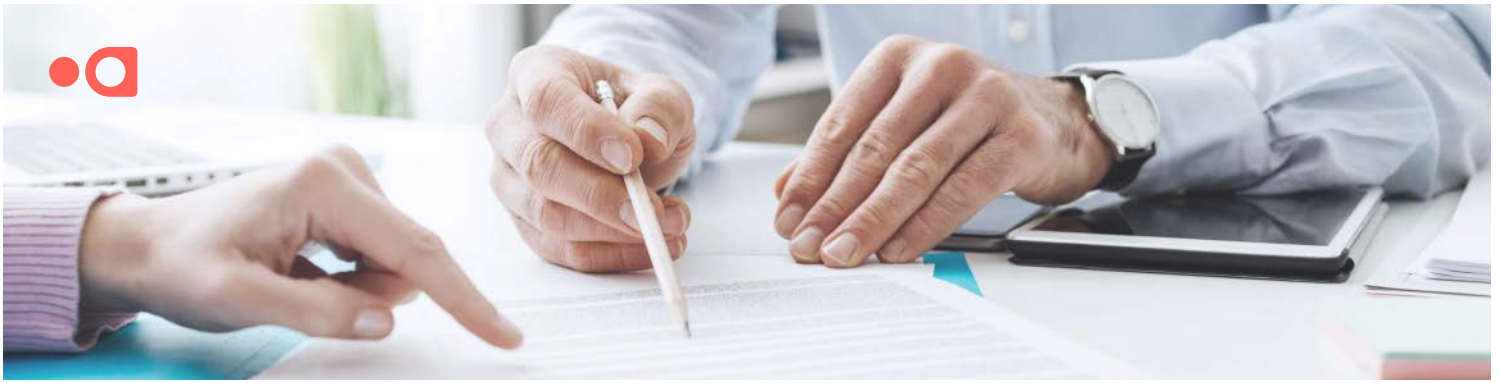
The State has yet to release information on how this will be enforced or what, if any, penalties employers could face for not holding these funds aside while awaiting approval.

In the event that an employer's Equivalent Plan Application is not submitted by May 31, 2023 or their plan is denied, then the employer will be responsible for paying premiums dating back to January 1, 2023 plus any interest and penalties.

If an employer goes with an Equivalent Plan can they go back to the State plan in the future?

Yes, an employer can leave their Equivalent Plan and join the State plan so long as their Equivalent Plan has been in effect for at least one year. If the employer is going to move to the State plan then they will need to provide at least 30 days' notice with the withdrawal taking effect 30 days from the later of the following dates:

- The date the withdrawal form is received by Oregon Employment Department
- The date that the equivalent plan has been in effect for one year
- The effective date of the withdrawal request by the employer
- Employees must be notified of the change at least 30 days prior to the effective date. For additional requirements, visit page 16 and 17 of the [State's Equivalent Plan Guidebook](#).



EQUIVALENT PLANS

What records do employers with Equivalent Plans need to keep?

Employees must keep the following records for a 6-year period from the date the plan becomes effective:

1. Oregon Quarterly Tax reports and other reports as required by OAR 471-070-3030(2)
2. Information and records relating to the Equivalent Plan including:
 - a. Any amendments
 - b. Financial information regarding the employer's administrative cost, maintenance, and claim documentation for the plan
 - c. Copy of any written notice(s) provided to employees about the plan as required in ORS 657B.200(11)(c) and applicable administrative rules
 - d. Employee benefit applications with the current status of pending, approved, or denied along with the reason for denial
 - e. Information regarding any disputes and appeals
 - f. Records regarding reach employee's leave taken and any benefits paid or denied and the reason for the denial under the equivalent plan



EMPLOYEE BENEFITS CONSULTANT

Evan Cole

Evan Cole partners with his clients to advise and assist them with their employee benefit plans, specializing in group and association plans. Prior to joining Aldrich, Evan was a top producing employee benefits representative for one of the nation's largest life, disability, and dental carriers. He holds licenses for life and health in the states of Oregon, Washington, and California. Evan is also an active member of the Oregon Association of Health Underwriters and supporter of the ACE Mentor Program of Oregon.

Evan graduated cum laude from Syracuse University with a Bachelor of Science in marketing and entrepreneurship.

ecole@aldrichadvisors.com | 503-716-9338

About Aldrich Benefits

Aldrich Benefits provides consulting and advising for employee benefit plans. We specialize in providing innovative and custom strategies to protect the financial interests of our clients and the well-being of their employees. Our advisors provide the expertise, resources, and personalized advice to guide organizations through the complexities of employee benefits.

aldrichadvisors.com/benefits