

## Paid Family Medical Leave Insurance (PFMLI)

### **Application**

Employees may submit applications for Paid Leave Oregon (PLO) to the Oregon Employment Department.<sup>1</sup> Applications may be submitted up to 30 days prior to the start of the leave and up to 30 days after the start of the leave.<sup>2</sup> The Department may require verification from the employee.<sup>3</sup> The Department will make all decisions regarding acceptance and denial of an application, including determining the amount of the benefit.<sup>4</sup> The ESD cannot accept, file, process or make decisions on applications.

An employee may appeal an approval or denial of claim, the amount of a weekly benefit or a disqualification from receipt of benefits to the Department in accordance with Oregon Revised Statute (ORS) 657B.010 and Oregon Administrative Rule (OAR) 471-070-2220.

### **Employee Notice to ESD**

If the leave is foreseeable<sup>5</sup>, the employee must provide the ESD with written notice<sup>6</sup> at least 30 calendar days prior to the leave.<sup>7</sup> If the leave is not foreseeable<sup>8</sup> the employee must give oral notice to the ESD within 24 hours of the start of the leave, and must provide written notice within 3 days after the start of leave.<sup>9</sup> The ESD requests as much advanced notice as possible.

The notice must include:

---

<sup>1</sup> For application requirements see ORS 657B.060 and Oregon Administrative Regulation (OAR) 471-070-1100. Applications can be submitted at <https://frances.oregon.gov/>.

<sup>2</sup> Exceptions may be granted when the applicant can demonstrate good cause for late submission.

<sup>3</sup> See verification requirements in OAR 471-070-1110 - OAR 471-070-1130.

<sup>4</sup> The benefit may be less than the employee's salary. See ORS 657B.050.

<sup>5</sup> Examples of foreseeable leave include, but are not limited to, an expected birth, planned placement of a child, or a scheduled medical treatment for a serious health condition of the eligible employee or a family member of the eligible employee. See OAR 471-070-1310(1).

<sup>6</sup> Written notice includes, but it not limited to, handwritten or typed notices, and electronic communication such as text messages and email.

<sup>7</sup> OAR 471-017-1310(56) states "An employer that requires eligible employees to provide a written notice before the eligible employee commences leave, must outline the requirement in the employer's written policy and procedures."

<sup>8</sup> Leave circumstances that are not foreseeable include, but are not limited to, an unexpected serious health condition of the eligible employee or a 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.

<sup>9</sup> An eligible employee who takes safe leave shall give the employer reasonable advance notice of the individual's intention to take safe leave, unless giving the advance notice is not feasible. If other leave also applies (OFLA, FMLA, etc.), notice requirements for those types of leave may also apply.

1. The employee's first and last name;
2. Type of leave;
3. Explanation of the need for leave; and
4. Anticipated timing and duration of leave, including if it is continuous or intermittent.

Notice need only be given one time, but the employee shall notify the ESD as soon as practicable if dates of scheduled leave change, are extended, or were initially unknown. This notice does not need to mention PFMLI or PLO to satisfy the notice requirements.<sup>10</sup> Notice may be provided by another party on behalf of the employee in accordance with state law.

Failure to comply with these notice requirements may result in a penalty imposed by the Department. The Department may reduce the amount of the benefit by 25 percent in accordance with OAR 471-070-1310(9)-(10).

### **Concurrent Use of ESD-Provided Paid Leave**

The ESD allows employees to use all or a portion of employer-provided paid leave in addition to receiving PLO benefits to replace an employee's wages up to 100 percent of the eligible employee's average weekly wage. Example:

An employee applies and is approved for PLO for a personal serious medical condition, which also qualifies for OFLA leave. The Department determines that the rate of pay will be 75 percent of the employee's regular salary. The employee will be allowed to use available ESD-provided paid leave (sick, vacation or otherwise) for days that PLO is received, but is limited to only utilizing an amount that increases the employee paid leave to 100 percent of regular payment. In this example, the amount would be 25 percent. ~~but is limited to only utilizing an amount that increases the employee paid leave to 100 percent of regular payment. In this example, the amount would be 25 percent.~~

Because of the overlap with OFLA leave, the employee will be able to choose how much other paid leave to use (which may result in the employee receiving more than 100 percent of their typical salary).

### **Return to Work**

Upon completion of leave, the employee is entitled to return to the position held in the ESD prior to the leave, if that position still exists and if the employee had been employed in the ESD for 90 days prior to taking leave.<sup>11</sup> If the position no longer exists, the employee is entitled to a position equal to their previous position, with equal benefits, pay and other terms and conditions of employment.

### **Communications Between the ESD and the Department**

---

<sup>10</sup> An ESD requiring written notice must outline the requirements in policy and procedures. A copy of the written policy and procedure must be provided to all eligible employees at the time of hire and each time the policy and procedure changes and in the language that the employer typically uses to communicate with the employee.

<sup>11</sup> If the employee's leave also qualifies for OFLA/FMLA protection, see also Board policy GCBDA/GDBDA - Family Medical Leave \* and its accompanying administrative regulations.

Upon receipt of an application or update in information from an ESD employee for PLO, the Department will notify the ESD. The ESD may provide additional information to the Department within 10 days. This information may include, but is not limited to, information about the employee's notice to the ESD or verification of the employee's continued employment with the ESD. If the ESD does not report such information to the Department, the Department will proceed using available information. The ESD can provide additional information to the Department as it becomes available.

If the Department requests additional information from the ESD, the ESD will respond within 10 calendar days.

Once the Department has issued a decision regarding an application submitted by an employee of the ESD, the Department will notify the ESD regarding the approval or denial and any applicable dates and periods of leave. The ESD cannot appeal a Department decision.

### **ESD Notice to Employees**

At the time of hire and each time the policy or procedure changes, the ESD must provide notice to employees. This notice must be in the language that the employer typically uses to communicate with employees and will include:

1. The right of an eligible employee to claim and receive family and medical leave insurance benefits;
2. The procedure for filing a claim for benefits;
3. That an eligible employee must provide notice to the ESD before the employee commences leave, and a description of the penalties for failure to comply with the notice requirements;
4. The right of an eligible employee to job protection and benefits continuation;
5. The right of an eligible employee to appeal a decision or determination made by the Department director;
6. That discrimination and retaliatory personnel actions against an employee for inquiring about the PFMLI or PLO, program, giving notification of leave under the program, taking leave under the program or claiming PFMLI or PLO benefits are prohibited;
7. The right of an employee to bring a civil action or to file a complaint for violation of ORS 657B.060 or 657B.070; and
8. That any health information related to family leave, medical leave or safe leave provided to the district by an employer by an employee is confidential and may not be released without the permission of the employee unless state or federal law or a court order permits or requires disclosure.<sup>12</sup>

---

<sup>12</sup> Paid Leave Oregon will provide a model notice, <https://paidleave.oregon.gov/DocumentsForms/Paid-Leave-ModelNotice-Poster-EN.pdf>. This policy can also be used as the notice. {See Oregon [Bureau of Labor and Industries opinion letter](#), April 7, 2023. Because most PMFLI leave will also qualify for OFLA leave, OSBA recommends allowing the employee to use employer-provided paid leave for all PMFLI. A decision to not allow employees to use employer-paid leave could apply to situations eligible for PMFLI leave, but not OFLA leave.}

The ESD will display the Department's notice poster in an area that is accessible to and regularly frequented by employees in each building or worksite. The ESD will provide this notice poster to employees working remotely by hand delivery, regular mail or through an electronic delivery method at the time of hire or assignment to remote work.

### **ESD Filings**

The ESD will file the Oregon Quarterly Tax Report, the Oregon Employee Detail Report and any other reports required by law. If the ESD fails to submit required filings or report, or fails to pay all required contributions, the ESD may be penalized in accordance with OAR 471-070-8520.

### **Employee Protections**

No employee or prospective employee will be discriminated or retaliated against for inquiring about PFMLI or PLO, giving notification of leave under PLO, taking PLO leave or claiming PLO benefits. Eligible employees have a right to file a complaint and/or bring a civil action for violations of ORS 657B.060 or ORS 657B.070.

Any health information related to family leave, medical leave or safe leave provided to the ESD by an employee is confidential and may not be released without the permission of the employee unless state or federal law or a court order permits or requires disclosure.

---