

# OREGON'S NEW PAID FAMILY AND MEDICAL LEAVE ACT

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## **U.S. Labor, Employment and Workplace Safety Alert**

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On the final day of the 2019 legislative session, Oregon approved Senate Bill 2005, the Oregon Family and Medical Leave Act (the "Act"). It establishes a statewide paid family and medical leave insurance program to compensate employees who take time away from work to care for and bond with a newborn, foster, or adopted child; to care for a family member or the individual's own serious health condition; or to deal with circumstances related to domestic violence, harassment, sexual assault, or stalking. The Act includes over 60 sections setting out the new law and amending other statutes.

## **WHO IS ELIGIBLE AND HOW MUCH TIME CAN THEY TAKE?**

Similar to unemployment benefits, family and medical leave insurance benefits are available to eligible employees<sup>[1]</sup> who contribute to the Paid Family and Medical Leave Insurance Fund (the "Fund") and submit a claim for benefits to the Employment Department.

An employee may take a total of 16 weeks of leave during the benefit year, as determined by the Employment Department, with up to 12 paid weeks covered under the Act, and the rest unpaid under Oregon's Family Leave Act ("OFLA") for which the employee may be eligible. An eligible employee may also qualify for up to two additional weeks of benefits for limitations related to pregnancy, childbirth, or a related medical condition. Leave taken under the Act must be taken concurrently with any OFLA leave and with leave taken under the federal Family and Medical Leave Act. Notably, the Act also provides that family and medical leave benefits are in addition to paid sick time under Oregon's Sick Leave statute.

## **HOW MUCH DOES AN EMPLOYEE RECEIVE AND WHO PAYS?**

The amount of compensation an eligible employee receives will be based on the state "average weekly wage" as calculated by the Employment Department, and it will also depend on the employee's own average weekly wage as calculated by the Employment Department. For instance, the Act provides that if the eligible employee's average weekly wage is equal to or less than 65 percent of the state average weekly wage, the employee's weekly benefit will be 100 percent of the employee's average weekly wage. If average weekly wage is \$1,000, and the eligible employee's average weekly wage is \$600, the employee may receive weekly benefits of \$600.

Other calculations apply depending on an employee's average weekly wage. The benefits will be paid to eligible employees directly from the Fund administered by the Employment Department.

## **WHO PAYS INTO THE FUND?**

Except for employers with fewer than 25 employees, all employers are required to contribute to the Fund. All employees are required to contribute to the Fund regardless of the number of employees employed by the employer. The employer is required to deduct the employee's portion of the contribution and pay that amount to the Fund. Employers will pay 40 percent of the required contribution, and employees will contribute 60 percent. The combined contributions required from employees and employers (the "total rate") will be determined by the Employment Department but may not exceed 1 percent of an employee's wages, with a cap of \$132,900.

Employers with fewer than 25 employees may, nonetheless, elect to pay the employer's portion of the total rate. An employer may elect to pay the required employee contributions, in whole or in part, as an employer-offered benefit, and employers with fewer than 25 employees who choose to pay the employer portion can apply for grants under the Act. In addition, employers may apply to the Employment Department for approval of an employer-sponsored benefit plan that provides benefits equal to or greater than the Act. If approved, neither the employer nor the employee covered under the employer-sponsored plan will be required to make contributions to the Fund.

## **WHAT IF AN EMPLOYER FAILS TO MAKE THEIR CONTRIBUTION PAYMENTS TO THE FUND?**

The Employment Department will have the power to place liens upon all property, whether real or personal, belonging to either the employer or any individual responsible for making contributions. Responsible individuals include officers of corporations, members of limited liability companies, and partners in limited partnerships. An employer may also be liable for failure to file all required reports, failure to pay all contributions due, or willfully making false statements regarding employee claim eligibility.

## **DOES AN EMPLOYEE HAVE ANY REINSTATEMENT AND CIVIL PROTECTIONS?**

Employees taking leave under the Act will have a right to be restored to their former positions. The Act also makes it an unlawful employment practice to discriminate against an employee who has invoked any provision of the Act, deny or interfere with taking leave, or retaliate against an eligible employee for inquiring about rights or responsibilities under the Act. The Act also requires employers to provide written notice to employees of the duties and rights of an eligible employee under the Act.

## WHEN DOES THE ACT TAKE EFFECT?

The Act takes effect on a rolling basis with full implementation by January 2025. First, the Employment Department must establish the Family and Medical Leave Insurance Program. Employers may begin making contributions no later than January 1, 2022. Some of the administrative contribution, collections, and penalty requirements also take effect on January 1, 2022. Employee eligibility and use of leave under the Act will begin on January 1, 2023. The amendments providing for civil action for violations of the Act take effect on January 1, 2025.

## WHAT SHOULD EMPLOYERS DO?

Although there is some time before employers must comply with the Act, employers should begin to familiarize themselves with the Act's requirements and start looking ahead to plan for necessary changes in company policies, payroll processes to collect contributions, trust accounts for holding contributions, accounting and recordkeeping requirements for paying contributions into the Fund, and business side changes to account for the increased cost related to the employer-required contributions.

Contact K&L Gates for more information on how to effectively plan for and comply with these new developments.

### Notes

[1] The Act defines "eligible employee" as "[a]n employee who has earned at least \$1,000 in wages during the base year; or...during the alternate base year."

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