
LEGAL UPDATE: PFML & Legislative Developments

Rebecca A Watkins

Matthew Baker



Paid Family Medical Leave Insurance (PFMLI)



WWW.paidleave.Oregon.gov



Posting, Notices, Recordkeeping

1. Posting at each worksite (electronic ok for remote workers)
2. Notice provided at hire and with any change
3. Keep records of payroll contributions, hours worked for all employees and leave taken for 4 years



Getting Ready: Notice

- Policy for requesting leave? Employers may require up to 30-day written notice for foreseeable leave, 24-hour oral notice for unforeseeable leave followed by 3-day written follow up
- What can you ask?
 - Type of leave
 - Explanation of need
 - Anticipated timing and length

Get your policy and any forms ready!



Process ... Starting September 3, 2023

- Notify employer
- Apply with OED 30 days before
- OED determines if the reason is qualifying
- OED sends employer notice of claim, triggering 10-day timeline:
 - Report if worker followed your notice policy
 - Report if worker is receiving other benefits or filed a workers' compensation claim
 - Report any other information you want OED to consider.

A failure to report a “material fact” to the OED is unlawful under ORS 657B.120.



Process: Potential Overlaps

- Oregon Sick Leave
- Oregon Family Leave Act (OFLA)*
- Family & Medical Leave Act (FMLA)*
- ADA
- Workers' compensation
- PTO, vacation or other company leaves
- CBA provisions

*PFMLI requires concurrent taking of leave when qualifies under these laws



Coordinating Leave: Pay

- PFMLI cannot be received when employee receives unemployment or workers' compensation benefits.
- Sick time, vacation time or other paid time off can be used to supplement PFMLI payments to bring employee up to 100% of pay, if the statutory formula does not. **Employer chooses if it will offer this opportunity.**



Maintaining Employment During Leave

- For any employee employed 90 days, they have the right to return to their same job after completing leave.
 - If job does not exist, they are entitled to any equivalent position that exists.
 - If employer has less than 25 employees, they can restore to similar position instead.
- Health care benefits must be continued during leave.



Coordinating Leave: Reasons for Leave

YES!

- Serious health conditions
- Caring for others with serious health conditions
- Parental leave (birth or adoption or foster child)
- Domestic violence & crime victim leave

NO!

- One-day absences for illness
- Doctor appointments
- Sick child care
- Bereavement
- Military leave
- Public health emergency



Coordinating Leave: Family Member

- FMLA = spouse, parent, child
- OFLA = FMLA definition + domestic partners and their kids, grandparents, and in-laws
- PFMLI = OFLA definition + siblings, grandchildren, “any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship”



Coordinating Leave: Timing

- While OSL, OFLA, & FMLA require minimum time employed before eligibility, PFMLI focuses only on \$1,000 earned in Oregon in the prior year.
- “Year” for PFMLI = look back year at 52 weeks before the leave commences
- “Workweek” = 7-day period beginning Sunday at 12:01 a.m. and “work day” = calendar day leave begins if work shift encompasses more than one day.

Legislative Update



Workers' Compensation



Firefighter Presumption (HB 4113)

- **Effective Jan. 1, 2023**
- Expands firefighter presumption
 - Same requirements (5 or more years of service, non-volunteer)
 - “Rebuttal” with clear/convincing evidence not materially related
- Bladder and female reproductive cancers added to list of presumed cancers
 - Already covered male reproductive cancers (with age limit)
- Requires MLAC to consider NIOSH study on cancer presumptions



Time-Loss Adjustments (HB 4138)

- **Effective Jan. 1, 2024**
- Increases retroactive authorization from 14 to 45 days
- Requires notice with explanation for cessation of time-loss benefits
- Prevents backdated medically stationary date more than 60 days
- Limits overpayments at closure 50% of PPD and compensation paid within two years
- Carve out for denied condition and attending physician disputes

Watch for rulemaking!



Time-Loss Adjustments (HB 4138)

Retroactive authorization from 14 to 45 days

- Problem: if timeloss payments stopped (missing appointment, light duty offer letter, doctor schedule, etc.) worker often could not figure out the problem, get a new appointment, and get new work release in 14 days creating gap in benefits
- If gap was out of worker's control should allow for chance to correct it
 - Discussed a good cause exception, but not practical



Time-Loss Adjustments (HB 4138)

Attending physician disputes

- Prevents worker from losing out on benefits when cannot establish with Type A provider
- During denied portion of claim, not subject to rules requiring certain types of providers, certain frequency of treatment, treatment in MCO, etc.
 - Consistent with current case law
 - Prevents worker in litigation for years losing out on back due benefits
- Can employer still request updates/verification from attending?



Time-Loss Adjustments (HB 4138)

Prevents backdated medically stationary date more than 60 days

- Claimants do not understand procedural/substantive timeloss, surprised when they have been treating and attending decides claimant was stationary 6 months ago (or agrees with an IME with older date)
- Original proposal was to allow worker to keep post-medically stationary date payments



Time-Loss Adjustments (HB 4138)

Notice with explanation for cessation of time-loss benefits

- Workers (mainly unrepresented) often unclear on process for getting benefits restarted, notice to help explain to the workers
 1. The time period the benefits are for
 2. What needs to be done to continue/restart benefits
- Writing versus email?
- Timing issues?



Time-Loss Adjustments (HB 4138)

Limits overpayments at closure 50% of PPD and compensation paid within two years

- Also getting at overpayment issue, original proposal was to allow the worker to go back 2 years and correct any gaps in timeloss
- If overpayment is more than 50% of PPD, can still keep the overpayment but have to collect later
- Run audits every (other) year!



Assessed Attorney Fees

- **OAR 436-001-0438 (new rule)**
 - ORS 656.383(1) (assessed fees) payable to claimant attorneys after Order on Reconsideration Issues
 - Max fee of \$5,600
 - Matrix for fee – time spent with modifier for additional benefits secured
- No assessed fee for *just* rescinding the closure
 - *Robert L. Stanley, 74 Van Natta 359 (2022)*



Other Changes

SB 1585

- Allows OSHA to share COVID related death so next of kin are notified of potential workers compensation claim

SB 1560

- Changes “alien” to “non-resident”

DCBS

- Changes Ombudsman for Injured Workers to Ombuds Office for Oregon Worker
- Generally removing gender specific terms when updating rules



2023 Legislation

- SB 418 – timeloss for medical appointments
- HB 3412 – physician assistants equal to nurse practitioners
- HB 3467 – first aid report
- HB 3471 – restricts workers compensation settlements
- HB 3541 – extends exclusive remedy to parent/subsidiaries

Legislative Updates



Employment



2023 Legislation

- SB 851 – prohibition of bullying
- SB 591 – OSHA inspections & penalties
- HB 3205 – hiring bonus and equal pay
- HB 3242 – unfair claim settlement practices