

# Enrolled House Bill 2005

Sponsored by Representative WILLIAMSON, Senator TAYLOR, Representatives ALONSO LEON, BONHAM; Representatives BARKER, BYNUM, CLEM, DOHERTY, EVANS, FAHEY, GOMBERG, GORSEK, GREENLICK, HELM, HELT, HERNANDEZ, HOLVEY, KENY-GUYER, MCLAIN, MEEK, MITCHELL, NERON, NOSSE, PILUSO, POWER, PRUSAK, RAYFIELD, REARDON, SALINAS, SANCHEZ, SCHOUTEN, SMITH WARNER, SOLLMAN, WILDE, WILLIAMS, Senators FAGAN, HASS, MANNING JR, MONNES ANDERSON, WAGNER

CHAPTER .....

AN ACT

Relating to family medical leave benefits; creating new provisions; amending ORS 410.619, 657.100, 657.471, 659A.162 and 659A.885; prescribing an effective date; and providing for revenue raising that requires approval by a three-fifths majority.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. Legislative Findings. The Legislative Assembly finds that:**

(1) **Employees experience a variety of caregiving obligations that interfere with work time.**

(2) **It is in the public interest to create a family and medical leave insurance program to provide to employees and certain other individuals compensated time off from work to care for and bond with a child during the first year after the child’s birth or arrival through adoption or foster care, to provide care for a family member who has a serious health condition or to recover from an employee’s or an individual’s own serious health condition.**

**SECTION 2. Definitions. As used in sections 1 to 51 of this 2019 Act:**

(1) **“Alternate base year” means the last four completed calendar quarters preceding the benefit year.**

(2) **“Average weekly wage” means the amount calculated by the Employment Department as the state average weekly covered wage under ORS 657.150 (4)(d) as determined not more than once per year.**

(3) **“Base year” means the first four of the last five completed calendar quarters preceding the benefit year.**

(4) **“Benefits” means family and medical leave insurance benefits.**

(5) **“Benefit year” means the 12-month period as determined by the Director of the Employment Department by rule under section 33 of this 2019 Act.**

(6) **“Child” means:**

(a) **A biological child, adopted child, stepchild or foster child of a covered individual or of the covered individual’s spouse or domestic partner;**

(b) **A person who is or was a legal ward of a covered individual or of the covered individual’s spouse or domestic partner; or**

(c) **A person who is or was in a relationship of in loco parentis with a covered individual or with the covered individual’s spouse or domestic partner.**

(7) "Contribution" or "contributions" means the money payments made by any of the following under section 16 of this 2019 Act:

- (a) An employer;
- (b) An eligible employee;
- (c) A self-employed individual;
- (d) A tribal government; or
- (e) An employee of a tribal government.

(8) "Covered individual" means any one of the following who qualifies to receive family and medical leave insurance benefits:

- (a) An eligible employee;
- (b) A self-employed individual; or
- (c) An employee of a tribal government.

(9) "Domestic partner" means an individual joined in a domestic partnership.

(10) "Domestic partnership" has the meaning given that term in ORS 106.310.

(11) "Eligible employee" means:

- (a)(A) An employee who has earned at least \$1,000 in wages during the base year; or
- (B) If an employee has not earned at least \$1,000 in wages during the base year, an employee who has earned at least \$1,000 in wages during the alternate base year; and
- (b) Who may apply for paid family and medical leave insurance benefits under section 3 of this 2019 Act.

(12) "Eligible employee's average weekly wage" means an amount calculated by the Director of the Employment Department by dividing the total wages earned by an eligible employee during the base year by the number of weeks in the base year.

(13)(a) "Employee" means:

(A) An individual performing services for an employer for remuneration or under any contract of hire, written or oral, express or implied.

(B) A home care worker as defined in ORS 410.600.

(b) "Employee" does not include:

(A) An independent contractor as defined in ORS 670.600.

(B) A participant in a work training program administered under a state or federal assistance program.

(C) A participant in a work-study program that provides students in secondary or postsecondary educational institutions with employment opportunities for financial assistance or vocational training.

(D) A railroad worker exempted under the federal Railroad Unemployment Insurance Act.

(E) A volunteer.

(14)(a) "Employer" means any person that employs one or more employees working anywhere in this state or any agent or employee of such person to whom the duties of the person under sections 1 to 51 of this 2019 Act have been delegated.

(b) "Employer" includes:

(A) A political subdivision of this state or any county, city, district, authority or public corporation, or any instrumentality of a county, city, district, authority or public corporation, organized and existing under law or charter;

(B) An individual;

(C) Any type of organization, corporation, partnership, limited liability company, association, trust, estate, joint stock company or insurance company;

(D) Any successor in interest to an entity described in subparagraph (C) of this paragraph;

(E) A trustee, trustee in bankruptcy or receiver; or

(F) A trustee or legal representative of a deceased person.

(c) "Employer" does not include the federal government or a tribal government.

- (15) “Employment agency” has the meaning given that term in ORS 658.005.
- (16) “Family and medical leave insurance benefits” means the wage replacement benefits that are available to a covered individual under section 7 of this 2019 Act or under the terms of an employer plan approved under section 43 of this 2019 Act, for family leave, medical leave or safe leave.
- (17)(a) “Family leave” means leave from work taken by a covered individual:
- (A) To care for and bond with a child during the first year after the child’s birth or during the first year after the placement of the child through foster care or adoption; or
  - (B) To care for a family member with a serious health condition.
- (b) “Family leave” does not mean:
- (A) Leave described in ORS 659A.159 (1)(d);
  - (B) Leave described in ORS 659A.159 (1)(e); or
  - (C) Leave authorized under ORS 659A.093.
- (18) “Family member” means:
- (a) The spouse of a covered individual;
  - (b) A child of a covered individual or the child’s spouse or domestic partner;
  - (c) A parent of a covered individual or the parent’s spouse or domestic partner;
  - (d) A sibling or stepsibling of a covered individual or the sibling’s or stepsibling’s spouse or domestic partner;
  - (e) A grandparent of a covered individual or the grandparent’s spouse or domestic partner;
  - (f) A grandchild of a covered individual or the grandchild’s spouse or domestic partner;
  - (g) The domestic partner of a covered individual; or
  - (h) Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.
- (19) “Medical leave” means leave from work taken by a covered individual that is made necessary by the individual’s own serious health condition.
- (20) “Parent” means:
- (a) A biological parent, adoptive parent, stepparent or foster parent of a covered individual;
  - (b) A person who was a foster parent of a covered individual when the covered individual was a minor;
  - (c) A person designated as the legal guardian of a covered individual at the time the covered individual was a minor or required a legal guardian;
  - (d) A person with whom a covered individual was or is in a relationship of in loco parentis; or
  - (e) A parent of a covered individual’s spouse or domestic partner who meets a description under paragraphs (a) to (d) of this subsection.
- (21) “Safe leave” means leave taken for any purpose described in 659A.272.
- (22) “Self-employed individual” means:
- (a) An individual who has self-employment income as defined in section 1402(b) of the Internal Revenue Code as amended and in effect on December 31, 2018; or
  - (b) An independent contractor as defined in ORS 670.600.
- (23) “Serious health condition” has the meaning given that term in ORS 659A.150.
- (24) “Third party administrator” means a third party that enters into an agreement with the Director of the Employment Department to implement and administer the paid family and medical leave program established under sections 1 to 51 of this 2019 Act.
- (25) “Tribal government” has the meaning given that term in ORS 181A.680.
- (26) “Wages” has the meaning given that term in ORS 657.105.

## BENEFITS

**SECTION 3. Benefit eligibility.** Family and medical leave insurance benefits are available to any of the following during a period of family leave, medical leave or safe leave:

(1) An eligible employee who:

(a) During the base year or alternate base year, as applicable, contributes to the Paid Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act in accordance with section 16 of this 2019 Act; and

(b) Submits a claim for benefits in accordance with the requirements under section 12 of this 2019 Act;

(2) A self-employed individual who:

(a) Elects coverage under section 41 of this 2019 Act; and

(b) During the base year or alternate base year, as applicable, contributes to the Paid Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act an amount determined by the Director of the Employment Department under section 16 of this 2019 Act; or

(3) An employee of a tribal government, if:

(a) The tribal government elects coverage for its employees under section 41 of this 2019 Act; and

(b) During the base year or alternate base year, as applicable, the employee and tribal government contribute to the Paid Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act an amount determined by the director under section 16 of this 2019 Act.

**SECTION 4. Duration of benefits.** (1) A covered individual may qualify for up to 12 weeks of family and medical leave insurance benefits per benefit year for leave taken for any of the following purposes, in any combination:

(a) Family leave;

(b) Medical leave; or

(c) Safe leave.

(2) Notwithstanding section 5 of this 2019 Act and except as provided under subsection (3) of this section, a covered individual who has taken any amount of paid leave available under subsection (1) of this section may take a total of 16 weeks of leave in the benefit year in any combination of the paid leave available under subsection (1) of this section, not to exceed 12 weeks, and unpaid leave under ORS 659A.159 for which the covered individual is eligible under ORS 659A.156. The leave may be taken for any purpose for which leave is allowable under the respective leave programs.

(3) In addition to the leave available under subsections (1) and (2) of this section, a covered individual may qualify for up to two additional weeks of benefits for limitations related to pregnancy, childbirth or a related medical condition, including but not limited to lactation, for a total amount of leave under this subsection and subsections (1) and (2) of this section, not to exceed 18 weeks per benefit year.

**SECTION 5. Coordination of leave.** Any family leave or medical leave taken under sections 1 to 51 of this 2019 Act must be taken concurrently with any leave taken by an eligible employee under ORS 659A.150 to 659A.186 or under the federal Family and Medical Leave Act of 1993 (P.L. 103-3) for the same purposes.

**SECTION 6. Other benefits; use of paid leave.** (1) Family and medical leave insurance benefits are in addition to any paid sick time under ORS 653.606, vacation leave or other paid leave earned by an employee.

(2) An employer may permit an employee to use paid sick time, vacation leave or any other paid leave earned by the employee in addition to receiving paid family and medical leave insurance benefits to replace an employee's wages up to 100 percent of the eligible employee's average weekly wage during a period of leave taken for family leave, medical leave or safe leave.

(3) In any week in which an employee is eligible to receive workers' compensation or unemployment benefits under ORS chapter 656 or 657, the employee is disqualified from receiving family and medical leave insurance benefits.

**SECTION 7. Amount of benefits.** (1) The Director of the Employment Department shall set the weekly benefit amount of family and medical leave insurance benefits that a covered individual qualifies for as follows:

(a) If the eligible employee's average weekly wage is equal to or less than 65 percent of the average weekly wage, the employee's weekly benefit amount shall be 100 percent of the employee's average weekly wage.

(b) If the eligible employee's average weekly wage is greater than 65 percent of the average weekly wage, the employee's weekly benefit amount is the sum of:

(A) 65 percent of the average weekly wage; and

(B) 50 percent of the employee's average weekly wage that is greater than 65 percent of the average weekly wage.

(2) Notwithstanding subsection (1) of this section, the director shall establish:

(a) A maximum weekly benefit amount of 120 percent of the average weekly wage.

(b) A minimum weekly benefit amount of five percent of the average weekly wage.

(3) The director shall determine, based on the contribution amounts made by a self-employed individual, a tribal government or the employees of a tribal government under section 16 of this 2019 Act, the amount of benefits payable to a self-employed individual or to an employee of a tribal government.

(4) Benefits are payable only to the extent that moneys are available in the Paid Family and Medical Leave Insurance Fund for that purpose. The state, any political subdivision of the state and any state agency are not liable for any amount in excess of this limit.

**SECTION 8. Notice to employees.** (1) An employer shall provide written notice to each employee of the duties and rights of an eligible employee under sections 1 to 51 of this 2019 Act in accordance with rules adopted by the Director of the Employment Department. At a minimum, the notice must advise the employee of the following:

(a) The right of an eligible employee to claim and receive family and medical leave insurance benefits under sections 1 to 51 of this 2019 Act;

(b) The procedure for filing a claim for benefits under section 12 of this 2019 Act;

(c) That an eligible employee must provide notice to an employer before the employee commences leave, as required under section 9 of this 2019 Act, and a description of the penalties for failure to comply with the notice requirements;

(d) The right of an eligible employee to job protection and benefits continuation under section 10 of this 2019 Act;

(e) The right of an eligible employee to appeal a decision or determination made by the director under section 31 of this 2019 Act;

(f) That discrimination and retaliatory personnel actions against an employee for inquiring about the family and medical leave insurance program established under section 33 of this 2019 Act, giving notification of leave under the program, taking leave under the program or claiming family and medical leave insurance benefits are prohibited;

(g) The right of an eligible employee to bring a civil action or to file a complaint for violation of section 10 or 11 of this 2019 Act; and

(h) That any health information related to family leave, medical leave or safe leave provided to 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.

(2) A notice provided to an employee under this section must be in the language the employer typically uses to communicate with the employee.

(3) The director shall make available to employers a model notice that meets the requirements of this section.

**SECTION 9. Notice to employers.** (1) Except as provided in subsection (2) of this section, an employer may require an eligible employee to give the employer written notice at least 30 days before commencing a period of family leave, medical leave or safe leave. The employer may require the employee to include in the notice an explanation of the need for the leave.

(2) An eligible employee may commence leave without 30 days' advance notice if the leave is not foreseeable, as in circumstances including but not limited to:

(a) An unexpected serious health condition of the employee or a family member of the employee;

(b) A premature birth, unexpected adoption or unexpected foster placement by or with the employee; or

(c) Safe leave.

(3)(a) Except as provided in subsection (5) of this section, if an eligible employee commences leave without prior notice under subsection (2) of this section, the employee must give oral notice to the employer within 24 hours of the commencement of the leave and must provide the written notice required under subsection (1) of this section within three days after the commencement of leave.

(b) The oral notice required by this subsection may be given by any other person on behalf of the eligible employee taking leave.

(c) The person named as the eligible employee's emergency contact person, or any other person otherwise designated by the eligible employee, as reflected in the employer's records, may provide the written notice required under subsection (1) of this section.

(4)(a) If an eligible employee fails to give notice as required under subsections (2) and (3) of this section, the Director of the Employment Department may reduce the first weekly benefit amount payable to the employee under section 12 of this 2019 Act by up to 25 percent.

(b) An employer shall notify the director of the employee's failure to provide the required notice, in the manner prescribed by the director by rule.

(5) 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.

**SECTION 10. Employment protection; retaliation prohibited.**

(1)(a) Except as provided in paragraph (b) of this subsection, after returning to work after a period of family leave, medical leave or safe leave, an eligible employee is entitled to be restored to the position of employment held by the employee when the leave commenced, if that position still exists, without regard to whether the employer filled the position with a replacement worker during the period of leave. If the position held by the employee at the time leave commenced no longer exists, the employee is entitled to be restored to any available equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

(b) For employers that employ fewer than 25 employees, if the position held by an eligible employee when the employee's leave commenced no longer exists, an employer may, at the employer's discretion based on business necessity, restore the eligible employee to a different position with similar job duties and with the same employment benefits and pay.

(2) During a period in which an eligible employee takes leave described under subsection (1) of this section, the employer shall maintain any health care benefits the employee had prior to taking such leave for the duration of the leave, as if the employee had continued in employment continuously during the period of leave.

(3) An eligible employee who has taken leave described under subsection (1) of this section does not lose any employment benefits, including seniority or pension rights, accrued before the date on which the leave commenced.

(4) It is an unlawful employment practice to discriminate against an eligible employee who has invoked any provision of sections 1 to 51 of this 2019 Act.

(5) Nothing in this section entitles an eligible employee to accrue employment benefits during a period of leave or to a right, benefit or position of employment other than a right, benefit or position to which the employee would have been entitled had the employee not taken leave.

(6)(a) Nothing in this section requires an employer to retain a temporary worker who was hired to replace an eligible employee taking family leave, medical leave or safe leave after the eligible employee has returned to work.

(b) A civil action may not be brought against an employer for taking any of the following actions necessary to restore an eligible employee to the position of employment held by the employee as required under subsection (1) of this section:

(A) Terminating the employment of a worker who was hired solely to temporarily replace an eligible employee during a period of leave; or

(B) Removing an employee from a position to which the employee was transferred to temporarily replace an eligible employee while the eligible employee was on leave, and returning the employee to the position originally held by the employee prior to the transfer at the salary or rate of pay and benefits associated with the position.

(c) An employer shall, either at the time of hire or before reassignment, inform a temporary worker or an employee who is reassigned to a position to temporarily replace an eligible employee during a period of leave of the information provided under this subsection.

(7) The protections provided under this section apply only to an eligible employee who was employed by the employer for at least 90 days before taking leave described under subsection (1) of this section.

**SECTION 11. Denying leave; discrimination and retaliation prohibited.** (1) It is an unlawful employment practice for an employer to:

(a) Violate section 10 of this 2019 Act.

(b) Deny leave or interfere with any other right to which an eligible employee is entitled under sections 1 to 51 of this 2019 Act.

(c) Retaliate or in any way discriminate against an employee with respect to hire or tenure or any other term or condition of employment because the employee has inquired about the rights or responsibilities under sections 1 to 51 of this 2019 Act.

(2) An employee who alleges a violation of this section may bring a civil action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

## CLAIMS ADMINISTRATION

**SECTION 12. Claim for benefits.** (1) Family and medical leave insurance benefits are not payable to a covered individual unless:

(a) The individual submits a claim to the Director of the Employment Department in the manner determined by the director by rule; and

(b) The director has made a decision to allow or deny the claim under section 13 of this 2019 Act.

(2) If the director has made a decision to allow the claim, the director shall make a reasonable effort to issue the first payment of benefits to a covered individual within two weeks after receiving the claim.

(3)(a) Benefits may be claimed for leave that is taken by a covered individual in increments that are equivalent to one work day or one work week as those terms are defined by the director by rule.

(b) If a covered individual takes leave in increments that are equivalent to one work day, benefits may be claimed for leave that occurs in nonconsecutive periods of leave that, when combined, provide the minimum benefit amount provided in section 7 of this 2019 Act.

(4) Benefit amounts, as determined under section 7 of this 2019 Act:

- (a) Must be prorated to increments that are equivalent to one work day; and
- (b) Must be paid in increments that are equivalent to one work week.

**SECTION 13. Allowing or denying claim; notice of denial; appeal.** (1) The Director of the Employment Department shall promptly examine each claim for family and medical leave insurance benefits and, on the basis of the facts available, make a decision to allow or deny the claim. Information furnished in the claim, as prescribed by the director by rule, must be accompanied by a written or electronically signed statement that such information is true and correct to the best of the individual's knowledge.

(2)(a) The director shall promptly give notice of a decision to allow or deny a claim.

(b) If the claim is denied, the written notice must include a statement of the reasons for denial.

(3) A decision made under this section is final and the benefits must be paid or denied accordingly. A covered individual may request review of the director's decision as provided in section 31 of this 2019 Act.

**SECTION 14. Continuous jurisdiction of director; reconsideration of previous decisions.**

(1) The Director of the Employment Department, upon motion of the director or upon application of a covered individual, may at any time reconsider any final decision under sections 1 to 51 of this 2019 Act. Reconsideration may occur when there is evidence of:

- (a) Errors of computation;
- (b) Clerical errors;
- (c) Misinformation provided to a party by the Employment Department;
- (d) Facts not previously known to the director; or
- (e) Errors caused by misapplication of law by the department.

(2) Reconsideration of a final decision shall be made in accordance with such regulations as the director may prescribe, and may include the making of a new decision which, if made, shall award, deny, terminate, continue, increase or decrease benefits to the extent found necessary and appropriate for the correction of a previous error respecting such benefits. Any new decision made under this subsection shall be subject to review as provided in section 31 of this 2019 Act.

**SECTION 15. Noncompliance and erroneous payments.** (1) An employer may not willfully make or cause to be made false statements or willfully fail to report a material fact regarding the claim of an eligible employee or regarding an employee's eligibility for family and medical leave insurance benefits under sections 1 to 51 of this 2019 Act.

(2) The Director of the Employment Department may assess a civil penalty in an amount not to exceed \$1,000 against an employer for each occurrence that violates subsection (1) of this section.

(3) If the director determines that a covered individual willfully made a false statement or willfully failed to report a material fact in order to obtain benefits under sections 1 to 51 of this 2019 Act, the covered individual is:

- (a) Disqualified from claiming benefits for one year; and
- (b) Liable for a penalty imposed at a rate prescribed by the director of at least 15 percent, but not greater than 30 percent, of the amount of benefits the individual received to which the individual was not entitled.

(4) If the director determines that a covered individual has received benefits to which the individual was not entitled, the director may:

- (a) Seek repayment of benefits from the covered individual in a manner prescribed by the director by rule; and
- (b) Have the amount of the benefits deducted from any future benefits otherwise payable to the individual under section 13 of this 2019 Act.

(5) If benefits are paid because of an error that is not due to provision of a false statement, nondisclosure of a material fact or misrepresentation by a covered individual, the director may waive, in whole or in part, the amount of any such payments for which recovery

under subsection (4) of this section would be against equity, good conscience or administrative efficiency.

(6) A decision of the director under this section does not authorize the recovery of the amount of any benefits paid to a covered individual until the decision is final and the decision specifies:

(a) That the covered individual, by reason of false statement, nondisclosure or misrepresentation, is liable to repay the amount to the Paid Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act;

(b) The nature of the false statement, nondisclosure or misrepresentation;

(c) The week or weeks for which the benefits were paid; and

(d) That any amount subject to recovery and any penalty due under this section may be collected by the director in a civil action against the employer or covered individual brought in the name of the director.

(7) The director shall adopt rules establishing standards and procedures for the repayment of benefits and payment of penalties and interest under this section.

(8) An employer or covered individual may appeal a determination made under this section as provided in section 31 of this 2019 Act.

## CONTRIBUTIONS

**SECTION 16. Contributions.** (1)(a) Except as otherwise provided in subsections (3) and (4) of this section, all employers and eligible employees shall contribute to the Paid Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act.

(b) Contributions shall be paid by employers and employees as a percentage of a total rate determined by the Director of the Employment Department.

(c) The total rate may not exceed one percent of employee wages, up to a maximum of \$132,900 in wages.

(2)(a) Employer contributions shall be paid in an amount that is equal to 40 percent of the total rate determined by the director.

(b) An employer shall deduct employee contributions from the wages of each employee in an amount that is equal to 60 percent of the total rate determined by the director.

(3) When an employment agency is acting as an employer, the employer contributions required under this section shall be the responsibility of the employment agency.

(4)(a) Employers that employ fewer than 25 employees are not required to pay the employer contributions under subsection (1) of this section.

(b) If an employer that employs fewer than 25 employees elects to pay the employer contributions under subsection (1) of this section, the employer may apply to receive a grant under section 42 of this 2019 Act.

(5) Notwithstanding subsection (1) of this section, an employer may elect to pay the required employee contributions, in whole or in part, as an employer-offered benefit.

(6) Subject to section 41 (2) and (3) of this 2019 Act, a self-employed individual who has elected coverage under section 41 (1) of this 2019 Act shall contribute to the fund, at a rate that may not exceed one percent of the individual's taxable income as determined by the director by rule, for a period of not less than three years from the date that the election becomes effective.

(7) A tribal government that elects coverage under section 41 of this 2019 Act and employees of the tribal government shall contribute to the fund in contribution amounts and at a rate that may not exceed one percent of employee wages, up to a maximum of \$132,900 in wages, as determined by the director by rule, for a period of not less than three years from the date that the election becomes effective.

(8) The director shall set rates for the collection of payroll contributions consistent with subsection (1) of this section and in a manner such that:

(a) At the end of the period for which the rates are effective, the balance of moneys in the fund is an amount not less than six months' worth of projected expenditures from the fund for performance of the functions and duties of the director under sections 1 to 51 of this 2019 Act; and

(b) The volatility of the contribution rates is minimized.

(9) For purposes of subsections (1)(c) and (7) of this section, the director shall annually adjust the maximum amount of employee wages by the percentage increase, if any, in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor, since the date of the previous determination made under this subsection.

(10) The director shall determine on an annual basis the amount of payroll contributions, timing of payroll contributions and maximum employee contributions sufficient to finance the costs related to the provisions of sections 1 to 51 of this 2019 Act.

(11) An employer shall hold any moneys collected under this section in trust for the State of Oregon and for the payment thereof to the Department of Revenue in the manner described in subsection (12) of this section.

(12)(a) An employer shall make and file a combined quarterly report of wages earned and contributions paid under this section on a form prescribed by the Department of Revenue.

(b) The report shall be filed with the Department of Revenue on or before the last day of the month following the quarter to which the report relates and shall be deemed received on the date of mailing.

(c) The report shall be accompanied by payment of any contributions due under this section in a manner determined by the Department of Revenue by rule.

(13) Moneys collected under this section shall be deposited in the Paid Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act.

(14)(a) If an employer ceases or discontinues operations or business, or sells out, exchanges or otherwise disposes of the business or stock of goods, any payroll contribution payable under this section is immediately due and payable, and the employer shall, within 10 calendar days, pay the payroll contribution due. Any person who becomes a successor in interest to the business is liable for the full amount of the unpaid payroll contribution.

(b) The director shall adopt rules for compliance with sections 1 to 51 of this 2019 Act with regard to contributions from an employer's successor in interest.

(15) Benefits may not be denied to a covered individual solely because an employer failed to collect or remit the contributions required under this section.

## COLLECTIONS

### SECTION 17. Delinquent contributions and benefit overpayments as liens; foreclosure. (1)

This section applies to:

(a) An employer that fails to remit to the Department of Revenue any amount of contributions due under section 16 of this 2019 Act;

(b) An individual liable to repay any amount of benefits paid under sections 1 to 51 of this 2019 Act to which the individual was not entitled; and

(c) A person liable under section 25 of this 2019 Act for amounts due under sections 1 to 51 of this 2019 Act.

(2) If a judgment or final administrative order is rendered in favor of the Director of the Employment Department for amounts described in subsection (1) of this section, the amounts shall be a lien in favor of the director upon all property, whether real or personal, belonging to the employer, individual or person.

(3) The lien shall be perfected and attach:

(a) To real and personal property located within the county, upon the recording of a warrant, as provided in section 19 of this 2019 Act, with the clerk of the county in which the property is located.

(b) To personal property wherever located within the state, upon:

(A) The recording of a warrant, as provided in section 19 of this 2019 Act, with the clerk of any county; and

(B) The filing of a copy of the warrant with the Secretary of State as provided in section 18 of this 2019 Act.

(4) The lien created by this section may be foreclosed by a suit in the circuit court in the manner provided by law for the foreclosure of other liens on real or personal property.

**SECTION 18. Filing warrant attaching lien with Secretary of State.** (1) Any warrant attaching the lien under section 17 of this 2019 Act may also be filed in the office of the Secretary of State. Filing in the office of the Secretary of State has no effect until a copy of the statement of lien or the warrant has been recorded with the county clerk.

(2) When a copy of the statement of lien or the warrant is filed with the Secretary of State in compliance with subsection (1) of this section, such filing shall have the same effect with respect to personal property as if the copy of the statement of lien or the warrant had been duly recorded with the county clerk in each county of this state.

(3) A copy of the statement of lien or the warrant filed with the Secretary of State shall be filed and indexed by the Secretary of State in the same manner as provided under ORS 79.0501 for the filing and indexing of financing statements.

**SECTION 19. Issuing warrant instead of bringing civil action; sheriff to proceed on warrant.** (1) In any case in which the Director of the Employment Department may bring a civil action for the collection of amounts liable to be repaid under section 17 of this 2019 Act, interest on those amounts or penalties, the director may instead issue a warrant for the amount liable to be repaid with the added interest, penalties, collection charges and the sheriff's costs of executing the warrant. The Employment Department shall mail or deliver a copy of the warrant to the last known address of the employer, individual or person.

(2) At any time after issuing a warrant under this section, the department may record the warrant in the County Clerk Lien Record of any county of this state. Recording of the warrant has the effect described in ORS 205.125.

(3) After recording a warrant under this section, the director may direct the sheriff of the county in which the warrant is recorded to levy upon and sell any real and personal property, and levy upon any currency, belonging to the employer, individual or person and found within that county. The proceeds or currency shall be applied against the amount reflected in the warrant and the sheriff's costs of executing the warrant.

(4) The sheriff shall proceed on the warrant in the same manner prescribed by law for executions issued against property pursuant to a judgment and is entitled to the same fees as provided for executions issued against property pursuant to a judgment. The fees of the sheriff shall be added to and collected as a part of the warrant liability.

(5)(a) The director may direct the warrant to any agent and authorize the agent to collect the amount reflected in the warrant.

(b) In the execution of the warrant the agent has all of the powers conferred by law upon sheriffs but is entitled to no fee or compensation in excess of actual expenses incurred in the execution.

(6) Amounts collected pursuant to this section shall be deposited in the Paid Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act.

**SECTION 20. Release of lien.** (1)(a) The Director of the Employment Department may release, compromise or satisfy any lien provided for in sections 17 and 18 of this 2019 Act by filing a notice of release or satisfaction with the county clerk of the county in which the notice of lien claim was filed.

(b) Upon filing of the notice under this subsection, the property against which the lien is claimed shall be released from the lien.

(2) The director may include in the amount received for the release of the lien any costs incurred by the director in collecting the amounts due.

(3) Amounts collected pursuant to this section shall be deposited in the Paid Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act.

#### LOCALIZATION

**SECTION 21. Where employee's service performed.** An employee's wages shall be used to make determinations under sections 1 to 51 of this 2019 Act if the wages are earned for service:

(1) Performed entirely within this state; or

(2) Performed both within and outside this state, but the service performed outside this state is incidental to the employee's service within the state.

#### PENALTIES

**SECTION 22.** (1) On or before June 30 of each year, the Director of the Employment Department shall send a written notice to each employer that has failed to file all reports as required by the director or to pay all contributions due under section 16 of this 2019 Act, warning the employer about the penalty provided in subsection (2) of this section.

(2) If, prior to September 1 of each year, an employer has failed to file all required reports and pay all contributions due in that year under section 16 of this 2019 Act, the employer shall pay a penalty equal to one percent of the wages of the employer's employees in the preceding calendar year.

(3)(a) On or before October 20 of each year, the director shall assess the penalty provided in subsection (2) of this section and send written notification of the assessment to the employer's last known address.

(b) Notwithstanding paragraph (a) of this subsection, the director may waive the penalty for good cause if the employer has filed the required reports and payments.

(4) On or before November 10 following a penalty assessment under subsection (3) of this section, the employer that is assessed the penalty may submit a written request to the director that the penalty be waived. The request must contain the specific reasons for the failure to file the required reports or payments prior to September 1.

(5)(a) If the request for waiver of the penalty is denied, the director shall send written notification of the denial to the employer at the employer's last known address. The decision denying the request shall become final unless within 20 days from the date on which the notification of the decision is sent to the employer, the employer files a written request for a hearing that states the reasons for the request.

(b) Hearings, decisions and reconsiderations under this section shall be conducted in accordance with rules adopted by the director.

(c) Judicial review of an order assessing a penalty under this section shall be as provided for review of orders in contested cases under ORS chapter 183, except that the petition must be filed within 20 days after the issuance of the order of the director.

(6) The penalty provided in subsection (2) of this section shall be collected in accordance with the provisions of sections 17, 18, 19 and 20 of this 2019 Act, and any amounts collected pursuant to this subsection shall be paid to the Paid Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act.

**SECTION 23.** (1) If, upon satisfactory evidence, the Director of the Employment Department finds it necessary for the protection of the Paid Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act, the director may require any employer

subject to sections 1 to 51 of this 2019 Act, other than the state of Oregon, and every state officer, board, commission, department, institution, branch, agency or political subdivision of this state, to deposit and keep on deposit with the director a sum equal to the contributions due or estimated to be due from the employer for a period of three calendar quarters.

(2)(a) In lieu of a deposit required under subsection (1) of this section, the director may accept a bond or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in a form acceptable to the director to secure payment of contributions to become due to the fund.

(b) The deposit or posting of a bond or letter of credit under paragraph (a) of this subsection shall not relieve the employer of the obligation to make contributions to the fund as provided under section 16 of this 2019 Act.

(c) The director may at any time apply any portion of the deposit, payment on the bond or the proceeds of the letter of credit to the payment of any amounts due from the employer under any provisions of sections 1 to 51 of this 2019 Act.

(3)(a) Except as provided in subsection (4) of this section, any deposit, bond or letter of credit shall be deemed for all purposes to become the sole property of the director and shall be deposited in the fund and held for the sole benefit of the fund.

(b) The deposit, bond or letter of credit shall be prior to all other liens, claims or encumbrances and shall be exempt from any process, attachment, garnishment or execution whatsoever and shall be for the sole benefit of the fund.

(4)(a) If an employer ceases to be an employer subject to sections 1 to 51 of this 2019 Act, such sums as are on deposit in the fund shall first be applied to any amounts due from the employer to the fund under any provisions of sections 1 to 51 of this 2019 Act.

(b) Only upon receipt of all payments due to the fund from an employer described in paragraph (a) of this subsection, the director shall refund to the employer all deposits remaining to the employer's credit in the fund and shall cancel any bond or letter of credit given under this section.

(c) An employer described in paragraph (a) of this subsection shall have no interest in a deposit, bond or letter of credit prior to full compliance with this section and all provisions of sections 1 to 51 of this 2019 Act.

**SECTION 24.** (1) If an employer defaults with respect to any amount of contributions required to be made by the employer to the Paid Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act, the unpaid amount, together with interest and penalties, shall be collected by the Director of the Employment Department in a civil action against the employer brought in the name of the director.

(2)(a) Judgment rendered on a civil action brought under subsection (1) of this section in favor of the director shall bear interest at the rate provided in subsection (3) of this section.

(b) An employer's compliance with the requirements of section 16 of this 2019 Act shall date from the time that contributions were collected from the employer.

(c) The amount of contributions collected from an employer, together with interest and penalties, shall be paid into the fund.

(3)(a) Interest upon any amounts due from an employer shall be paid and collected at the rate of one and one-half percent per month from the date prescribed for the payment to the fund. In computing the interest, a fraction of a month shall be counted as a full month.

(b) Interest shall be paid at the same time contributions are required to be paid by the employer to the fund.

(4) If an employer fails to pay contributions required by section 16 of this 2019 Act at the time prescribed by the director, the employer shall be in default.

(5) If an employer that is in default with respect to payment of contributions fails to make payment within 10 days after written demand has been made by the director, the employer shall be subject to a penalty of 10 percent of the amount of the contributions. A de-

mand for payment shall be deemed to have been made when deposited in the mail addressed to the employer at the employer's last known address of record with the director.

(6) If any part of a deficiency is due to fraud with intent to avoid payment of contributions to the fund, then 50 percent of the total amount of the deficiency, in addition to the deficiency, shall be assessed, collected and paid, in the same manner as if it were a deficiency, and deposited in the fund.

(7) Civil actions brought in the name of the director under this section to collect contributions, interest or penalties from an employer shall be entitled to preference upon the calendar over all civil cases that involve only private parties.

(8)(a) Notwithstanding the provisions of this section, the director may agree to accept from an employer or former employer with a delinquent account any amount the director finds reasonable under the circumstances as consideration in settlement of the full amount of contributions, interest or penalties due if the director finds that:

(A) The total interest collectible on the delinquent account is in excess of 25 percent of the principal;

(B) The employer or former employer no longer conducts an active business and has insufficient net assets to pay the full amount of all contributions, interest or penalties due; and

(C) The employer or former employer can pay some but not all of the delinquent amounts.

(b) Whenever a settlement agreement is made pursuant to paragraph (a) of this subsection, a written record signed by the director shall be maintained in the files of the director. Such records shall set forth:

(A) The name of the employer or former employer against whom the liability was assessed;

(B) The amount of the assessed liability;

(C) The amount of the liability paid;

(D) The amount of the liability canceled or waived; and

(E) A sworn statement of the employer or former employer setting forth the complete financial responsibility of the employer or former employer and containing a full disclosure of all matters bearing upon the ability of the employer or former employer to pay the full amount of the liability assessed.

(9) The director shall file a full and true copy of the record of each settlement agreement with the Secretary of State as a public record.

(10) Any amount agreed to in settlement of the director's claims on behalf of the fund pursuant to subsection (8)(a) of this section shall be first credited to the contributions due from the employer or former employer until the principal amount of contributions due has been satisfied and shall be deposited in the fund.

**SECTION 25.** (1) This section applies to an individual who is one or more of the following:

(a) An officer or employee of a corporation;

(b) A member or employee of a limited liability company; or

(c) A partner in or employee of a limited liability partnership.

(2) In the case of default by an employer subject to section 24 of this 2019 Act, an individual described in subsection (1) of this section who is under a duty to perform the actions required of employers under section 16 of this 2019 Act shall be personally liable for amounts due under section 16 of this 2019 Act. More than one individual may be jointly and severally liable under this section for amounts due.

(3) If the Director of the Employment Department determines that an amount is due under this section, the director shall issue a notice of assessment to the individual liable under this section by mail to the individual's last known address of record with the director.

(4) If the director has reason to believe that the individual liable under this section is insolvent, the director may issue a jeopardy assessment as provided under section 28 (4) of this 2019 Act.

(5) Amounts assessed under this section may be reviewed in the manner provided by section 28 (5) of this 2019 Act.

**SECTION 26.** (1) An employer may not willfully refuse or fail to pay a contribution to the Paid Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act or to furnish any report, audit or information duly required by the Director of the Employment Department under sections 1 to 51 of this 2019 Act.

(2) An employer may not make a deduction from the wages of an employee to pay any portion of the employer contributions due from the employer.

**SECTION 27.** (1) If an employer fails to file a combined quarterly report of wages earned and contributions paid under section 16 of this 2019 Act by the 10th day of the second month following the end of the calendar quarter, the Director of the Employment Department, for the first such failure, shall send to the employer at the employer's last known address a written notice warning the employer that a subsequent failure to file a report could result in the imposition of a late filing penalty.

(2) If an employer, without good cause, fails to file a timely report within the three-year period immediately following a written warning sent pursuant to subsection (1) of this section, the employer may be assessed a late filing penalty in addition to other amounts due.

(3) Except as provided in subsection (4) of this section, a penalty assessed under subsection (2) of this section shall be 0.02 percent of the wages of the employer's employees rounded to the nearest \$100.

(4) A penalty assessed under subsection (2) of this section for an employer who has no employees during the calendar quarter to which a quarterly report relates shall be as follows:

(a) \$10 for the first report filed late within the three-year period immediately following a written notice sent pursuant to subsection (1) of this section.

(b) \$25 for the first report filed late within the three-year period immediately following the assessment of a penalty under subsection (2) of this section.

(c) \$50 for the second report filed late within the three-year period immediately following the assessment of a penalty under subsection (2) of this section.

(d) \$100 for the third or subsequent report filed late within the three-year period immediately following the assessment of a penalty under subsection (2) of this section.

(5)(a) A penalty assessed under this section is final unless, within 20 days after the date the assessment is mailed to the last known address of the employer, the employer requests that the penalty be deleted. The request must be in writing and state the reason why the report was filed late.

(b) If the director determines that the employer had good cause for filing the report late, the penalty shall be deleted. If it is determined there was not good cause for filing the report late, the request for deletion shall be denied.

(6)(a) A determination denying the request for deletion is final unless, within 20 days after the date the determination is mailed to the last known address of the employer, the employer files a request for hearing. The request for hearing must be in writing and state the reasons why the determination should not be affirmed.

(b) Judicial review of the determination of denial shall be as provided for review of orders in contested cases in ORS chapter 183, except that the request for hearing must be filed within 20 days after the issuance of the determination of the director or a designated representative.

**SECTION 28.** (1)(a) If an employer files a report for the purpose of determining the amount of contributions due under section 16 of this 2019 Act but fails to pay contributions or interest, the Director of the Employment Department may assess the amount of contributions or interest due on the basis of the information submitted and shall give written

notice of the assessment to the employer by mail sent to the employer's last known address of record with the director.

(b) Notwithstanding subsection (5) of this section, if the report is subsequently found to be incorrect, additional assessments may be made.

(2) If an employer fails to file a report when required by the director for the purpose of determining the amount of contributions due under section 16 of this 2019 Act, the director may make an estimate based upon any information of the amount of the wages of the employer's employees for the period or periods for which no report was filed and upon the basis of the estimate shall compute and assess the amount of contributions payable by the employer. Written notice of the assessment to the employer shall be mailed to the employer's last known address of record with the director.

(3) If the director is not satisfied with a report made by an employer for the purpose of determining the amount of contributions due under section 16 of this 2019 Act, the director may compute the amount required to be paid upon the basis of facts contained in the report or of any information obtainable and may make an assessment of the amount of the deficiency. Written notice of a deficiency assessment to the employer shall be mailed to the employer's last known address of record with the director.

(4)(a) If the director has reason to believe that an employer or an individual liable under section 25 of this 2019 Act is insolvent, or that the collection of any contributions will be jeopardized by delaying collection, the director may make an immediate assessment of the estimated amount of accrued contributions, noting upon the assessment that it is a jeopardy assessment levied under this subsection, and may proceed to enforce collection immediately.

(b)(A) Interest shall not begin to accrue on contributions collected under paragraph (a) of this subsection until the due date.

(B) Court costs may not be charged against an employer or an individual liable under section 25 of this 2019 Act on any action to enforce collection commenced prior to the due date.

(c) In levying an assessment under paragraph (a) of this subsection, the director may demand a bond or deposit of such security as is necessary to ensure collection of the amount of the assessment.

(d) Written notice of an assessment to an employer or an individual liable under section 25 of this 2019 Act shall be mailed to the employer's or individual's last known address of record with the director.

(5)(a) All assessments provided for in this section shall finally fix the amount of contributions due and payable unless:

(A) The employer or the individual liable under section 25 of this 2019 Act applies to the director for a hearing within 20 days after the mailing of the notice of assessment; or

(B) The director reviews the assessment prior to a decision of the administrative law judge pursuant to a hearing.

(b) An employer or person liable under sections 24 and 25 of this 2019 Act that fails to apply for a hearing upon an assessment within the time provided or, having applied, fails to appear and be heard after due notice of the hearing, is precluded from raising any defense to any action, suit or proceeding brought by the director for the recovery of contributions based upon the assessment that could have been raised in the hearing.

(c) The amount of contributions assessed under this section shall be subject to the penalties and interest provided by sections 24 and 25 of this 2019 Act.

**SECTION 29.** It is unlawful for an employer to willfully make or cause to be made false statements or to willfully fail to report a material fact regarding the claim of an employee of the employer or regarding an employee's eligibility for benefits under sections 1 to 51 of this 2019 Act.

**SECTION 30.** (1) In addition to any penalties otherwise prescribed under sections 1 to 51 of this 2019 Act, violation of any provision of sections 1 to 51 of this 2019 Act is a Class A misdemeanor.

(2) If an offending employer is a corporation, the president, secretary and the treasurer, or officers exercising corresponding functions, are subject to the penalties in this section in respect to any duties of which they respectively had knowledge or in the proper exercise of their duties ought to have had knowledge.

(3) Subject to ORS 153.022, willful violation of sections 1 to 51 of this 2019 Act or of any order issued or rule adopted under sections 1 to 51 of this 2019 Act, the violation of which is made unlawful or the compliance with which is required under sections 1 to 51 of this 2019 Act, and for which a penalty is neither prescribed in this section nor provided by any other applicable statute, is a Class C misdemeanor. Each day the violation continues is considered a separate offense.

## APPEALS

**SECTION 31. Generally.** (1) The Director of the Employment Department shall establish a process by which:

(a) An employer may request a hearing to obtain review of a final decision of the director regarding approval or denial of an employer's application for approval of a plan under section 43 of this 2019 Act.

(b) A covered individual may request a hearing to obtain review of a final decision of the director regarding:

(A) Approval or denial of a claim submitted to the director for payment of family and medical leave insurance benefits;

(B) The weekly benefit amount payable to a covered individual as determined under section 7 of this 2019 Act; or

(C) Disqualification from the receipt of benefits including liability or repayment of benefits as determined under section 15 of this 2019 Act.

(2) Notwithstanding ORS 183.315, the process established by the director under this section shall comply with provisions for a contested case under ORS chapter 183 and is subject to judicial review as provided in ORS 183.482.

**SECTION 32. Appeals of decisions under equivalent employer plan.** The Director of the Employment Department shall establish by rule a method to resolve disputes between employers and employees concerning coverage and benefits provided under a plan approved under section 43 of this 2019 Act.

## ADMINISTRATION

**SECTION 33. Family and medical leave insurance program; administration of program.** (1) The Director of the Employment Department shall establish a family and medical leave insurance program to provide family and medical leave insurance benefits to a covered individual as specified in sections 1 to 51 of this 2019 Act.

(2) Not later than September 1, 2021, the director shall adopt rules that are necessary to establish the program under subsection (1) of this section, including but not limited to rules that:

(a) Establish an outreach plan for the program to receive input from, and disseminate information to, employers and eligible employees.

(b) Establish a process by which employers may apply for approval of an employer-offered benefit plan under section 43 of this 2019 Act.

(c) Establish alternatives by which an employer may determine a benefit year period, including on a calendar year and noncalendar year basis.

(3) The director may enter into interagency agreements to perform the duties and functions necessary to implement and administer sections 1 to 51 of this 2019 Act.

(4) Whenever possible, the director shall use existing employer and public infrastructure to maintain records, conduct outreach and facilitate contributions made to the program.

(5) All agencies of state government, as defined in ORS 174.111, shall, upon request of the director, assist in the performance of the director's duties under sections 1 to 51 of this 2019 Act, including but not limited to outreach, technical assistance and training.

**SECTION 34. Agreements with third party.** (1) The Director of the Employment Department may enter into an agreement with a third party to implement sections 1 to 51 of this 2019 Act and to serve as the administrator of the program established under section 33 of this 2019 Act. The director may enter into such an agreement only on a competitive bid basis.

(2) Every service provided by a third party administrator pursuant to an agreement entered into under this section is subject to the same requirements provided under sections 1 to 51 of this 2019 Act as if the services had been provided by the director.

(3) A third party administrator that enters into an agreement with the director under this section is subject to oversight by the director.

(4) Costs incurred by the director pursuant to an agreement with a third party administrator entered into under this section may not be recovered by an increase in the contribution rate determined by the director under section 16 of this 2019 Act.

**SECTION 35. Counting employees.** (1) Subject to subsection (2) of this section, for purposes of sections 10 and 16 of this 2019 Act, the Director of the Employment Department shall establish by rule a method to determine on an annual basis the number of employees employed by an employer. The method shall require that the determination be based on the average number of employees employed by the employer in the 12-month period immediately preceding the date on which the determination is made.

(2) A replacement worker who is hired to temporarily replace an eligible employee during a period of family leave, medical leave or safe leave shall not be counted as an employee for purposes of determining the number of employees employed by an employer.

**SECTION 36. Advisory committee.** (1) The Director of the Employment Department shall establish an advisory committee to review issues related to the implementation and administration of the family and medical leave insurance program established under section 33 of this 2019 Act and rulemaking related to the program.

(2)(a) The advisory committee shall consist of nine members appointed by the director as follows:

(A) A representative of the Employment Department.

(B) Four members who represent employees.

(C) Four members who represent employers, at least one of whom represents employers that employ fewer than 25 employees.

(b) Members shall serve for a term of two years and may be reappointed. If there is a vacancy for any cause, the director shall make an appointment to become immediately effective for the unexpired term.

(c) The representative of the department shall serve as chairperson of the advisory committee.

(3) The advisory committee shall advise and make recommendations to the director regarding issues related to the program, including but not limited to:

(a) Implementation;

(b) Administration; and

(c) Rulemaking.

(4) Members of the advisory committee are not entitled to compensation but may be reimbursed for actual and necessary travel or other expenses incurred in the performance of

their official duties. The director shall pay the expenses out of funds appropriated to the department under section 59 of this 2019 Act.

(5) All agencies of state government, as defined in ORS 174.111, are directed to assist the advisory committee in the performance of the duties of the advisory committee and, to the extent permitted by laws relating to confidentiality, to furnish information and advice that the members of the advisory committee consider necessary to perform their duties.

**SECTION 37. Records of employers; inspections.** (1) All employers shall maintain payroll records, including account records that document employee contributions and expenses, and employment records that reflect the total hours worked by all employees and the amount of leave taken by employees under sections 1 to 51 of this 2019 Act for the current calendar year and the three prior calendar years.

(2) The Director of the Employment Department may inspect the payroll and employment records of employers for the purpose of administering sections 1 to 51 of this 2019 Act. Employers must provide the director with all pertinent payroll and employment records upon request.

(3) When an employment agency is acting as an employer, the requirements under subsections (1) and (2) of this section shall be the responsibility of the employment agency.

**SECTION 38. Confidentiality.** (1) All information in the records of the Employment Department or a third party administrator pertaining to the administration of sections 1 to 51 of this 2019 Act:

(a) Is confidential and for the exclusive use and information of the Director of the Employment Department in administering sections 1 to 51 of this 2019 Act;

(b) May not be used in any court action or in any proceeding pending in the court unless the director or the State of Oregon is a party to the action or proceeding or unless the action or proceeding concerns the establishment, enforcement or modification of a support obligation and support services are being provided by the Division of Child Support of the Department of Justice or the district attorney pursuant to ORS 25.080; and

(c) Is exempt from disclosure under ORS 192.311 to 192.478.

(2) At the discretion of the director and subject to an interagency agreement, the director may disclose information to a public official in the performance of the public official's official duties administering or enforcing laws within the public official's authority and to an agent or contractor of a public official. The public official shall agree to assume responsibility for misuse of the information by the public official's agent or contractor.

(3) At the discretion of the director, the director may disclose information to a contractor pursuant to a contract for actuarial services. The contractor shall agree to assume responsibility for misuse of the information by the contractor's agent.

(4) At the discretion of the director, the director may disclose information to an employee or officer within any division of the department as necessary to conduct research, compile aggregate data from the information received and any other purpose deemed necessary by the director to assist the director in carrying out the duties under sections 1 to 51 of this 2019 Act or other duties under ORS chapter 657.

**SECTION 39. Paid Family and Medical Leave Insurance Fund.** (1) The Paid Family and Medical Leave Insurance Fund is established in the State Treasury, separate and distinct from the General Fund. The Paid Family and Medical Leave Insurance Fund is declared to be a trust fund.

(2) The fund consists of moneys deposited in the fund from contributions made under section 16 of this 2019 Act and from penalties, fees, revenues and all other amounts deposited in or credited to the fund. Interest earned by the fund shall be credited to the fund.

(3) Moneys in the fund are continuously appropriated to the Director of the Employment Department and may be used solely to carry out the purposes set forth in sections 1 to 51 of this 2019 Act, including the payment of administrative costs and expenses that the director incurs in carrying out the provisions of sections 1 to 51 of this 2019 Act.

**SECTION 40. State agencies to assist with outreach, technical assistance and compliance services.** The Director of the Employment Department may enter into intergovernmental agreements under ORS chapter 190 with the Department of Revenue, the Department of Consumer and Business Services, the Bureau of Labor and Industries and any other agency to provide outreach, technical assistance or compliance services related to sections 1 to 51 of this 2019 Act on behalf of the director.

#### **ELECTIVE COVERAGE**

**SECTION 41.** (1) Except as provided in subsections (2) and (3) of this section, a self-employed individual may elect to be covered under sections 1 to 51 of this 2019 Act for a period of not less than three years. The self-employed individual must file a notice of election in writing with the Director of the Employment Department and contribute to the Paid Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act in the manner prescribed by the director by rule. The election becomes effective on the date the notice is filed. The self-employed individual must agree to supply any information concerning taxable income that the director deems necessary.

(2) Subject to section 16 of this 2019 Act, a self-employed individual who has elected coverage may terminate coverage by filing written notice with the director at such times as the director prescribes by rule, including at the time of a change in the self-employed individual's employment status. The termination may not take effect sooner than 30 days after the notice is filed.

(3) A self-employed individual who has elected coverage may terminate coverage on the date of filing of a voluntary or involuntary bankruptcy petition. The self-employed individual's elective coverage terminates on the date on which the self-employed individual provides to the director documentation to support the self-employed individual's filing of the bankruptcy petition and files written notice with the director. At any time thereafter, the self-employed individual may re-elect coverage under this section.

(4) A tribal government may elect to be covered under sections 1 to 51 of this 2019 Act, or to terminate coverage, in the same manner as provided in subsections (1) to (3) of this section.

(5) The director shall prescribe by rule the method for collecting contributions and erroneous payments of benefits from self-employed individuals, tribal governments and tribal government employees.

#### **EMPLOYER ASSISTANCE**

**SECTION 42. Employer assistance.** (1) Except as provided in subsection (2) of this section, employers that employ fewer than 25 employees and that make the required contributions under section 16 of this 2019 Act may apply to the Employment Department to receive one of the following grants:

(a) If the employer hires a temporary worker to replace an eligible employee who takes family leave, medical leave or safe leave for a period of seven or more days, a grant of up to \$3,000 to apply toward the costs of hiring the worker.

(b) A grant of up to \$1,000 as reimbursement for significant additional wage-related costs incurred during a period in which an eligible employee takes leave described under paragraph (a) of this subsection.

(2) In addition to a grant received under subsection (1)(b) of this section, an employer may receive a grant in the amount of the difference between the grant awarded and \$3,000 if:

(a) After the commencement of a period of family leave, medical leave or safe leave taken by an eligible employee, the employee extends the period of leave beyond the employee's initial expected period of leave; and

(b) The employer hired a temporary worker to replace the eligible employee during the employee's period of leave.

(3) An employer may apply for a grant under subsection (1) of this section not more than 10 times per calendar year and not more than once for each eligible employee who takes leave under section 4 of this 2019 Act.

(4) To be eligible for a grant under this section, an employer shall provide to the Director of the Employment Department written documentation showing that the employer hired a temporary worker or that the wage-related costs incurred are due to an eligible employee's use of family leave, medical leave or safe leave.

(5) The grants awarded under this section shall be funded with moneys in the Paid Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act.

(6) The director shall adopt any rules necessary to implement this section.

### EQUIVALENT PLANS

**SECTION 43. Equivalent plans, generally.** (1)(a) An employer may apply to the Director of the Employment Department for approval of an employer-offered benefit plan that provides family and medical leave insurance benefits to the employer's employees.

(b) An employer that seeks approval of a plan shall submit an application to the director in the form and manner prescribed by the director by rule, accompanied by an application fee not to exceed \$250.

(2) The director shall review and approve an application for a plan if the director finds that:

(a) The plan is made available to all employees who have been continuously employed with an employer for 30 days.

(b) The benefits afforded to employees covered under the plan are equal to or greater than the weekly benefits and the duration of leave that an eligible employee would qualify for under sections 1 to 51 of this 2019 Act.

(3) An employer may make a plan available to employees who have been employed by the employer for less than 30 days but in no event may an employer require an employee to have been employed by the employer for more than 30 days to be eligible for coverage under the plan.

(4) Neither an employer that provides benefits under an approved plan nor an employee covered under such a plan is required to make the contributions under section 16 of this 2019 Act.

(5)(a) An employer may assume all or a part of the costs related to a plan approved under this section.

(b) If an employer assumes only part of the costs, the employer may deduct employee contributions from the wages of employees to finance the costs related to the plan, except that any contribution amounts deducted may not exceed the amount that an eligible employee would otherwise be required to contribute under section 16 of this 2019 Act.

(c) Employee contributions received or retained by an employer under this subsection must be used for plan expenses and are not considered to be a part of an employer's assets for any purpose.

(6) Any paid sick leave earned under ORS 653.606 is in addition to the benefits made available under a plan that has been approved under this section.

(7) An employee who takes leave pursuant to a plan approved under this section shall provide notice to an employer of such leave in the same manner as provided in section 9 of this 2019 Act.

(8) A plan approved under this section shall remain in effect for a period of not less than one year.

(9) Nothing in this section prohibits an employee who is otherwise eligible from applying for coverage under the program established under section 33 of this 2019 Act or under a separate employer-offered plan that has been approved under this section.

(10) The director shall adopt rules:

(a) To prevent the payment of benefits in excess of 100 percent of an eligible employee's average weekly wage to an employee who is simultaneously covered under more than one employer-offered plan or who has additional coverage under the program established under section 33 of this 2019 Act; and

(b) That require that the benefits made available to an eligible employee who is covered under more than one plan shall be prorated under each respective plan.

(11) An employer that offers a plan approved under this section shall:

(a) Be subject to the same requirements provided in sections 10 and 11 of this 2019 Act;

(b) Maintain all reports, information and records relating to the plan, including payroll and account records that document employee contributions and expenses, in the manner established by the director by rule; and

(c) Provide written notice to employees that includes:

(A) Information about benefits available under the approved plan, including the duration of leave;

(B) The process for filing a claim to receive benefits under the plan;

(C) The process for employee deductions used to finance the costs of the plan, if any;

(D) An employee's right to dispute a benefit determination in the manner determined by the director under section 32 of this 2019 Act;

(E) The right to job protection and benefits continuation, if applicable; and

(F) A statement that discrimination and retaliatory personnel actions against an employee for inquiring about the family and medical leave insurance program established under section 33 of this 2019 Act, giving notification of leave under the program, taking leave under the program or claiming family and medical leave insurance benefits are prohibited.

(12) Benefits received under this section are considered wages for purposes of a wage claim under ORS chapter 652.

(13) An employer whose application for plan approval was denied by the director under this section or terminated by the director under section 44 of this 2019 Act may request review of the decision as provided in section 31 of this 2019 Act.

**SECTION 44. Equivalent plans - termination.** (1)(a) At such times as may be established by the Director of the Employment Department by rule, the director shall review the family and medical leave insurance benefits provided under a plan that has been approved under section 43 of this 2019 Act.

(b) Based on the review, the director shall determine whether the approved plan provides benefits that are equal to or greater than the benefits that would be available to eligible employees under the family and medical leave insurance program established under section 33 of this 2019 Act.

(2) If the director determines that the approved plan does not provide benefits in compliance with requirements under section 43 (2) of this 2019 Act, the director shall terminate the plan and the employer shall be required to make employer contributions and deduct employee contributions in accordance with section 16 of this 2019 Act.

**SECTION 45. Equivalent plans - reapproval.** (1) Except as provided in section 46 of this 2019 Act, an employer shall resubmit an application to the Director of the Employment Department for reapproval of a plan that was approved under section 43 of this 2019 Act. An employer shall apply for reapproval once a year for a three-year period following the date on which the director first approved the plan.

(2) Unless an employer has made changes to a plan that were not considered by the director in a previously approved or reapproved application, an employer need not submit an application for reapproval of the plan after expiration of the three-year period described in subsection (1) of this section.

**SECTION 46. Equivalent plans - Withdrawal.** (1) An employer may elect to withdraw from a plan that was approved under section 43 of this 2019 Act in the manner specified by the Director of the Employment Department by rule provided that the plan has been in effect for at least one year.

(2) If an employer elects to withdraw from an approved plan, any deductions made from the wages of an employee that remain in possession of the employer upon the employer's withdrawal of the plan shall be disposed of as determined by the director.

**SECTION 47. Equivalent plans - Gap coverage.** (1) An employee who is a covered individual under the program established under section 33 of this 2019 Act retains such status until the employee qualifies for coverage under a plan approved under section 43 of this 2019 Act.

(2)(a) An employee who has ceased to be covered by a plan approved under section 43 of this 2019 Act, is, if otherwise eligible, automatically qualified to receive family and medical leave insurance benefits under the program established under section 33 of this 2019 Act.

(b) Notwithstanding section 43 (3) of this 2019 Act, an employee who was eligible for benefits under a plan approved under section 43 of this 2019 Act is automatically eligible for benefits under a plan that is offered by a new employer and that has been approved under section 43 of this 2019 Act.

(c) For purposes of this subsection, an employee has ceased to be covered by an approved plan if:

(A) The employee takes family leave, medical leave or safe leave after the employee has separated from employment with an employer that offered a plan approved under section 43 of this 2019 Act;

(B) The employer has withdrawn from the plan as provided under section 46 of this 2019 Act;

(C) The Director of the Employment Department has terminated the plan under section 44 of this 2019 Act; or

(D) The director finds that the employer is insolvent or has discontinued doing business in this state.

**SECTION 48. Equivalent plans - Successors in interest to employers.** (1) Except as provided in subsection (2) of this section, a plan that has been approved under section 43 of this 2019 Act and that is in effect at the time a successor in interest acquires the organization, trade or business, or substantially all assets of the organization, trade or business or a distinct and severable portion of the organization, trade or business, and continues its operation without substantial reduction of personnel resulting from the acquisition, must continue to be offered to eligible employees and the successor in interest may not withdraw the plan without a specific request for withdrawal in a manner prescribed by the Director of the Employment Department by rule.

(2) Within 90 days following the date of an acquisition described in subsection (1) of this section, a successor in interest to an employer may terminate a plan that was approved under section 43 of this 2019 Act and that was in effect on the date of acquisition without a request to withdraw the plan, provided the successor in interest provides notice to the director and all employees of the employer in a manner prescribed by the director by rule.

## COLLECTIVE BARGAINING AGREEMENTS

**SECTION 49. Collective Bargaining Agreements.** Nothing in sections 1 to 51 of this 2019 Act requires the reopening or renegotiation of a collective bargaining agreement entered into before the effective date of this 2019 Act prior to the date on which the agreement expires.

**SECTION 49a. Minimum requirements.** Sections 1 to 51 of this 2019 Act establish minimum requirements pertaining to family leave, medical leave and safe leave and may not be construed to preempt, limit or otherwise diminish the applicability of any employer policy, standard or collective bargaining agreement that provides for greater use of family leave, medical leave or safe leave under state or federal law.

## REPORTS AND REVIEWS

**SECTION 50. Department review of equivalent plans.** Beginning January 1, 2023, and not more than once each year for three consecutive calendar years thereafter, the Director of the Employment Department shall conduct a review of the expenses incurred by the Employment Department in reviewing plans for approval under section 43 of this 2019 Act, including an analysis of adequacy of the application fee determined by the department and administrative expenses related to request for review of determinations regarding approval or denial of applications as provided under section 31 of this 2019 Act.

**SECTION 51. Reports.** (1)(a) The Director of the Employment Department shall submit to the interim committees of the Legislative Assembly related to workforce or business and labor, in the manner provided in ORS 192.245, reports summarizing the Employment Department's progress toward implementing the family and medical leave insurance program described in sections 1 to 51 of this 2019 Act.

(b) The director shall submit the first report not later than February 15, 2020, and a second report not later than September 1, 2021.

(2) Beginning on July 1, 2023, and once during each of the following three consecutive biennia, the director shall, to the extent that the director has acquired the information, submit to the interim committees of the Legislative Assembly related to workforce or business and labor, in the manner provided in ORS 192.245, a report that includes:

(a) The total number of claims submitted under section 12 of this 2019 Act.

(b) The number of claims allowed under section 13 of this 2019 Act and the number of claims denied under section 13 of this 2019 Act.

(c) The total amount of benefits paid out of the Paid Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act.

(d) Data regarding the use of moneys in the fund, the solvency of the fund and the balance of the fund.

(e) The amount of contributions collected under section 16 of this 2019 Act.

(f) The number of applications for plan approval submitted under section 43 of this 2019 Act, including the number of plans approved and the costs the department incurred in reviewing such applications.

(g) The number of applications received by the department for employer assistance and the total amounts awarded in grants under section 42 of this 2019 Act.

(h) The director shall include in the reports described in this subsection any recommendations made by the advisory committee under section 36 of this 2019 Act.

**SECTION 52.** ORS 410.619 is amended to read:

410.619. (1) A home care worker who is not otherwise employed by the Home Care Commission, the Department of Human Services, the Oregon Health Authority, an area agency or a support services brokerage shall not be deemed to be an employee of the state, whether or not the state selects the home care worker for employment or exercises any direction or control over the home care worker, for the purpose of the state's liability for the home care worker's actions.

(2) The state shall be deemed an employer of home care workers for the purposes of:

(a) ORS 410.605, 410.606, 410.612 and 410.614 and sections 1 to 51 of this 2019 Act; and

(b) ORS chapter 657, except as provided in ORS 657.730 (4).

**SECTION 53.** ORS 410.619, as amended by section 17, chapter 75, Oregon Laws 2018, is amended to read:

410.619. (1) A home care worker or personal support worker who is not otherwise employed by the Home Care Commission, the Department of Human Services, the Oregon Health Authority, an area agency or a support services brokerage shall not be deemed to be an employee of the state, whether or not the state selects the home care worker or personal support worker for employment or exercises any direction or control over the home care worker or personal support worker, for the purpose of the state's liability for the actions of the home care worker or personal support worker.

(2) The state shall be deemed an employer of home care workers or personal support workers for the purposes of:

(a) ORS 410.605, 410.606, 410.612 and 410.614 **and sections 1 to 51 of this 2019 Act**; and

(b) ORS chapter 657, except as provided in ORS 657.730 (4).

**SECTION 54.** ORS 657.100 is amended to read:

657.100. (1) An individual is deemed "unemployed" in any week during which the individual performs no services and with respect to which no remuneration for services performed is paid or payable to the individual, or in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual's weekly benefit amount.

(2) For the purposes of ORS 657.155 (1), an individual who performs full-time services in any week for an employing unit is not unemployed even though remuneration is neither paid nor payable to the individual for the services performed; however, nothing in this subsection shall prevent an individual from meeting the definition of "unemployed" as used in this section solely by reason of the individual's performance of volunteer services without remuneration for a charitable institution or a governmental entity.

**(3) An individual may not be deemed "unemployed" under this section for any week in which the individual is receiving family and medical leave insurance benefits under sections 1 to 51 of this 2019 Act.**

[3] (4) The Director of the Employment Department shall prescribe rules as the director deems necessary with respect to the various types of unemployment.

**SECTION 55.** ORS 657.471 is amended to read:

657.471. (1) Except as otherwise provided in this section, benefits paid to an eligible individual shall be charged to each of the individual's employers during the base year in the same proportion that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that year.

(2) The account of an employer, other than a political subdivision electing to pay taxes under ORS 657.509, may not be charged with benefits paid an unemployed individual in excess of one-third of the base year wages paid that individual while in the employ of the employer.

(3) Benefits paid to an individual for unemployment immediately after the expiration of a period of disqualification for having left the employment of an employer voluntarily without good cause may not be charged to the employer.

(4) Benefits paid to an individual for unemployment immediately after the expiration of a period of disqualification for having been discharged by an employer for misconduct may not be charged to the employer.

(5) Benefits paid without any disqualification to an individual may not be charged to an employer of the individual for the immediate period of unemployment if:

(a) The individual left the employment of the employer voluntarily for good cause not attributable to the employer; or

(b) The employer discharged the individual because the individual was unable to satisfy a job prerequisite required by law or administrative rule.

(6) If it is determined under the provisions of subsection (3), (4) or (5) of this section that benefits paid to an individual may not be charged to an employer, the employer's account may not be

charged for any benefits paid for any subsequent period or periods of unemployment during the individual's affected benefit year or during any benefit year beginning within 52 weeks subsequent to the affected benefit year.

(7)(a) A base-year employer that is not otherwise eligible for relief of charges for benefits under this section and that receives notification of an initial valid determination of a claim may request relief of charges if the claim is made by an individual who:

(A) Left the employment of the employer voluntarily and not for reasons attributable to the employer;

(B) Was disqualified for the individual's most recent separation from the employer by a determination of the Director of the Employment Department that the individual has been discharged for misconduct connected with the employment for the employer; or

(C) Was discharged for reasons that would be disqualifying under ORS 657.176 (2)(a), (b), (f), (g) or (h).

(b)(A) A request under paragraph (a)(A) of this subsection:

(i) Must advise the director in writing of the date on which the individual left employment, state that the individual left voluntarily and not for reasons attributable to the employer and give the reason for which the individual left employment.

(ii) May not be granted if the individual was reemployed by the employer prior to the filing of the initial valid claim.

(B) A request under paragraph (a)(C) of this subsection must specify the date of the discharge and the reasons why the employer believes the discharge was for reasons that would be disqualifying under ORS 657.176 (2)(a), (b), (f), (g) or (h).

(c) A request for relief under this subsection must be sent to the department within 30 days after the date on which the notice provided for under ORS 657.266 is mailed or delivered to the employer.

(d) Upon receipt of the request from the employer, the director shall review the information provided by the employer and determine whether the employer is entitled to relief of charges for benefits paid to the individual during the benefit year. If the director determines that the employer is entitled to relief of charges, the director shall grant the relief.

(e)(A) The determination of the director under paragraph (a)(A) and (C) of this subsection is final in all cases unless an application for hearing is filed within 20 days after delivery of the determination, or, if mailed, within 20 days after the determination was mailed to the employer's last-known address.

(B) When a request for hearing has been timely filed, an administrative law judge shall be assigned to conduct a hearing.

(C) After the administrative law judge has afforded all parties an opportunity for a fair hearing, the administrative law judge shall affirm or reverse the determination and promptly notify all parties entitled to notice of the decision and the reasons for the decision.

(D) Decisions of the administrative law judge under this subsection are final and may be judicially reviewed as provided in ORS 657.684 to the extent applicable.

(8)(a) If the director finds that an employer or the employer's agent, in submitting facts under subsection (7) of this section, willfully makes a false statement or representation or willfully fails to report a material fact concerning the termination of an individual's employment, the director shall make a determination charging the employer's reserve account not less than two nor more than 10 times the weekly benefit amount of the claimant or claimants.

(b) The director shall give notice to the employer of the determination under this subsection and the determination of the director is final unless an application for hearing is filed in the manner provided for in subsection (7)(e) of this section.

(9) Benefits paid to an individual may not be charged to a base-year employer if:

(a) The employer furnished part-time work to the individual during the base year;

(b) The individual has become eligible for benefits because of loss of employment with one or more other employers;

(c) The employer has continued to furnish part-time work to the individual in substantially the same amount as during the individual's base year; and

(d) The employer requests relief of charges within 30 days of the date the notice provided for in ORS 657.266 is mailed or delivered to the employer.

**(10) Benefits paid to an individual for unemployment due to the return of a covered individual, as defined in section 2 of this 2019 Act, who was temporarily replaced by the individual for a period of family leave, medical leave or safe leave under sections 1 to 51 of this 2019 Act may not be charged to the employer of the covered individual.**

~~[(10)]~~ **(11)** Notwithstanding any other provision of this section, benefits paid to an individual shall be charged to an employer's account if:

(a) The employer or the employer's agent fails to respond timely or adequately to a request from the Employment Department for information relating to the claim for benefits;

(b) The failure to respond causes an overpayment of benefits to the claimant; and

(c) The employer or the employer's agent has a pattern of failing to respond timely or adequately to requests from the department for information relating to claims for benefits.

**SECTION 56.** ORS 659A.162 is amended to read:

659A.162. (1) Except as specifically provided by ORS 659A.150 to 659A.186 **and section 4 of this 2019 Act**, an eligible employee is entitled to up to a total of 12 weeks of family leave within any one-year period.

(2)(a) Except as provided by paragraph (b) of this subsection, an eligible employee is entitled to a total of two weeks of family leave for the purposes described in ORS 659A.159 (1)(e).

(b) An eligible employee is entitled to the period of leave described in paragraph (a) of this subsection upon the death of each family member of the employee within any one-year period, except that leave taken as provided by this subsection may not exceed the total period of family leave authorized by subsection (1) of this section.

(c) A covered employer may not require an eligible employee to take multiple periods of leave described in ORS 659A.159 (1)(e) concurrently if more than one family member of the employee dies during the one-year period.

(d) All leave taken for the purposes described in ORS 659A.159 (1)(e) shall be counted toward the total period of family leave authorized by subsection (1) of this section.

(3)(a) In addition to the 12 weeks of family leave authorized by subsection (1) of this section, a female eligible employee may take a total of 12 weeks of leave within any one-year period for an illness, injury or condition related to pregnancy or childbirth that disables the eligible employee from performing any available job duties offered by the covered employer.

(b) An eligible employee who takes 12 weeks of family leave within a one-year period for the purpose specified in ORS 659A.159 (1)(a) may take up to an additional 12 weeks of leave within the one-year period for the purpose specified in ORS 659A.159 (1)(d).

(4) When two or more family members work for the same covered employer, the eligible employees may not take concurrent family leave unless:

(a) One employee needs to care for another employee who is a family member and who is suffering from a serious health condition;

(b) One employee needs to care for a child who has a serious health condition while another employee who is a family member is also suffering from a serious health condition; or

(c) The employees are taking leave described in ORS 659A.159 (1)(e).

(5) An eligible employee may take family leave for the purpose specified in ORS 659A.159 (1)(a) in two or more nonconsecutive periods of leave only with the approval of the employer.

(6) Leave need not be provided to an eligible employee by a covered employer for the purpose specified in ORS 659A.159 (1)(d) if another family member is available to care for the child.

(7) A covered employer may not reduce the amount of family leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury.

(8)(a) The Commissioner of the Bureau of Labor and Industries shall adopt rules governing when family leave for a serious health condition of an eligible employee or a family member of the eligible employee may be taken intermittently or by working a reduced workweek. Rules adopted by the commissioner under this paragraph shall allow taking of family leave on an intermittent basis or by use of a reduced workweek to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis or by use of a reduced workweek does not result in the loss of an eligible employee's exempt status under the federal Fair Labor Standards Act.

(b) The commissioner shall adopt rules governing when family leave for the purposes described in ORS 659A.159 (1)(e) may be taken to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis does not result in the loss of an eligible employee's exempt status under the federal Fair Labor Standards Act.

**SECTION 57.** ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, is amended to read:

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and any other equitable relief that may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

(a) The judge shall determine the facts in an action under this subsection; and

(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of:

(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355 or 659A.421 **or sections 10 and 11 of this 2019 Act;** or

(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.355 or 659A.421 **or sections 10 and 11 of this 2019 Act:**

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater, and punitive damages;

(b) At the request of any party, the action shall be tried to a jury;

(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and

(d) Any attorney fee agreement shall be subject to approval by the court.

(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a violation of ORS 652.220, the court may award punitive damages if:

(a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted with malice or acted with willful and wanton misconduct; or

(b) An employer was previously adjudicated in a proceeding under this section or under ORS 659A.850 for a violation of ORS 652.220.

(5) In any action under subsection (1) of this section alleging a violation of ORS 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater.

(6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$250, whichever is greater.

(7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section, a civil penalty in the amount of \$720.

(8) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory and punitive damages;

(b) The operator or manager of the place of public accommodation, the employee or person acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all damages awarded in the action;

(c) At the request of any party, the action shall be tried to a jury;

(d) The court shall award reasonable attorney fees to a prevailing plaintiff;

(e) The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails only if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court; and

(f) Upon any appeal of a judgment under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1).

(9) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved persons in the same manner as a person or group of persons may file a civil action under this section. In a civil action filed under this subsection, the court may assess against the respondent, in addition to the relief authorized under subsections (1) and (3) of this section, a civil penalty:

(a) In an amount not exceeding \$50,000 for a first violation; and

(b) In an amount not exceeding \$100,000 for any subsequent violation.

(10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to the commissioner if the commissioner prevails in the action. The court may award reasonable attorney fees and expert witness fees incurred by a defendant that prevails in the action if the court determines that the commissioner had no objectively reasonable basis for asserting the claim or for appealing an adverse decision of the trial court.

(11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law:

(a) "Aggrieved person" includes a person who believes that the person:

(A) Has been injured by an unlawful practice or discriminatory housing practice; or

(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(b) An aggrieved person in regard to issues to be determined in an action may intervene as of right in the action. The Attorney General may intervene in the action if the Attorney General certifies that the case is of general public importance. The court may allow an intervenor prevailing party costs and reasonable attorney fees at trial and on appeal.

**SECTION 58.** ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017, and section 13, chapter 691, Oregon Laws 2017, is amended to read:

659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and any other equitable relief that may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

(a) The judge shall determine the facts in an action under this subsection; and

(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of:

(a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020, 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421 **or sections 10 and 11 of this 2019 Act;** or

(b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421 **or sections 10 and 11 of this 2019 Act:**

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater, and punitive damages;

(b) At the request of any party, the action shall be tried to a jury;

(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and

(d) Any attorney fee agreement shall be subject to approval by the court.

(4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a violation of ORS 652.220, the court may award punitive damages if:

(a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted with malice or acted with willful and wanton misconduct; or

(b) An employer was previously adjudicated in a proceeding under this section or under ORS 659A.850 for a violation of ORS 652.220.

(5) In any action under subsection (1) of this section alleging a violation of ORS 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater.

(6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$250, whichever is greater.

(7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092, the court may award, in addition to the relief authorized under subsection (1) of this section, a civil penalty in the amount of \$720.

(8) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any employee or person acting on behalf of the place or by any person aiding or abetting the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of the place, the employee or person acting on behalf of the place or the aider or abettor of the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory and punitive damages;

(b) The operator or manager of the place of public accommodation, the employee or person acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all damages awarded in the action;

(c) At the request of any party, the action shall be tried to a jury;

(d) The court shall award reasonable attorney fees to a prevailing plaintiff;

(e) The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails only if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court; and

(f) Upon any appeal of a judgment under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1).

(9) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved persons in the same manner as a person or group of persons may file a civil action under this section. In a civil action filed under this subsection, the court may assess against the respondent, in addition to the relief authorized under subsections (1) and (3) of this section, a civil penalty:

(a) In an amount not exceeding \$50,000 for a first violation; and

(b) In an amount not exceeding \$100,000 for any subsequent violation.

(10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to the commissioner if the commissioner prevails in the action. The court may award reasonable attorney fees and expert witness fees incurred by a defendant that prevails in the action if the court determines that the commissioner had no objectively reasonable basis for asserting the claim or for appealing an adverse decision of the trial court.

(11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law:

(a) "Aggrieved person" includes a person who believes that the person:

(A) Has been injured by an unlawful practice or discriminatory housing practice; or

(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(b) An aggrieved person in regard to issues to be determined in an action may intervene as of right in the action. The Attorney General may intervene in the action if the Attorney General certifies that the case is of general public importance. The court may allow an intervenor prevailing party costs and reasonable attorney fees at trial and on appeal.

## APPROPRIATION LOAN

**SECTION 59.** There is appropriated to the Employment Department, for the biennium beginning July 1, 2019, out of the General Fund, the amount of \$15,688,586, to enable the department to cover start-up costs related to the establishment of the family and medical leave insurance program under section 33 of this 2019 Act.

**SECTION 60.** When the Employment Department determines that moneys in sufficient amount are available in the Paid Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act, but in no event later than January 1, 2023, the department shall reimburse the General Fund, without interest, in an amount equal to the amount from the General Fund appropriated as provided in section 59 of this 2019 Act.

**SECTION 60a.** Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (6), chapter \_\_\_\_\_, Oregon Laws 2019 (Enrolled Senate Bill 5515), for the biennium beginning July 1, 2019, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Department of Justice for the General Counsel Division, is increased by \$219,016 to provide legal services to state agencies related to the implementation of sections 1 to 51 of this 2019 Act.

**SECTION 61. Preemption.** Except as provided in section 43 of this 2019 Act, sections 1 to 51 of this 2019 Act supersede and preempt any rule, regulation, code or ordinance of any unit of a local government, as defined in ORS 174.116, relating to paid family and medical leave.

## TRANSITIONAL PROVISIONS

**SECTION 62.** The Director of the Employment Department shall establish the family and medical leave insurance program under section 33 of this 2019 Act such that eligible employees as defined in section 2 of this 2019 Act and employers may begin making contributions to the program no later than January 1, 2022.

**SECTION 62a.** Notwithstanding the operative date specified in section 63 (1)(a) of this 2019 Act, an employer may apply to the Director of the Employment Department, in accordance with the application process established by the director under section 33 of this 2019 Act, for approval of an employer-offered benefit plan described under section 43 of this 2019 Act on or after the effective date of this 2019 Act.

**SECTION 63. Operative dates.** (1)(a) Sections 8, 11, 14, 16 to 31, 37, 41, 43 to 48, 49a and 61 of this 2019 Act become operative on January 1, 2022.

(b) Sections 3 to 7, 9, 10, 12, 13, 15, 42 and 50 of this 2019 Act become operative on January 1, 2023.

(c) The amendments to ORS 410.619 by sections 52 and 53 of this 2019 Act become operative on January 1, 2022.

(d) The amendments to ORS 657.100, 657.471 and 659A.162 by sections 54, 55 and 56 of this 2019 Act become operative on January 1, 2023.

(e) The amendments to ORS 659A.885 by sections 57 and 58 of this 2019 Act become operative January 1, 2025.

(2) The Employment Department and the Department of Revenue may take any action before the operative dates specified in subsection (1) of this section that is necessary to enable the departments to exercise, on and after the operative dates specified in subsection (1) of this section, the duties, functions and powers conferred on the departments by sections 1 to 51 of this 2019 Act.

## CAPTIONS

**SECTION 64.** The unit and section captions used in this 2019 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2019 Act.

**EFFECTIVE DATE**

**SECTION 65.** This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.

**Passed by House June 20, 2019**

.....  
Timothy G. Sekerak, Chief Clerk of House

.....  
Tina Kotek, Speaker of House

**Passed by Senate June 30, 2019**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2019

**Approved:**

.....M.,....., 2019

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2019

.....  
Bev Clarno, Secretary of State