

House Bill 3052

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates Family Leave Benefits Insurance program to provide benefits to employees taking family leave. Requires employers to withhold amount from employee earnings for deposit into Family Leave Benefits Insurance Account. Continuously appropriates moneys in account to Bureau of Labor and Industries and requires bureau to administer claims for benefits. Establishes qualifications for benefits.

Creates unlawful employment practice. Authorizes bureau to assess civil penalties against employers for failure to comply with withholding requirements.

Establishes procedures and requirements for filing reports with Department of Revenue.

A BILL FOR AN ACT

1
2 Relating to family leave benefits insurance; creating new provisions; amending ORS 316.168 and
3 316.171; and providing for revenue raising that requires approval by a three-fifths majority.

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

5 **SECTION 1. Sections 1 to 5 of this 2017 Act may be cited as the Family Leave Benefits**
6 **Insurance Act.**

7 **SECTION 2. (1) The Legislative Assembly finds that:**

8 (a) **Although family leave laws have assisted employees to balance the demands of the**
9 **workplace with their family responsibilities, more needs to be done to achieve the goals of**
10 **workforce stability and economic security.**

11 (b) **Many employees do not have access to family leave, and those who do may not be in**
12 **a financial position to take leave that is unpaid.**

13 (c) **Employer-paid benefits meet only a small part of this need.**

14 (d) **The establishment of paid family leave benefits will reduce the impact on state income**
15 **support programs by increasing the ability of workers to recover from illness or provide**
16 **caregiving services for family members while maintaining employment.**

17 (2) **Sections 1 to 5 of this 2017 Act are enacted to allow an employee:**

18 (a) **To care for an infant or newly adopted child under 18 years of age, or for a newly**
19 **placed foster child under 18 years of age, or for an adopted or foster child older than 18 years**
20 **of age if the child is incapable of self-care because of a mental or physical disability.**

21 (b) **To care for a family member with a serious health condition.**

22 (c) **To recover from or seek treatment for a serious health condition that renders the**
23 **employee unable to perform at least one of the essential functions of the employee's regular**
24 **position.**

25 **SECTION 3. (1) As used in this section:**

26 (a) **"Application year" means the 12-month period beginning on the first day of the cal-**
27 **endar week in which an employee files an application for family leave benefits and, there-**
28 **after, the 12-month period beginning with the first day of the calendar week in which the**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 employee files a subsequent application for family leave benefits after the expiration of the
 2 employee's last preceding application year.

3 (b) "Employer" means a covered employer as defined in ORS 659A.150.

4 (c) "Family leave" means a leave of absence described in ORS 659A.159 (1)(a), (b) or (c).

5 (d) "Family member" has the meaning given that term in ORS 659A.150.

6 (e) "Health care provider" has the meaning given that term in ORS 659A.150.

7 (f) "Paid family leave" includes family leave with pay from the employer and family leave
 8 during which the employee uses any other type of paid leave, such as paid vacation leave or
 9 paid sick leave.

10 (g) "Premium" means the payments required by subsection (8) of this section to be made
 11 for the Family Leave Benefits Insurance Account.

12 (h) "Qualifying year" means the first four of the last five completed calendar quarters
 13 or the last four completed calendar quarters immediately preceding the first day of the
 14 employee's application year.

15 (i) "Serious health condition" has the meaning given that term in ORS 659A.150.

16 (2)(a) The Bureau of Labor and Industries shall administer a Family Leave Benefits In-
 17 surance Account and establish procedures and forms for filing benefit claims. The bureau
 18 shall notify the employer within five business days of a claim being filed.

19 (b) The bureau may require that a claim for benefits under this section be supported by
 20 a certification issued by a health care provider who is providing care to the employee or the
 21 employee's family member, as applicable.

22 (c) Information contained in the files and records pertaining to an employee under this
 23 section is confidential and not open to public inspection, other than to public employees in
 24 the performance of their official duties. However, the employee or an authorized represen-
 25 tative of an employee may review the records or receive specific information from the re-
 26 cords on the presentation of the signed authorization of the employee. An employer or the
 27 employer's duly authorized representative may review the records of an employee in con-
 28 nection with a pending claim. At the bureau's discretion, other persons may review records
 29 when those persons are rendering assistance to the bureau at any stage of the proceedings
 30 on any matter pertaining to the administration of this section.

31 (3) Family leave benefits are payable to an employee during a period in which the em-
 32 ployee is on unpaid family leave if the employee does all of the following:

33 (a) Files a claim for benefits as required by rules adopted by the bureau.

34 (b) Establishes the employee's eligibility to take family leave under ORS 659A.156.

35 (c) Establishes an application year. An application year may not be established if the
 36 qualifying year includes hours worked before establishment of a previous application year.

37 (d) Documents that the employee has notified the employer as provided in ORS 659A.165.

38 (4)(a) In an application year, family leave benefits are payable for a maximum of six
 39 weeks.

40 (b) The first payment of benefits shall be made to an employee within two weeks after
 41 the claim is filed or the family leave began, whichever is later. Subsequent payments shall
 42 be made twice a month thereafter.

43 (c) Family leave benefits shall be paid as follows:

44 (A) For family leave beginning before July 1, 2020, benefits shall be \$__ per week for an
 45 employee who at the time family leave began was regularly working 40 hours or more per

1 week, or a prorated amount based on the weekly hours regularly worked for an employee
 2 regularly working less than 40 hours per week.

3 (B) Family leave benefits are payable only in weekly amounts for one or more full weeks
 4 of family leave taken by an employee. The minimum period of family leave for which benefits
 5 may be paid is one week. The bureau may not pay a claim for benefits for a period of family
 6 leave of less than one week.

7 (d) If an employee dies before receiving payment of benefits, the payment shall be made
 8 by the bureau to the surviving spouse or to the child or children if there is no surviving
 9 spouse. If there is no surviving spouse and no child or children, the payment shall be made
 10 and distributed consistent with the terms of the decedent's will or, if the decedent dies
 11 intestate, consistent with the provisions of ORS chapter 112.

12 (5)(a) This section may not be construed to limit an employee's right to take leave from
 13 employment under other laws or employer policy.

14 (b) An employee is not eligible for benefits under this section for any week for which the
 15 employee receives paid family leave or temporary disability benefits, or for any week for
 16 which compensation is payable to the employee under ORS chapter 656 or under other federal
 17 or state workers' compensation programs. If an employer provides paid family leave or an
 18 employee is covered by disability insurance, the employee may elect whether first to use the
 19 paid family leave or to receive temporary disability benefits. An employee may not be re-
 20 quired to use paid family leave to which the employee is entitled before receiving benefits
 21 under this section.

22 (c) The eligibility of an employee for benefits is not affected by a strike or lockout at the
 23 factory, establishment or other premises at which the employee is or was last employed.

24 (d) An employee who has received benefits under this section may not lose any other
 25 employment benefits, including seniority or pension rights, accrued before the date that
 26 family leave commenced. However, this section does not entitle an employee to accrue em-
 27 ployment benefits during a period of family leave or to a right, benefit or position of em-
 28 ployment other than a right, benefit or position to which the employee would have been
 29 entitled had the employee not taken family leave.

30 (e) This section may not be construed to diminish an employer's obligation to comply
 31 with a collective bargaining agreement or an employment benefits program or plan that
 32 provides greater benefits to employees than the benefits provided under this section.

33 (f) An agreement by an employee to waive the employee's rights under this section is
 34 void as contrary to public policy. The benefits under this section may not be diminished by
 35 a collective bargaining agreement or another employment benefits program or plan entered
 36 into or renewed after the effective date of this section.

37 (6)(a) Every employer required to pay premiums under this section shall make and file
 38 a report of employee hours worked and amounts due under this section upon a combined
 39 report form prescribed by the Department of Revenue. If the employer is a temporary em-
 40 ployment agency that provides employees on a temporary basis to its customers, the tem-
 41 porary employment agency is considered the employer for purposes of this section. The
 42 report shall be filed with the Department of Revenue:

43 (A) At the times and in the manner prescribed in ORS 316.168 and 316.171; or

44 (B) Annually as required or allowed pursuant to ORS 316.197 or 657.571.

45 (b) An employer must keep at its place of business records of employment from which

1 the information needed by the bureau for purposes of this section may be obtained. The re-
 2 cords shall at all times be open to the inspection of the bureau pursuant to rules adopted
 3 by the bureau.

4 (c) Information obtained from employer records under this section is confidential and not
 5 open to public inspection, other than to public employees in the performance of their official
 6 duties. However, an interested party shall be supplied with information from employer re-
 7 cords to the extent necessary for the proper presentation of the case in question. An em-
 8 ployer may authorize inspection of the employer's records by written consent.

9 (7)(a) When an employer quits business or sells out, exchanges or otherwise disposes of
 10 the business or stock of goods, any premium payable under this section is immediately due
 11 and payable, and the employer shall, within 10 days thereafter, pay the premium due. Any
 12 person who becomes a successor to the business is liable for the full amount of the premium
 13 and shall withhold from the purchase price a sum sufficient to pay any premium due from
 14 the employer until the employer produces a receipt from the bureau showing payment in full
 15 of any premium due or a certificate that no premium is due. If the premium is not paid by
 16 the employer within 10 days from the date of the sale, exchange or disposal, the successor
 17 is liable for the payment of the full amount of premium. The successor's payment of the
 18 premium is, to the extent of the payment, a payment upon the purchase price, and if the
 19 payment is greater in amount than the purchase price, the amount of the difference is a debt
 20 due the successor from the employer.

21 (b) A successor is not liable for any premium due from the person from whom the suc-
 22 cessor has acquired a business or stock of goods if the successor gives written notice to the
 23 bureau of the acquisition and no assessment is issued by the bureau within one year after
 24 receipt of the notice against the former operator of the business.

25 (8) Each employer shall withhold from the post-tax earnings of each employee a premium
 26 of _____ per hour worked. The employer shall pay the withheld amounts with the report
 27 required by subsection (6)(a) of this section. All withheld amounts paid by employers under
 28 this subsection shall be deposited in the Family Leave Benefits Insurance Account estab-
 29 lished under section 4 of this 2017 Act.

30 (9) The bureau shall provide a tax form to each employee who has received family leave
 31 benefits for the employee's use in paying federal income tax on the benefits and shall advise
 32 an employee filing a new claim for family leave benefits, at the time of filing the claim, that:

- 33 (a) Benefits are subject to federal income tax; and
- 34 (b) Requirements exist pertaining to estimated tax payments.

35 (10) It is an unlawful employment practice for an employer, temporary employment
 36 agency, employment agency, employee organization or other person to discharge, expel or
 37 otherwise discriminate against a person because the person has filed or communicated to the
 38 employer an intent to file a claim, a complaint or an appeal or has testified or is about to
 39 testify or has assisted in any proceeding under this section.

40 (11)(a) Family leave benefits are payable under this section only to the extent that mon-
 41 eys are available in the Family Leave Benefits Insurance Account for that purpose. Neither
 42 the state nor the bureau is liable for any amount in excess of this limit.

43 (b) This section does not create a continuing entitlement or contractual right.

44 (12) The bureau may adopt rules as necessary to implement this section. In adopting
 45 rules, the bureau shall maintain consistency with the rules adopted to implement ORS

1 **659A.150 to 659A.186, to the extent those rules are not in conflict with this section.**

2 **(13) The bureau may assess a civil penalty not to exceed \$5,000 against an employer that:**

3 **(a) Fails to withhold premiums or fails to pay when due the moneys withheld under this**
4 **section; or**

5 **(b) Fails to comply with this section or rules adopted under this section relating to re-**
6 **ports or other requirements necessary to carry out the purposes of this section.**

7 **(14) All civil penalties collected under this section shall be applied first toward re-**
8 **imbursement of the costs incurred in investigating violations, conducting hearings and as-**
9 **sessing and collecting penalties. All remaining amounts shall be paid into the State Treasury**
10 **and credited to the Family Leave Benefits Insurance Account established under section 4 of**
11 **this 2017 Act.**

12 **(15) An employee is disqualified from family leave benefits under this section if the em-**
13 **ployee:**

14 **(a) Willfully makes a false statement or misrepresentation regarding a material fact, or**
15 **willfully fails to disclose a material fact, to obtain benefits;**

16 **(b) Seeks benefits based on an intentionally self-inflicted serious health condition; or**

17 **(c) Seeks benefits based on a serious health condition that resulted from the employee's**
18 **commission of a felony.**

19 **(16) A disqualification for benefits under subsection (15) of this section is for a period of**
20 **two years, and commences on the first day of the calendar week in which the employee filed**
21 **an application for benefits under this section. Any employee who is disqualified for benefits**
22 **under subsection (15) of this section is also liable to the bureau for a penalty in an amount**
23 **equal to 15 percent of the amount of benefits received by the employee.**

24 **(17) If an employee receives benefits under this section to which the employee is not**
25 **entitled:**

26 **(a) The employee is liable to the bureau for the amount of benefits received; and**

27 **(b) The amount of benefits received may be deducted by the bureau from any future**
28 **benefits otherwise payable to the employee under this section.**

29 **(18) If the bureau decides that an employee has been paid benefits to which the employee**
30 **is not entitled because of an error, and that the employee is not subject to disqualification**
31 **under subsection (15) of this section, the amounts received in error may be recovered by the**
32 **bureau only by deductions from benefits otherwise payable to the employee under this sec-**
33 **tion during the 52 weeks following the date on which the order establishing the amount of**
34 **the erroneous payment becomes final. If amounts determined to be recoverable have not**
35 **been paid within that time, the liability shall be canceled by the bureau and charged against**
36 **the Family Leave Benefits Insurance Account established under section 4 of this 2017 Act.**

37 **(19) Except as provided in subsection (18) of this section, if benefits determined to be**
38 **recoverable under this section have not been paid within three years after the date that the**
39 **order of the bureau establishing the liability of the employee becomes final, and no payments**
40 **have been received on the liability for at least three months, the liability shall be canceled**
41 **by the bureau and charged against the Family Leave Benefits Insurance Account.**

42 **(20) Any amount due under this section may be collected by the bureau in a civil action**
43 **against the employee brought in the name of the bureau.**

44 **(21) Interest on any benefits recoverable under this section shall be paid and collected**
45 **at the same time repayment of benefits is made by the employee. Interest on an amount**

1 recoverable under this section accrues at the rate specified in ORS 82.010, beginning on the
 2 first day of the month following 60 days after entry of the order establishing the amount of
 3 the overpayment.

4 (22) Any amount collected under this section by the bureau shall be paid into the Family
 5 Leave Benefits Insurance Account.

6 **SECTION 4.** The Family Leave Benefits Insurance Account is established in the State
 7 Treasury, separate and distinct from the General Fund. Interest earned by the account shall
 8 be credited to the account. All moneys from premiums received by the Department of Re-
 9 venue shall be credited to the account. Moneys in the account are continuously appropriated
 10 to the Bureau of Labor and Industries for the purposes authorized by section 3 of this 2017
 11 Act.

12 **SECTION 5.** (1) An employer that is not subject to section 3 of this 2017 Act or a self-
 13 employed person may elect to provide benefits to the employer’s employees or to the self-
 14 employed person under section 3 of this 2017 Act for an initial coverage period of not less
 15 than three years and subsequent coverage periods of not less than one year. The employer
 16 or self-employed person must file a written notice of election with the Bureau of Labor and
 17 Industries. The election becomes effective on the date the notice is filed.

18 (2) An employer or self-employed person who makes an election under this section may
 19 withdraw the election not more than 30 days after the end of the initial three-year coverage
 20 period, or at such other times as the bureau by rule may prescribe. An election to withdraw
 21 must be made by written notice to the bureau and takes effect no sooner than 30 days after
 22 the filing of the notice.

23 (3) The bureau may cancel an election under this section if the employer or self-employed
 24 person fails to remit required premiums or reports. The bureau may collect unpaid premiums
 25 and may levy an additional premium for the remainder of the coverage period. A cancellation
 26 under this subsection becomes effective 30 days after the issuance of a written notice of the
 27 cancellation to the employer or self-employed person or such earlier time as specified in the
 28 notice.

29 **SECTION 6.** Section 5 of this 2017 Act becomes operative on July 1, 2020.

30 **SECTION 7.** Sections 1 to 5 of this 2017 Act are added to and made a part of ORS chapter
 31 659A.

32 **SECTION 8.** Notwithstanding section 3 of this 2017 Act:

33 (1) Employers shall first withhold premiums from employees’ earnings for hours worked
 34 on and after January 1, 2019.

35 (2) Employees may first file claims for benefits under section 3 of this 2017 Act on or
 36 after July 1, 2019, for family leave taken on or after July 1, 2019.

37 **SECTION 9.** ORS 316.168 is amended to read:

38 316.168. (1) Except as otherwise provided by law, every employer subject to the provisions of
 39 ORS 316.162 to 316.221[,] or 656.506 [and], sections 1 to 5 of this 2017 Act or ORS chapter 657,
 40 or a payroll-based tax imposed by a mass transit district and administered by the Department of
 41 Revenue under ORS 305.620, shall make and file a combined quarterly tax and assessment report
 42 upon a form prescribed by the department.

43 (2) The report shall be filed with the Department of Revenue on or before the last day of the
 44 month following the quarter to which the report relates and shall be deemed received on the date
 45 of mailing, as provided in ORS 305.820.

1 (3) The report shall be accompanied by payment of any tax or assessment due and a combined
2 tax and assessment payment coupon prescribed by the department. The employer shall indicate on
3 the coupon the amount of the total payment and the portions of the payment to be paid to each of
4 the tax or assessment programs.

5 (4) The Department of Revenue shall credit the payment to the tax or assessment programs in
6 the amounts indicated by the employer on the coupon and shall promptly remit the payments to the
7 appropriate taxing or assessing body.

8 (5) If the employer fails to allocate the payment on the coupon, the department shall allocate
9 the payment to the proper tax or assessment programs on the basis of the percentage the payment
10 bears to the total amount due.

11 (6) The Department of Revenue shall distribute copies of the combined quarterly tax and as-
12 sessment report and the necessary tax or assessment payment information to each of the agencies
13 charged with the administration of a tax or assessment covered by the report.

14 (7) The Department of Revenue, the Employment Department and the Department of Consumer
15 and Business Services shall develop a system of account numbers and assign to each employer a
16 single account number representing all of the tax and assessment programs included in the combined
17 quarterly tax and assessment report.

18 **SECTION 10.** ORS 316.171 is amended to read:

19 316.171. Except as provided in this section and ORS 314.840, 316.168, 316.197, 316.202 and 657.571
20 **and sections 1 to 5 of this 2017 Act**, the statutes and regulations applicable to each agency, re-
21 quiring a report and imposing a tax, shall govern the audit and examination of reports and returns,
22 determination of deficiencies, assessments, claims for refund, penalties, interest, administrative and
23 judicial appeals and the procedures relating thereto.

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