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CHAPTER 839

BUREAU OF LABOR AND INDUSTRIES

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FILING CAPTION: Adopts job protection rules applicable to Paid Leave Oregon.

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ADOPT: 839-009-0150

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RULE SUMMARY: Adopts rule describing worker protections under Paid Leave Oregon.

CHANGES TO RULE:

839-009-0150

Paid Leave Oregon: Job Protections

(1) The protections provided under ORS 657B.060 and this rule apply only to an eligible employee who was employed by the employer for at least 90 consecutive calendar days prior to taking Paid Leave Oregon leave. 90 consecutive calendar days include the days the employee is not scheduled to work but is still employed with the employer.¶

(2) An employer must restore an employee returning from Paid Leave Oregon leave to the employee's former position, if the position still exists, even if the former position has been filled by a replacement worker during the employee's Paid Leave Oregon leave. The employee's former position is the position held by the employee at the time Paid Leave Oregon leave commenced, regardless of whether the job has been renamed or reclassified. (For example, a delivery driver must be returned to the same route, at the same rate of pay and benefits, driving the same type of truck, delivering the same type of goods, on the same shift, and working from the same location as when the driver started Paid Leave Oregon leave.)¶

(3) For the purposes of this rule, any worker hired or reassigned during an eligible employee's leave to perform the same work in the same position that the eligible employee held before the leave was taken is a replacement worker. If the eligible employee on Paid Leave Oregon leave notifies the employer that they are ready to return to work earlier than anticipated, the employer must give the eligible employee the opportunity to work any hours that the replacement worker would otherwise have been scheduled to work beginning on the second business day following the date the eligible employee notified the employer they were ready to end their leave and return to work.¶

(4) Notwithstanding section (2) of this rule, an employee is not entitled to return to the former position if the employee would have been terminated or reassigned from their current position to another position if Paid Leave Oregon leave had not been taken.¶

(5) Subject to section (6)(d) of this rule, if the position held by the employee at the time Paid Leave Oregon leave began has been eliminated, and not merely renamed or reclassified, then:¶

(a) If the employer is a large employer as defined in OAR 471-070-3150, the employer must restore the employee to any available, equivalent position for which the employee is qualified, within a 50 mile radius of the employee's former job site.¶

(A) An available position is a position that is vacant or not permanently filled.¶

(B) An equivalent position is a position that is virtually identical to the employee's former position in as many aspects as possible in terms of employment benefits and pay, and similar working conditions, including privileges, perks, and status. It must involve substantially the same or similar duties and responsibilities, which must entail equivalent skill, effort, responsibility, and authority.¶

(C) If an equivalent position is available at multiple job sites, and the employee is not able to return to the employee's former position because it no longer exists, the employer shall first offer the employee an equivalent position at the job site closest to the employee's former job site.¶

(b) If the employer is a small employer as defined in OAR 471-070-3150, the employer may, at the employer's discretion and based on business necessity, restore the employee to a different position. The different position must offer the same employment benefits and pay, and similar working conditions, including privileges, perks, and status as the employee's former position and must have similar job duties and responsibilities as the employee's former position.¶

(6)(a) Unless the terms of a collective bargaining agreement, other employment agreement, or the employer's policy provides otherwise, an employee on Paid Leave Oregon leave is not entitled to accrue employment benefits during a period of leave. Employment benefits include but are not limited to: accrual of seniority, production bonuses, or other non-health-care-related benefits that would have accrued if the employee was working.¶

(b) Benefits an employee was entitled to and that accrued prior to starting Paid Leave Oregon leave, including, but not limited to seniority or pension rights, must be restored in full upon the employee's return to work. The benefits do not have to be restored if such benefits have been eliminated or changed for all similarly situated employees.¶

(c) An employee is not entitled to a right, benefit, or position of employment other than a right, benefit, or position to which the employee would have been entitled, if the employee had not taken Paid Leave Oregon leave; and¶

(d) An employee is subject to layoff on the same terms or under the same conditions as similarly situated employees who have not taken Paid Leave Oregon leave.¶

(7) During any Paid Leave Oregon leave, an employer must maintain any health care benefits the employee had prior to taking such leave, for the duration of the leave, as if the employee had maintained their employment continuously during the period of leave.¶

(a) An employer continuing health care insurance coverage for an employee on Paid Leave Oregon leave may require that the employee pay only the same share of premium costs during the leave that the employee would have been required to pay if not on leave.¶

(b) If an employee cannot or will not pay their share of the premium costs, the employer may elect to discontinue health care benefit coverage, unless doing so would render the employer unable to restore the employee to full benefit coverage once the employee returns to work. If coverage lapses because an employee has not made required premium payments, upon the employee's return from Paid Leave Oregon leave the employer must restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including being subject to any new preexisting condition waiting period, to wait for an open enrollment period, or to pass a medical examination to obtain reinstatement of coverage.¶

(c) If the employer pays (directly or indirectly, voluntarily or as required by state or federal statute) any part of the employee's share of health or other insurance premium while an employee is on Paid Leave Oregon leave, the employer may deduct from their pay the employee's share of health or other insurance premiums paid by the employer until the amount is repaid. The employer may deduct up to 10 percent of the employee's gross pay each pay period after the employee returns to work until the health or other insurance premium amounts paid by the employer are repaid.¶

(d) If an employee fails to return to work - unless the failure to return to work is because of a serious health condition or safe leave for which the employee would be entitled to Paid Leave Oregon leave or another circumstance beyond the employee's control - the employer may recover the employee's share of the health insurance premiums paid by the employer. The employer may use any legal means to collect the amount owed for the employee's share of health insurance premiums paid by the employer, including deducting the amount from the employee's final paycheck.¶

(8) An employer may require an employee to follow the employer's established leave policy regarding reporting to the employer any changes to the employee's leave status.¶

(9) If an employee gives clear notice of intent to not to return to work from Paid Leave Oregon leave, except as required by other state or federal law, the employer's obligations under ORS chapter 657B to restore the employee's position and maintain any health care benefits cease on the date the notice is given to the employer.¶

(10) It is an unlawful employment practice to discriminate against an eligible employee who has invoked any provision of ORS chapter 657B or this rule. An employee who alleges a violation of any provision of ORS 657B.060

or this rule 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 unless a remedy is provided under ORS 657B.410 or applicable administrative rules.

Statutory/Other Authority: Section 2, chapter 85, Oregon Laws 2025, ORS 651.060

Statutes/Other Implemented: ORS 657B.060, ORS 657B.070