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What Employers Need to Know About Paid Leave Oregon

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Beginning in 2023, Oregon employers will be required to either contribute to the new Paid Leave Oregon program or offer their employees comparable paid leave benefits.

Paid Leave Oregon will provide employees up to 12 paid weeks of leave for family leave, medical leave and safe leave, which are defined as:

- Family leave – The birth of a child, bonding with a child (in first year after birth, through adoption or when child is placed through foster care) or caring for a family member with a serious illness or injury (family member includes in-law or step relationships, and affinity relationships).
- Medical leave – To care for oneself due to a serious illness or injury.
- Safe leave – For survivors of sexual assault, domestic violence, harassment or stalking (for the employee or their minor child).

Employees on leave will receive a percentage of their total compensation for up to 12 weeks, with an additional two weeks available for pregnancy limitations. The percentage of compensation is based on Oregon's average weekly wage (AWW), which is updated annually. Keep in mind, the benefit is paid by the state, with the funding provided by the payroll deductions.

- If employee earns 65% or less than the AWW, their weekly benefit will equal 100% of their earnings.
- If employee earns more than 65% of the AWW, their weekly benefit will equal that of those who earn less, plus 50% of their salary for amounts over the AWW, to a minimum of 5% and a maximum of 120% of the AWW.
- These benefits may be taxable; the IRS has not weighed in yet.

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- Benefits are based on total compensation, not base pay. Total compensation includes any commissions, bonuses, shift differentials, etc.
- Employees who have worked 90 days or longer for their employer have the right to return from their leave to the same job role.

Does this apply to your organization? If you're an Oregon employer, the answer is yes. For employers with more than 25 employees, the employees will pay 60% and the employer will pay 40% towards the program. The cost equates to 1% of employee wages up to $132,900 per employee. Alternatively, employers may choose to opt out to an equivalent plan – but what is an equivalent plan?

EQUIVALENT PLANS

For a plan to be considered equivalent to Paid Leave, it must meet a few different criteria. Equivalent plans

- The plan must offer the same or more benefits than Paid Leave offers.
- The plan cannot deduct more from employee's contributions than Paid Leave.
- The plan must first be approved by the Oregon Employment Department.

There are several reasons that employers might want to consider opting out.

- It could be less costly.
- It may be easier to coordinate tracking employee leaves through salary continuation, and employers can more easily top up (i.e., fill the gap between 60% of income to the employee's full-time income) using accumulated paid time off.
- Employers could more easily administer Family and Medical Leave Act (FMLA), Oregon Family Leave Act (OFLA), short-term disability (STD) and employer paid time off. It's worth noting that Paid Leave Oregon runs concurrently with FMLA and OFLA, as well. Engaging with a traditional disability carrier may simplify the process of managing Paid Leave Oregon leaves alongside other types, including FMLA, STD, etc.
- The employer can access the status of the employee's leave throughout the process.
- The employer can manage the return-to-work process (if using a traditional disability carrier, there are incentives to encourage employees to return to work).

If you are considering opting out, there are a few options available.

- A self-insured plan using a third-party administrator. This is appropriate for larger companies that can take on the financial risk and have the cash flow to pay leaves throughout the year.
- An employer self-administered plan. This is a good option for companies with a dedicated human resources representative prepared to manage various leaves for all employees.
- An insured plan through a traditional disability carrier. This is feasible for companies of any size that find the cost of paying a traditional carrier comparable to or less than using the state's program.

To properly opt out, there are several steps you need to take to ensure your plan qualifies as equivalent.

1. You must submit an application/declaration of intent (and pay a fee) to opt out that will be available on the state website. The window for applications opened on Sept. 6 and extends to Nov. 6 for those companies wanting to opt out effective Jan. 1, 2023.
2. You must provide a detailed description of the plan that demonstrates the equivalence or betterment compared to the state plan. Many traditional

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disability carriers are providing a description template to help employers obtain approval.

3. Employers can opt out at the beginning of any quarter in the year, with the application deadline set at 31 days prior to the quarter.
4. After three consecutive years of approval for an equivalent plan, the employer is not required to submit for additional approval.

FINAL CONSIDERATIONS

Based on the current AWW of $1,325.24, an employee earning up to approximately $105,000 would receive 60% of their income while on leave. For employees earning more, the percentage of income replacement decreases. It may be worthwhile for employers to put a short-term disability plan in place to provide a comparable benefit to these highly compensated employees.

At this time, the contribution cost for Paid Leave is 1% of employee wages, up to $132,900 per employee. If an equivalent plan will cost more, employers may want to use the state plan for this first year and revisit the costs the following year.

It is also important to note that employees may find a window to take additional parental bonding in Paid Leave Oregon's first year. An employee could take FMLA leave for their newborn/newly adopted child, and then take an additional 12 weeks after Sept. 3, 2023, when Paid Leave benefits become payable, as long as the 12 weeks is between the date of the birth/adoption and before 12 months have passed.

There will be many moving parts and an associate learning curve as Paid Leave Oregon rolls out in 2023. If you have questions about the new program, opting out, or just want to ensure that you are maintaining a leading and competitive edge with your benefits offerings, reach out to Parker, Smith & Feek's benefits department.