

B-Engrossed House Bill 2005

Ordered by the House June 19
Including House Amendments dated June 14 and June 19

Sponsored by Representative WILLIAMSON, Senator TAYLOR; Representatives BARKER, EVANS, FAHEY, GREENLICK, HOLVEY, KENY-GUYER, MCLAIN, MEEK, MITCHELL, NERON, PILUSO, POWER, PRUSAK, SALINAS, SANCHEZ, SCHOUTEN, WILDE, WILLIAMS

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.

Creates family and medical leave insurance program to provide partially or fully compensated time away from work to covered individual who meets certain criteria while covered individual is on family leave, medical leave or safe leave.

Requires employer and employee contributions to fund program. Establishes requirements for employers related to required contributions.

Creates exemption from employer contribution requirements for employers that employ fewer than 25 employees. Provides grant program for certain employers to defray costs.

Allows Director of Employment Department to assess civil penalties in specified circumstances.

Authorizes director to bring civil action against employer for failure to file required reports and pay contributions due. Provides that employers shall be personally liable for contribution amounts due.

Makes employer's violation of provisions of Act punishable by specified imprisonment, fine or both.

Allows self-employed individuals and tribal government employers to elect family and medical leave insurance coverage. Directs director to determine contribution amounts and weekly benefit amounts for self-employed individuals and tribal government employers that elect coverage.

Protects eligible employee's position of employment with employer while employee is on leave if employee has been employed with employer for 90 days before commencing leave. Prohibits employer from retaliating against employee who inquires about rights or responsibilities under family and medical leave insurance program and from interfering with employee rights under program. Establishes right for civil action for certain employer violations.

Establishes Paid Family and Medical Leave Insurance Fund as trust fund and continuously appropriates moneys in fund to Employment Department for purposes of Act. **Appropriates moneys to department to cover start-up costs related to program.**

Permits director to contract with third party to serve as administrator of program.

Provides that employer may apply to director for approval of employer-offered benefit plan that provides family and medical leave insurance benefits that are equivalent to or better than leave and benefit amounts available under family and medical leave insurance program established by department. Establishes requirements for employers. Requires director to establish by rule application process for employers and method for resolving disputes between employers and employees concerning coverage and benefits provided under approved plan. Provides that employers may apply to director for approval of plan.

Requires director to establish process for review of final decisions regarding benefit claims, benefit amounts, receipt of benefits and repayment of benefits.

Provides that provisions of Act do not require reopening or renegotiation of collective bargaining agreement entered into before effective date of Act.

Requires director to submit progress reports to interim committee of Legislative Assembly. Requires director to submit periodic report concerning administration of family and medical leave insurance program, including recommendations made by advisory committee.

Provides specified delayed operative dates.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

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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.

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

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

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

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

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

11 (1) **"Alternate base year" means the last four completed calendar quarters preceding the**
12 **benefit year.**

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

16 (3) **"Base year" means the first four of the last five completed calendar quarters pre-**
17 **ceding the benefit year.**

18 (4) **"Benefits" means family and medical leave insurance benefits.**

19 (5) **"Benefit year" means the 12-month period as determined by the Director of the Em-**
20 **ployment Department by rule under section 33 of this 2019 Act.**

21 (6) **"Child" means:**

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

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

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

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

30 (a) **An employer;**

31 (b) **An eligible employee;**

32 (c) **A self-employed individual;**

33 (d) **A tribal government; or**

34 (e) **An employee of a tribal government.**

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

37 (a) **An eligible employee;**

38 (b) **A self-employed individual; or**

39 (c) **An employee of a tribal government.**

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

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

42 (11) **"Eligible employee" means:**

43 (a)(A) **An employee who has earned at least \$1,000 in wages during the base year; or**

44 (B) **If an employee has not earned at least \$1,000 in wages during the base year, an em-**
45 **ployee who has earned at least \$1,000 in wages during the alternate base year; and**

1 **(b) Who may apply for paid family and medical leave insurance benefits under section 3**
2 **of this 2019 Act.**

3 **(12) “Eligible employee’s average weekly wage” means an amount calculated by the Di-**
4 **rector of the Employment Department by dividing the total wages earned by an eligible em-**
5 **ployee during the base year by the number of weeks in the base year.**

6 **(13)(a) “Employee” means:**

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

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

10 **(b) “Employee” does not include:**

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

12 **(B) A participant in a work training program administered under a state or federal as-**
13 **sistance program.**

14 **(C) A participant in a work-study program that provides students in secondary or**
15 **postsecondary educational institutions with employment opportunities for financial assist-**
16 **ance or vocational training.**

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

19 **(E) A volunteer.**

20 **(14)(a) “Employer” means any person that employs one or more employees working any-**
21 **where in this state or any agent or employee of such person to whom the duties of the per-**
22 **son under sections 1 to 51 of this 2019 Act have been delegated.**

23 **(b) “Employer” includes:**

24 **(A) A political subdivision of this state or any county, city, district, authority or public**
25 **corporation, or any instrumentality of a county, city, district, authority or public corpo-**
26 **ration, organized and existing under law or charter;**

27 **(B) An individual;**

28 **(C) Any type of organization, corporation, partnership, limited liability company, associ-**
29 **ation, trust, estate, joint stock company or insurance company;**

30 **(D) Any successor in interest to an entity described in subparagraph (C) of this para-**
31 **graph;**

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

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

34 **(c) “Employer” does not include the federal government or a tribal government.**

35 **(15) “Employment agency” has the meaning given that term in ORS 658.005.**

36 **(16) “Family and medical leave insurance benefits” means the wage replacement benefits**
37 **that are available to a covered individual under section 7 of this 2019 Act or under the terms**
38 **of an employer plan approved under section 43 of this 2019 Act, for family leave, medical**
39 **leave or safe leave.**

40 **(17)(a) “Family leave” means leave from work taken by a covered individual:**

41 **(A) To care for and bond with a child during the first year after the child’s birth or**
42 **during the first year after the placement of the child through foster care or adoption; or**

43 **(B) To care for a family member with a serious health condition.**

44 **(b) “Family leave” does not mean:**

45 **(A) Leave described in ORS 659A.159 (1)(d);**

1 (B) Leave described in ORS 659A.159 (1)(e); or

2 (C) Leave authorized under ORS 659A.093.

3 (18) "Family member" means:

4 (a) The spouse of a covered individual;

5 (b) A child of a covered individual or the child's spouse or domestic partner;

6 (c) A parent of a covered individual or the parent's spouse or domestic partner;

7 (d) A sibling or stepsibling of a covered individual or the sibling's or stepsibling's spouse
8 or domestic partner;

9 (e) A grandparent of a covered individual or the grandparent's spouse or domestic part-
10 ner;

11 (f) A grandchild of a covered individual or the grandchild's spouse or domestic partner;

12 (g) The domestic partner of a covered individual; or

13 (h) Any individual related by blood or affinity whose close association with a covered in-
14 dividual is the equivalent of a family relationship.

15 (19) "Medical leave" means leave from work taken by a covered individual that is made
16 necessary by the individual's own serious health condition.

17 (20) "Parent" means:

18 (a) A biological parent, adoptive parent, stepparent or foster parent of a covered indi-
19 vidual;

20 (b) A person who was a foster parent of a covered individual when the covered individual
21 was a minor;

22 (c) A person designated as the legal guardian of a covered individual at the time the
23 covered individual was a minor or required a legal guardian;

24 (d) A person with whom a covered individual was or is in a relationship of in loco
25 parentis; or

26 (e) A parent of a covered individual's spouse or domestic partner who meets a description
27 under paragraphs (a) to (d) of this subsection.

28 (21) "Safe leave" means leave taken for any purpose described in 659A.272.

29 (22) "Self-employed individual" means:

30 (a) An individual who has self-employment income as defined in section 1402(b) of the
31 Internal Revenue Code as amended and in effect on December 31, 2018; or

32 (b) An independent contractor as defined in ORS 670.600.

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

34 (24) "Third party administrator" means a third party that enters into an agreement with
35 the Director of the Employment Department to implement and administer the paid family
36 and medical leave program established under sections 1 to 51 of this 2019 Act.

37 (25) "Tribal government" has the meaning given that term in ORS 181A.680.

38 (26) "Wages" has the meaning given that term in ORS 657.105.

39
40 **BENEFITS**

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

44 (1) An eligible employee who:

45 (a) During the base year or alternate base year, as applicable, contributes to the Paid

1 **Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act in**
2 **accordance with section 16 of this 2019 Act; and**

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

5 **(2) A self-employed individual who:**

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

7 **(b) During the base year or alternate base year, as applicable, contributes to the Paid**
8 **Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act an**
9 **amount determined by the Director of the Employment Department under section 16 of this**
10 **2019 Act; or**

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

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

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

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

21 **(a) Family leave;**

22 **(b) Medical leave; or**

23 **(c) Safe leave.**

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

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

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

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

43 **(2) An employer may permit an employee to use paid sick time, vacation leave or any**
44 **other paid leave earned by the employee in addition to receiving paid family and medical**
45 **leave insurance benefits to replace an employee's wages up to 100 percent of the eligible**

1 employee's average weekly wage during a period of leave taken for family leave, medical
2 leave or safe leave.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (g) The right of an eligible employee to bring a civil action or to file a complaint for vi-

1 olation of section 10 or 11 of this 2019 Act; and

2 (h) That any health information related to family leave, medical leave or safe leave pro-
3 vided to an employer by an employee is confidential and may not be released without the
4 permission of the employee unless state or federal law or a court order permits or requires
5 disclosure.

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

8 (3) The director shall make available to employers a model notice that meets the re-
9 quirements of this section.

10 **SECTION 9. Notice to employers.** (1) Except as provided in subsection (2) of this section,
11 an employer may require an eligible employee to give the employer written notice at least
12 30 days before commencing a period of family leave, medical leave or safe leave. The em-
13 ployer may require the employee to include in the notice an explanation of the need for the
14 leave.

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

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

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

21 (c) Safe leave.

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

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

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

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

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

37 (5) An eligible employee who takes safe leave shall give the employer reasonable advance
38 notice of the individual's intention to take safe leave, unless giving the advance notice is not
39 feasible.

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

41 (1)(a) Except as provided in paragraph (b) of this subsection, after returning to work af-
42 ter a period of family leave, medical leave or safe leave, an eligible employee is entitled to
43 be restored to the position of employment held by the employee when the leave commenced,
44 if that position still exists, without regard to whether the employer filled the position with
45 a replacement worker during the period of leave. If the position held by the employee at the

1 time leave commenced no longer exists, the employee is entitled to be restored to any
2 available equivalent position with equivalent employment benefits, pay and other terms and
3 conditions of employment.

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

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

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

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

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

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

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

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

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

33 (c) An employer shall, either at the time of hire or before reassignment, inform a tem-
34 porary worker or an employee who is reassigned to a position to temporarily replace an eli-
35 gible employee during a period of leave of the information provided under this subsection.

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

39 **SECTION 11. Denying leave; discrimination and retaliation prohibited.** (1) It is an un-
40 lawful employment practice for an employer to:

41 (a) Violate section 10 of this 2019 Act.

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

44 (c) Retaliate or in any way discriminate against an employee with respect to hire or
45 tenure or any other term or condition of employment because the employee has inquired

1 about the rights or responsibilities under sections 1 to 51 of this 2019 Act.

2 (2) An employee who alleges a violation of this section may bring a civil action under ORS
3 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Indus-
4 tries in the manner provided by ORS 659A.820.

5
6 **CLAIMS ADMINISTRATION**
7

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

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

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

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

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

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

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

24 (a) Must be prorated to increments that are equivalent to one work day; and

25 (b) Must be paid in increments that are equivalent to one work week.

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

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

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

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

38 **SECTION 14. Continuous jurisdiction of director; reconsideration of previous decisions.**
39 (1) The Director of the Employment Department, upon motion of the director or upon ap-
40 plication of a covered individual, may at any time reconsider any final decision under
41 sections 1 to 51 of this 2019 Act. Reconsideration may occur when there is evidence of:

42 (a) Errors of computation;

43 (b) Clerical errors;

44 (c) Misinformation provided to a party by the Employment Department;

45 (d) Facts not previously known to the director; or

1 (e) Errors caused by misapplication of law by the department.

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

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

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

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

18 (a) Disqualified from claiming benefits for one year; and

19 (b) Liable for a penalty imposed at a rate prescribed by the director of at least 15 percent,
20 but not greater than 30 percent, of the amount of benefits the individual received to which
21 the individual was not entitled.

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

24 (a) Seek repayment of benefits from the covered individual in a manner prescribed by the
25 director by rule; and

26 (b) Have the amount of the benefits deducted from any future benefits otherwise payable
27 to the individual under section 13 of this 2019 Act.

28 (5) If benefits are paid because of an error that is not due to provision of a false state-
29 ment, nondisclosure of a material fact or misrepresentation by a covered individual, the di-
30 rector may waive, in whole or in part, the amount of any such payments for which recovery
31 under subsection (4) of this section would be against equity, good conscience or administra-
32 tive efficiency.

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

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

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

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

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

44 (7) The director shall adopt rules establishing standards and procedures for the repay-
45 ment of benefits and payment of penalties and interest under this section.

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

3
4 **CONTRIBUTIONS**

5
6 **SECTION 16. Contributions.** (1)(a) Except as otherwise provided in subsections (3) and (4)
7 of this section, all employers and eligible employees shall contribute to the Paid Family and
8 Medical Leave Insurance Fund established under section 39 of this 2019 Act.

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

11 (c) The total rate may not exceed one percent of employee wages, up to a maximum of
12 \$132,900 in wages.

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

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

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

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

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

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

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

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

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

38 (a) At the end of the period for which the rates are effective, the balance of moneys in
39 the fund is an amount not less than six months' worth of projected expenditures from the
40 fund for performance of the functions and duties of the director under sections 1 to 51 of this
41 2019 Act; and

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

43 (9) For purposes of subsections (1)(c) and (7) of this section, the director shall annually
44 adjust the maximum amount of employee wages by the percentage increase, if any, in the
45 Consumer Price Index for All Urban Consumers, West Region (All Items), as published by

1 the Bureau of Labor Statistics of the United States Department of Labor, since the date of
2 the previous determination made under this subsection.

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

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

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

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

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

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

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

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

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

27
28 **COLLECTIONS**

29
30 **SECTION 17. Delinquent contributions and benefit overpayments as liens; foreclosure.** (1)

31 **This section applies to:**

32 (a) An employer that fails to remit to the Department of Revenue any amount of con-
33 tributions due under section 16 of this 2019 Act;

34 (b) An individual liable to repay any amount of benefits paid under sections 1 to 51 of this
35 2019 Act to which the individual was not entitled; and

36 (c) A person liable under section 25 of this 2019 Act for amounts due under sections 1 to
37 51 of this 2019 Act.

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

42 (3) The lien shall be perfected and attach:

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

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

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

4 (B) The filing of a copy of the warrant with the Secretary of State as provided in section
5 18 of this 2019 Act.

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

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

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

16 (3) A copy of the statement of lien or the warrant filed with the Secretary of State shall
17 be filed and indexed by the Secretary of State in the same manner as provided under ORS
18 79.0501 for the filing and indexing of financing statements.

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

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

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

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

38 (5)(a) The director may direct the warrant to any agent and authorize the agent to col-
39 lect the amount reflected in the warrant.

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

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

45 SECTION 20. Release of lien. (1)(a) The Director of the Employment Department may

1 release, compromise or satisfy any lien provided for in sections 17 and 18 of this 2019 Act by
2 filing a notice of release or satisfaction with the county clerk of the county in which the
3 notice of lien claim was filed.

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

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

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

10
11 **LOCALIZATION**

12
13 **SECTION 21. Where employee's service performed.** An employee's wages shall be used
14 to make determinations under sections 1 to 51 of this 2019 Act if the wages are earned for
15 service:

16 (1) Performed entirely within this state; or

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

19
20 **PENALTIES**

21
22 **SECTION 22.** (1) On or before June 30 of each year, the Director of the Employment
23 Department shall send a written notice to each employer that has failed to file all reports
24 as required by the director or to pay all contributions due under section 16 of this 2019 Act,
25 warning the employer about the penalty provided in subsection (2) of this section.

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

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

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

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

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

44 (b) Hearings, decisions and reconsiderations under this section shall be conducted in ac-
45 cordance with rules adopted by the director.

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

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

8 **SECTION 23.** (1) If, upon satisfactory evidence, the Director of the Employment Depart-
9 ment finds it necessary for the protection of the Paid Family and Medical Leave Insurance
10 Fund established under section 39 of this 2019 Act, the director may require any employer
11 subject to sections 1 to 51 of this 2019 Act, other than the state of Oregon, and every state
12 officer, board, commission, department, institution, branch, agency or political subdivision
13 of this state, to deposit and keep on deposit with the director a sum equal to the contribu-
14 tions due or estimated to be due from the employer for a period of three calendar quarters.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **(5) If an employer that is in default with respect to payment of contributions fails to**
16 **make payment within 10 days after written demand has been made by the director, the em-**
17 **ployer shall be subject to a penalty of 10 percent of the amount of the contributions. A de-**
18 **mand for payment shall be deemed to have been made when deposited in the mail addressed**
19 **to the employer at the employer's last known address of record with the director.**

20 **(6) If any part of a deficiency is due to fraud with intent to avoid payment of contribu-**
21 **tions to the fund, then 50 percent of the total amount of the deficiency, in addition to the**
22 **deficiency, shall be assessed, collected and paid, in the same manner as if it were a defi-**
23 **ciency, and deposited in the fund.**

24 **(7) Civil actions brought in the name of the director under this section to collect contri-**
25 **butions, interest or penalties from an employer shall be entitled to preference upon the cal-**
26 **endar over all civil cases that involve only private parties.**

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

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

33 **(B) The employer or former employer no longer conducts an active business and has in-**
34 **sufficient net assets to pay the full amount of all contributions, interest or penalties due;**
35 **and**

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

38 **(b) Whenever a settlement agreement is made pursuant to paragraph (a) of this sub-**
39 **section, a written record signed by the director shall be maintained in the files of the direc-**
40 **tor. Such records shall set forth:**

41 **(A) The name of the employer or former employer against whom the liability was as-**
42 **essed;**

43 **(B) The amount of the assessed liability;**

44 **(C) The amount of the liability paid;**

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

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

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

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

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

12 (a) An officer or employee of a corporation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 SECTION 28. (1)(a) If an employer files a report for the purpose of determining the
27 amount of contributions due under section 16 of this 2019 Act but fails to pay contributions
28 or interest, the Director of the Employment Department may assess the amount of contri-
29 butions or interest due on the basis of the information submitted and shall give written no-
30 tice of the assessment to the employer by mail sent to the employer's last known address
31 of record with the director.

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

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

41 (3) If the director is not satisfied with a report made by an employer for the purpose of
42 determining the amount of contributions due under section 16 of this 2019 Act, the director
43 may compute the amount required to be paid upon the basis of facts contained in the report
44 or of any information obtainable and may make an assessment of the amount of the defi-
45 ciency. Written notice of a deficiency assessment to the employer shall be mailed to the

1 employer's last known address of record with the director.

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

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

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

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

15 (d) Written notice of an assessment to an employer or an individual liable under section
16 25 of this 2019 Act shall be mailed to the employer's or individual's last known address of
17 record with the director.

18 (5)(a) All assessments provided for in this section shall finally fix the amount of contri-
19 butions due and payable unless:

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

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

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

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

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

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

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

42 (3) Subject to ORS 153.022, willful violation of sections 1 to 51 of this 2019 Act or of any
43 order issued or rule adopted under sections 1 to 51 of this 2019 Act, the violation of which
44 is made unlawful or the compliance with which is required under sections 1 to 51 of this 2019
45 Act, and for which a penalty is neither prescribed in this section nor provided by any other

1 applicable statute, is a Class C misdemeanor. Each day the violation continues is considered
2 a separate offense.

3
4 **APPEALS**

5
6 **SECTION 31. Generally.** (1) The Director of the Employment Department shall establish
7 a process by which:

8 (a) An employer may request a hearing to obtain review of a final decision of the director
9 regarding approval or denial of an employer's application for approval of a plan under section
10 43 of this 2019 Act.

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

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

15 (B) The weekly benefit amount payable to a covered individual as determined under sec-
16 tion 7 of this 2019 Act; or

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

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

22 **SECTION 32. Appeals of decisions under equivalent employer plan.** The Director of the
23 Employment Department shall establish by rule a method to resolve disputes between em-
24 ployers and employees concerning coverage and benefits provided under a plan approved un-
25 der section 43 of this 2019 Act.

26
27 **ADMINISTRATION**

28
29 **SECTION 33. Family and medical leave insurance program; administration of program.**

30 (1) The Director of the Employment Department shall establish a family and medical leave
31 insurance program to provide family and medical leave insurance benefits to a covered indi-
32 vidual as specified in sections 1 to 51 of this 2019 Act.

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

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

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

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

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

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

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

4 **SECTION 34. Agreements with third party.** (1) The Director of the Employment Depart-
5 ment may enter into an agreement with a third party to implement sections 1 to 51 of this
6 2019 Act and to serve as the administrator of the program established under section 33 of
7 this 2019 Act. The director may enter into such an agreement only on a competitive bid basis.

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

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

13 (4) Costs incurred by the director pursuant to an agreement with a third party adminis-
14 trator entered into under this section may not be recovered by an increase in the contribu-
15 tion rate determined by the director under section 16 of this 2019 Act.

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

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

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

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

31 (A) A representative of the Employment Department.

32 (B) Four members who represent employees.

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

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

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

40 (3) The advisory committee shall advise and make recommendations to the director re-
41 garding issues related to the program, including but not limited to:

42 (a) Implementation;

43 (b) Administration; and

44 (c) Rulemaking.

45 (4) Members of the advisory committee are not entitled to compensation but may be re-

1 imbursed for actual and necessary travel or other expenses incurred in the performance of
2 their official duties. The director shall pay the expenses out of funds appropriated to the
3 department under section 59 of this 2019 Act.

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

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

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

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

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

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

24 (b) May not be used in any court action or in any proceeding pending in the court unless
25 the director or the State of Oregon is a party to the action or proceeding or unless the action
26 or proceeding concerns the establishment, enforcement or modification of a support obli-
27 gation and support services are being provided by the Division of Child Support of the De-
28 partment of Justice or the district attorney pursuant to ORS 25.080; and

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

30 (2) At the discretion of the director and subject to an interagency agreement, the direc-
31 tor may disclose information to a public official in the performance of the public official's
32 official duties administering or enforcing laws within the public official's authority and to
33 an agent or contractor of a public official. The public official shall agree to assume respon-
34 sibility for misuse of the information by the public official's agent or contractor.

35 (3) At the discretion of the director, the director may disclose information to a contrac-
36 tor pursuant to a contract for actuarial services. The contractor shall agree to assume re-
37 sponsibility for misuse of the information by the contractor's agent.

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

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

1 be a trust fund.

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

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

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

15
16 **ELECTIVE COVERAGE**

17
18 SECTION 41. (1) Except as provided in subsections (2) and (3) of this section, a self-
19 employed individual may elect to be covered under sections 1 to 51 of this 2019 Act for a
20 period of not less than three years. The self-employed individual must file a notice of election
21 in writing with the Director of the Employment Department and contribute to the Paid
22 Family and Medical Leave Insurance Fund established under section 39 of this 2019 Act in
23 the manner prescribed by the director by rule. The election becomes effective on the date
24 the notice is filed. The self-employed individual must agree to supply any information con-
25 cerning taxable income that the director deems necessary.

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

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

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

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

43
44 **EMPLOYER ASSISTANCE**

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

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

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

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

14 (a) After the commencement of a period of family leave, medical leave or safe leave taken
15 by an eligible employee, the employee extends the period of leave beyond the employee's ini-
16 tial expected period of leave; and

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

19 (3) An employer may apply for a grant under subsection (1) of this section not more than
20 10 times per calendar year and not more than once for each eligible employee who takes
21 leave under section 4 of this 2019 Act.

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

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

28 (6) The director shall adopt any rules necessary to implement this section.
29

30 **EQUIVALENT PLANS**

31
32 **SECTION 43. Equivalent plans, generally.** (1)(a) An employer may apply to the Director
33 of the Employment Department for approval of an employer-offered benefit plan that pro-
34 vides family and medical leave insurance benefits to the employer's employees.

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

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

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

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

45 (3) An employer may make a plan available to employees who have been employed by the

1 employer for less than 30 days but in no event may an employer require an employee to have
2 been employed by the employer for more than 30 days to be eligible for coverage under the
3 plan.

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

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

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

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

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

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

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

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

26 (10) The director shall adopt rules:

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

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

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

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

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

38 (c) Provide written notice to employees that includes:

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

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

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

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

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

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

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

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

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

14 (b) Based on the review, the director shall determine whether the approved plan provides
15 benefits that are equal to or greater than the benefits that would be available to eligible
16 employees under the family and medical leave insurance program established under section
17 33 of this 2019 Act.

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

22 **SECTION 45. Equivalent plans - reapproval.** (1) Except as provided in section 46 of this
23 2019 Act, an employer shall resubmit an application to the Director of the Employment De-
24 partment for reapproval of a plan that was approved under section 43 of this 2019 Act. An
25 employer shall apply for reapproval once a year for a three-year period following the date
26 on which the director first approved the plan.

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

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

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

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

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

45 (b) Notwithstanding section 43 (3) of this 2019 Act, an employee who was eligible for

1 benefits under a plan approved under section 43 of this 2019 Act is automatically eligible for
2 benefits under a plan that is offered by a new employer and that has been approved under
3 section 43 of this 2019 Act.

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

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

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

11 (C) The Director of the Employment Department has terminated the plan under section
12 44 of this 2019 Act; or

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

15 **SECTION 48. Equivalent plans - Successors in interest to employers.** (1) Except as pro-
16 vided in subsection (2) of this section, a plan that has been approved under section 43 of this
17 2019 Act and that is in effect at the time a successor in interest acquires the organization,
18 trade or business, or substantially all assets of the organization, trade or business or a dis-
19 tinct and severable portion of the organization, trade or business, and continues its operation
20 without substantial reduction of personnel resulting from the acquisition, must continue to
21 be offered to eligible employees and the successor in interest may not withdraw the plan
22 without a specific request for withdrawal in a manner prescribed by the Director of the
23 Employment Department by rule.

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

29
30 **COLLECTIVE BARGAINING AGREEMENTS**

31
32 **SECTION 49. Collective Bargaining Agreements.** Nothing in sections 1 to 51 of this 2019
33 Act requires the reopening or renegotiation of a collective bargaining agreement entered into
34 before the effective date of this 2019 Act prior to the date on which the agreement expires.

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

40
41 **REPORTS AND REVIEWS**

42
43 **SECTION 50. Department review of equivalent plans.** Beginning January 1, 2023, and not
44 more than once each year for three consecutive calendar years thereafter, the Director of
45 the Employment Department shall conduct a review of the expenses incurred by the Em-

1 **ployment Department in reviewing plans for approval under section 43 of this 2019 Act, in-**
2 **cluding an analysis of adequacy of the application fee determined by the department and**
3 **administrative expenses related to request for review of determinations regarding approval**
4 **or denial of applications as provided under section 31 of this 2019 Act.**

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

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

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

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

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

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

21 **(d) Data regarding the use of moneys in the fund, the solvency of the fund and the bal-**
22 **ance of the fund.**

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

24 **(f) The number of applications for plan approval submitted under section 43 of this 2019**
25 **Act, including the number of plans approved and the costs the department incurred in re-**
26 **viewing such applications.**

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

29 **(h) The director shall include in the reports described in this subsection any recommen-**
30 **dations made by the advisory committee under section 36 of this 2019 Act.**

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

32 **410.619. (1) A home care worker who is not otherwise employed by the Home Care Commission,**
33 **the Department of Human Services, the Oregon Health Authority, an area agency or a support ser-**
34 **vices brokerage shall not be deemed to be an employee of the state, whether or not the state selects**
35 **the home care worker for employment or exercises any direction or control over the home care**
36 **worker, for the purpose of the state's liability for the home care worker's actions.**

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

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

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

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

42 **410.619. (1) A home care worker or personal support worker who is not otherwise employed by**
43 **the Home Care Commission, the Department of Human Services, the Oregon Health Authority, an**
44 **area agency or a support services brokerage shall not be deemed to be an employee of the state,**
45 **whether or not the state selects the home care worker or personal support worker for employment**

1 or exercises any direction or control over the home care worker or personal support worker, for the
2 purpose of the state's liability for the actions of the home care worker or personal support worker.

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

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

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

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

8 657.100. (1) An individual is deemed "unemployed" in any week during which the individual
9 performs no services and with respect to which no remuneration for services performed is paid or
10 payable to the individual, or in any week of less than full-time work if the remuneration paid or
11 payable to the individual for services performed during the week is less than the individual's weekly
12 benefit amount.

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

19 **(3) An individual may not be deemed "unemployed" under this section for any week in**
20 **which the individual is receiving family and medical leave insurance benefits under sections**
21 **1 to 51 of this 2019 Act.**

22 [(3)] (4) The Director of the Employment Department shall prescribe rules as the director deems
23 necessary with respect to the various types of unemployment.

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

25 657.471. (1) Except as otherwise provided in this section, benefits paid to an eligible individual
26 shall be charged to each of the individual's employers during the base year in the same proportion
27 that the wages paid by each employer to the individual during the base year bear to the wages paid
28 by all employers to that individual during that year.

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

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

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

38 (5) Benefits paid without any disqualification to an individual may not be charged to an em-
39 ployer of the individual for the immediate period of unemployment if:

40 (a) The individual left the employment of the employer voluntarily for good cause not attribut-
41 able to the employer; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (B) When a request for hearing has been timely filed, an administrative law judge shall be as-
34 signed to conduct a hearing.

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

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

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

45 (b) The director shall give notice to the employer of the determination under this subsection and

1 the determination of the director is final unless an application for hearing is filed in the manner
2 provided for in subsection (7)(e) of this section.

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

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

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

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

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

11 **(10) Benefits paid to an individual for unemployment due to the return of a covered in-**
12 **dividual, as defined in section 2 of this 2019 Act, who was temporarily replaced by the indi-**
13 **vidual for a period of family leave, medical leave or safe leave under sections 1 to 51 of this**
14 **2019 Act may not be charged to the employer of the covered individual.**

15 [(10)] (11) Notwithstanding any other provision of this section, benefits paid to an individual
16 shall be charged to an employer's account if:

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

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

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

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

23 659A.162. (1) Except as specifically provided by ORS 659A.150 to 659A.186 **and section 4 of this**
24 **2019 Act**, an eligible employee is entitled to up to a total of 12 weeks of family leave within any
25 one-year period.

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

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

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

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

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

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

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

1 (a) One employee needs to care for another employee who is a family member and who is suf-
2 fering from a serious health condition;

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

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

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

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

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

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

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

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

26 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
27 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
28 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
29 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
30 court may order back pay in an action under this subsection only for the two-year period imme-
31 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
32 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
33 year period immediately preceding the filing of the action. In any action under this subsection, the
34 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
35 cept as provided in subsection (3) of this section:

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

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

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

40 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
41 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
42 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
43 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
44 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
45 659A.318, 659A.320, 659A.355 or 659A.421 **or sections 10 and 11 of this 2019 Act;** or

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

2 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
3 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
4 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
5 659A.290, 659A.318, 659A.355 or 659A.421 **or sections 10 and 11 of this 2019 Act:**

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

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

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

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

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

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

16 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
17 659A.850 for a violation of ORS 652.220.

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

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

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

27 (8) Any individual against whom any distinction, discrimination or restriction on account of
28 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
29 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
30 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
31 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
32 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
33 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
34 section:

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

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

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

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

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

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

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

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

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

13 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
14 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
15 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
16 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
17 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
18 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
19 appealing an adverse decision of the trial court.

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

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

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

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

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

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

32 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
33 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
34 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
35 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
36 court may order back pay in an action under this subsection only for the two-year period imme-
37 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
38 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
39 year period immediately preceding the filing of the action. In any action under this subsection, the
40 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
41 cept as provided in subsection (3) of this section:

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

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

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

1 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,
2 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,
3 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
4 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
5 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
6 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421 **or sections 10 and 11 of this 2019 Act;** or

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

8 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
9 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
10 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,
11 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421 **or sections 10 and 11 of this 2019 Act:**

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

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

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

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

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

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

22 (b) An employer was previously adjudicated in a proceeding under this section or under ORS
23 659A.850 for a violation of ORS 652.220.

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

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

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

33 (8) Any individual against whom any distinction, discrimination or restriction on account of
34 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
35 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
36 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
37 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
38 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
39 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
40 section:

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

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

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

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

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

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

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

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

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

19 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or
20 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
21 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
22 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
23 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
24 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
25 appealing an adverse decision of the trial court.

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

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

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

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

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

36
37 **APPROPRIATION LOAN**

38
39 **SECTION 59. There is appropriated to the Employment Department, for the biennium**
40 **beginning July 1, 2019, out of the General Fund, the amount of \$15,688,586, to enable the de-**
41 **partment to cover start-up costs related to the establishment of the family and medical leave**
42 **insurance program under section 33 of this 2019 Act.**

43 **SECTION 60. When the Employment Department determines that moneys in sufficient**
44 **amount are available in the Paid Family and Medical Leave Insurance Fund established under**
45 **section 39 of this 2019 Act, but in no event later than January 1, 2023, the department shall**

1 reimburse the General Fund, without interest, in an amount equal to the amount from the
2 General Fund appropriated as provided in section 59 of this 2019 Act.

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

10 **SECTION 61. Preemption.** Except as provided in section 43 of this 2019 Act, sections 1 to
11 51 of this 2019 Act supersede and preempt any rule, regulation, code or ordinance of any unit
12 of a local government, as defined in ORS 174.116, relating to paid family and medical leave.

13
14 **TRANSITIONAL PROVISIONS**

15
16 **SECTION 62.** The Director of the Employment Department shall establish the family and
17 medical leave insurance program under section 33 of this 2019 Act such that eligible em-
18 ployees as defined in section 2 of this 2019 Act and employers may begin making contribu-
19 tions to the program no later than January 1, 2022.

20 **SECTION 62a.** Notwithstanding the operative date specified in section 63 (1)(a) of this
21 2019 Act, an employer may apply to the Director of the Employment Department, in ac-
22 cordance with the application process established by the director under section 33 of this 2019
23 Act, for approval of an employer-offered benefit plan described under section 43 of this 2019
24 Act on or after the effective date of this 2019 Act.

25 **SECTION 63. Operative dates.** (1)(a) Sections 8, 11, 14, 16 to 31, 37, 41, 43 to 48, 49a and
26 61 of this 2019 Act become operative on January 1, 2022.

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

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

31 (d) The amendments to ORS 657.100, 657.471 and 659A.162 by sections 54, 55 and 56 of this
32 2019 Act become operative on January 1, 2023.

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

35 (2) The Employment Department and the Department of Revenue may take any action
36 before the operative dates specified in subsection (1) of this section that is necessary to en-
37 able the departments to exercise, on and after the operative dates specified in subsection (1)
38 of this section, the duties, functions and powers conferred on the departments by sections
39 1 to 51 of this 2019 Act.

40
41 **CAPTIONS**

42
43 **SECTION 64.** The unit and section captions used in this 2019 Act are provided only for
44 the convenience of the reader and do not become part of the statutory law of this state or
45 express any legislative intent in the enactment of this 2019 Act.

EFFECTIVE DATE

1
2
3
4
5

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.
