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Self-Employed Workers (Including Independent Contractors) Must Elect Coverage Under Paid Leave Oregon to be Eligible for Benefits

By Stacie Damazo

On January 1, 2023, contribution requirements under Paid Leave Oregon—initially referred to as the Paid Family and Medical Leave Insurance (“PFMLI”) program—begin. Passed by the Oregon legislature in 2019, Paid Leave Oregon is a family, medical, and sick leave insurance program that was created to provide eligible individuals up to 12 weeks (or, in case of pregnancy, up to 14 weeks) of compensated time off from work for qualifying reasons.

As a practical matter, all Oregon employees are covered by Paid Leave Oregon. Starting January 1, Oregon employees are required to contribute (via payroll deductions) 60% of the total contribution rate to the Paid Leave Oregon Trust Fund. By November 15 of each year, the Oregon Employment Department (“OED”) will set the total contribution rate for the following year. For 2023, the rate is set at 1% of up to \$132,900 of covered wages.

Beginning September 3, 2023, eligible employees experiencing a qualifying event—family leave, medical leave, or safe leave—may apply for benefits under the program. OED will then make benefits determinations and, if the application for benefits is approved, pay claimants’ benefits from the Paid Leave Oregon Trust Fund.

“Employee” or “Self-Employed”: How Are You Paid?

While all Oregon employees are generally covered by Paid Leave Oregon, the rules apply differently to Oregon workers who earn their income from self-employment, including independent contractors.

In general, self-employed workers are not covered by Paid Leave Oregon. In other words, self-employed workers are not required to contribute to the program, nor are they eligible to receive benefits. However, self-employed workers may elect coverage (and therefore be eligible to apply for benefits) if they meet certain requirements.

To determine whether someone is an “employee” or a “self-employed” worker, OED looks at how the individual is paid. For example, a business owner who receives a paycheck that is reported on their W-2 is an employee covered by Paid Leave Oregon. However, if a business owner does not receive wages covered by a W-2, but instead receives profits from their business that are reported on a K-1 or as self-employed income, then they are a self-employed worker who has the option to elect coverage under the program.

Notwithstanding the above, there are significant financial and legal consequences to misclassifying an employee as an independent contractor. To determine whether a worker is an employee or an independent contractor, Oregon law balances multiple factors. To the extent an employer or individual is unsure whether a worker can be classified as an independent contractor, it is strongly recommended they seek the advice of counsel to ensure the worker is properly classified.

Self-Employed Workers Must Elect Coverage to be Eligible for Paid Leave Benefits

Self-employed individuals may elect coverage in writing any time after January 1, 2023, by submitting a notice of election to OED. As part of that election, self-employed individuals must also agree to:

- (1) pay contributions for a period of not less than three years;
- (2) provide any information and documentation regarding their taxable income that OED deems necessary for the administration of the elective coverage, including but not limited to a copy of their Oregon personal income tax return annually; and
- (3) provide additional information to confirm eligibility for elective coverage, if requested by OED.

Note that self-employed workers may only terminate coverage within those first three years if they have (1) filed a voluntary or involuntary bankruptcy petition, or (2) changed their employment status, such that they are no longer self-employed. Once the elective coverage has been in effect for three years or longer, however, a self-employed individual may terminate such coverage at any time.

OED Has Approved My Election of Coverage. Now What?

If OED approves a self-employed worker's election of coverage, coverage for that worker becomes effective on the date the complete notice of election was received by OED. The self-employed worker's contribution payments will begin in that same quarter in which their election of coverage was made. If a contribution is due for only part of a quarter, OED will prorate the amount due based on the number of calendar days that coverage is in effect.

The contribution rate is the same for self-employed workers as it is for employees—that is self-employed workers must pay 0.6% of covered earnings up to the maximum for the year (the maximum for 2023 is \$132,900). Self-employed workers must submit their contributions on a quarterly basis. In addition, self-employed workers must report their income and provide a copy of their tax return to OED by April 30 of each year.

In general, benefits for self-employed workers are the same as those that employees will be eligible for under Paid Leave Oregon. However, self-employed workers are only eligible to receive their full benefit amount after they have contributed to the program for four full quarters. Those who apply for benefits before contributing for four full quarters will receive a pro-rated benefit based on the number of quarters contributions have been made. For example, to be eligible for at least partial benefits by September 3, 2023, self-employed workers must elect coverage and begin making contributions by the end of June 2023.

Ultimately, a self-employed worker's decision to elect coverage will likely hinge on (1) whether they would like the option to apply for paid leave benefits in the event they experience a qualifying event; and (2) whether they can commit to making contributions for a three-year period.

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