

# Do I have to approve all requests for leave?

**Yes!**



# Anti-Retaliation Provisions

Employers cannot retaliate or discriminate against an employee with respect to hire or tenure or any other term or condition of employment because an employee has requested or taken leave.

Discrimination / Retaliation → a civil action or administrative complaint with BOLI.

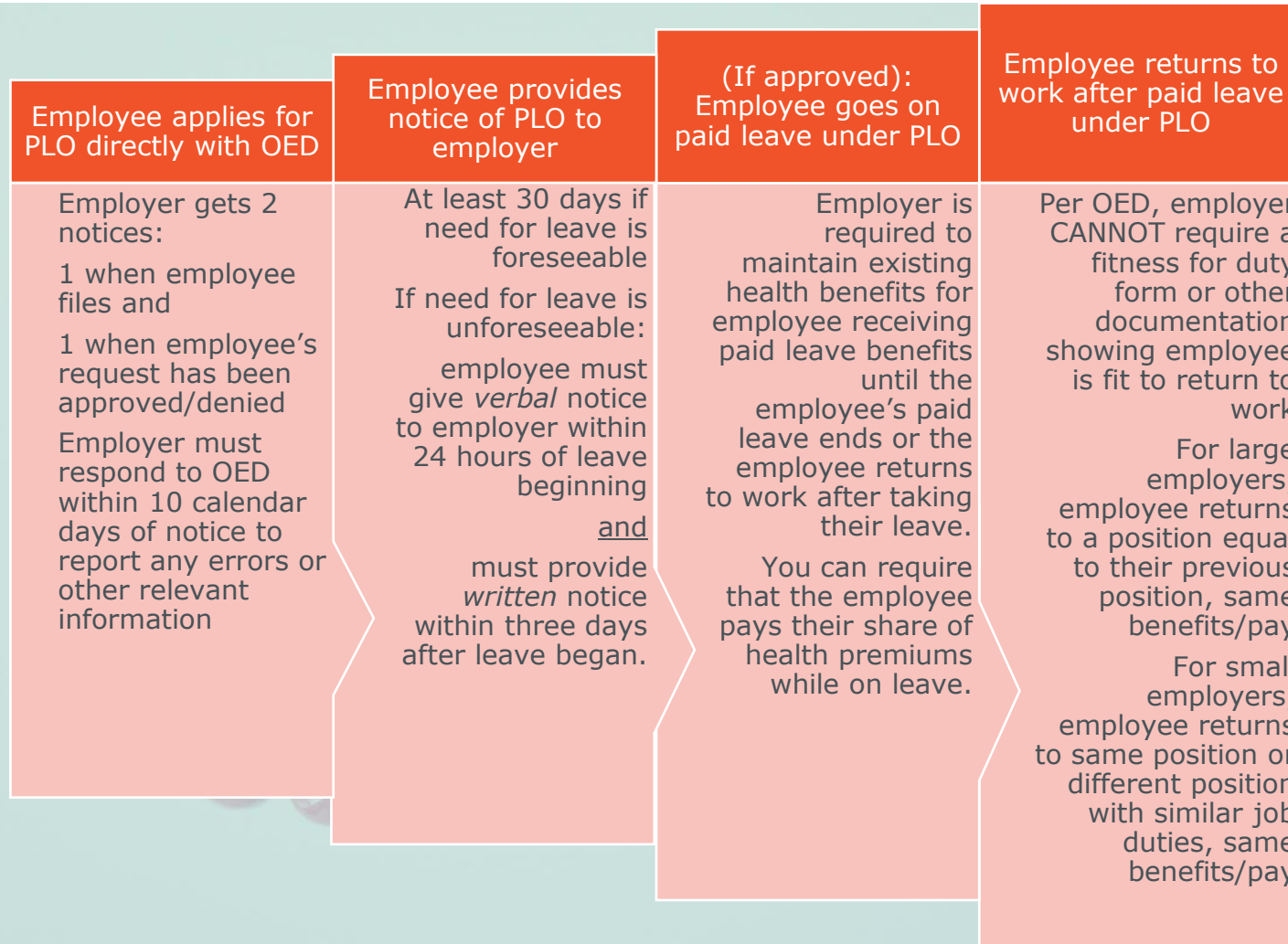
Not required to retain a temporary hired to replace an employee on leave.

Safe harbor against civil actions brought by a temp worker - employer must inform the temporary employee at the time of hire or reassignment that they are temporarily replacing an employee on leave.

# Application and Notice

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# How Does it Really Work?



# Applying for Benefits



- Employee applications opened on August 14, 2023
- **September 3, 2023** – approved employees could begin taking leave
- The **employee** must apply for PLO benefits
- OED, **not the employer**, approves the leave and determines the amount of benefits

# Verification of Eligibility

- **The Oregon Employment Department (OED)** will verify employees' eligibility for leave under PLO when they apply.
- Different types of leave require different types of verification.
- Employees may be required to provide additional verification.
- Employees must respond to PLO's requests for additional verification:
  - within 14 days from the date of the request for information if the request is mailed, or
  - within 10 days if the request is sent via telephone message, email, or other electronic means.





# Required Notice by Employees

If leave is foreseeable:

- you can require 30 days *written* notice!
- **must put it in your policy.**

If leave is unforeseeable:

- employee must give *verbal* notice to employer within 24 hours of leave beginning and
- must provide *written* notice within three days after leave began.



# Written Notice

- You can only require written notice **if** it exists in your policies
- You can require employees to provide:
  - the type of leave
  - explanation of the need for leave
  - anticipated timing and duration of leave.





# Written Notice Requirements

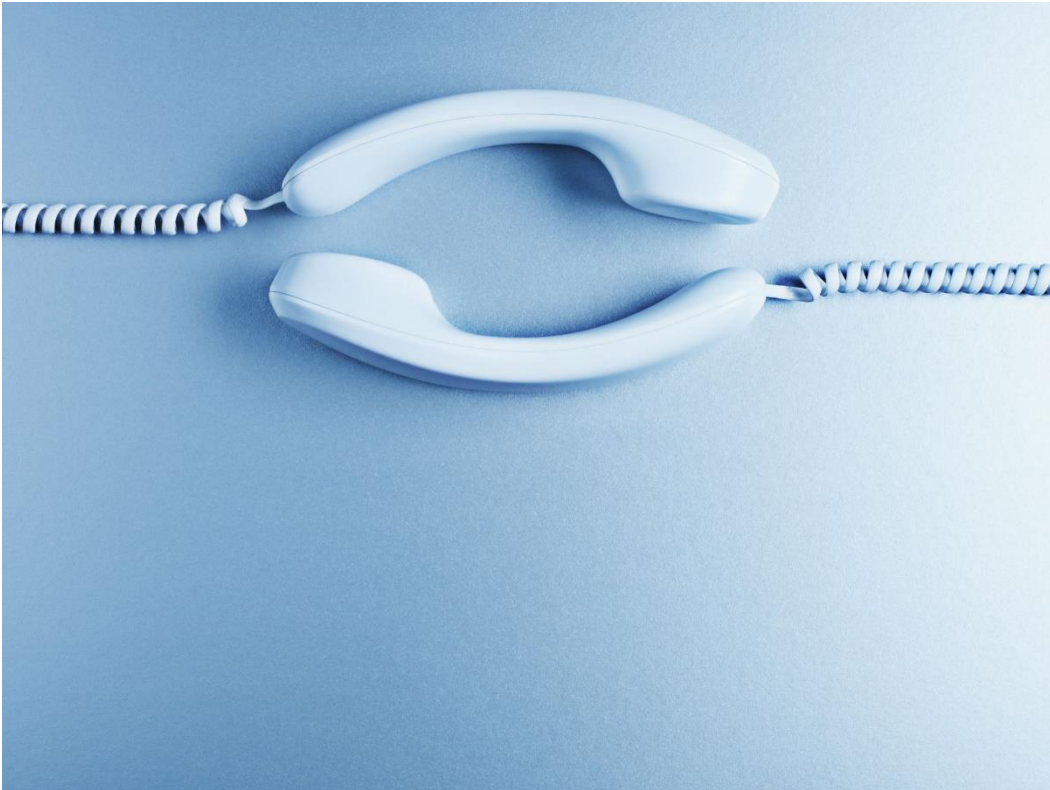
Your policy must include a description of the penalties that may be imposed by the state for not complying with the employer's notice requirements.

Employers must provide a copy of the policy to all eligible employees at:

- time of hire; and
- each time the policy and procedure changes.



# Required Notice by Employees



What about notice for safe leave?

- Employee must provide “reasonable” advance notice, unless it is not feasible to do so.

# Required Notice by Employees – No Notice

What if the employee doesn't provide the required notice?

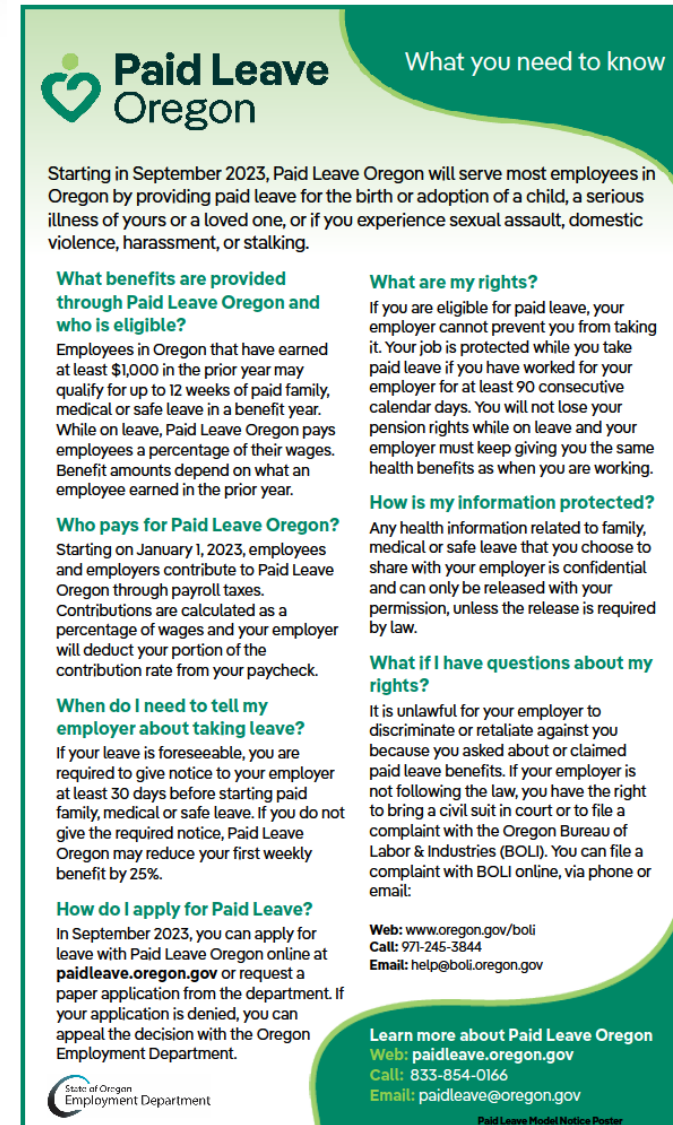
- Respond to OED's notice of employee's leave application within 10 days saying that notice not provided
- Employees who fail to provide the required leave notice may incur a penalty amounting to a 25% reduction in the first weekly benefit amount – imposed by department.



# Required Notice for Employers

Employers must post model notice poster:

- at each work site
  - Must be accessible and regularly frequented by EEs
- provide electronically/by mail to remote workers



**Paid Leave Oregon** What you need to know

Starting in September 2023, Paid Leave Oregon will serve most employees in Oregon by providing paid leave for the birth or adoption of a child, a serious illness of yours or a loved one, or if you experience sexual assault, domestic violence, harassment, or stalking.

**What benefits are provided through Paid Leave Oregon and who is eligible?**  
Employees in Oregon that have earned at least \$1,000 in the prior year may qualify for up to 12 weeks of paid family, medical or safe leave in a benefit year. While on leave, Paid Leave Oregon pays employees a percentage of their wages. Benefit amounts depend on what an employee earned in the prior year.

**What are my rights?**  
If you are eligible for paid leave, your employer cannot prevent you from taking it. Your job is protected while you take paid leave if you have worked for your employer for at least 90 consecutive calendar days. You will not lose your pension rights while on leave and your employer must keep giving you the same health benefits as when you are working.

**How is my information protected?**  
Any health information related to family, medical or safe leave that you choose to share with your employer is confidential and can only be released with your permission, unless the release is required by law.

**Who pays for Paid Leave Oregon?**  
Starting on January 1, 2023, employees and employers contribute to Paid Leave Oregon through payroll taxes. Contributions are calculated as a percentage of wages and your employer will deduct your portion of the contribution rate from your paycheck.

**When do I need to tell my employer about taking leave?**  
If your leave is foreseeable, you are required to give notice to your employer at least 30 days before starting paid family, medical or safe leave. If you do not give the required notice, Paid Leave Oregon may reduce your first weekly benefit by 25%.

**What if I have questions about my rights?**  
It is unlawful for your employer to discriminate or retaliate against you because you asked about or claimed paid leave benefits. If your employer is not following the law, you have the right to bring a civil suit in court or to file a complaint with the Oregon Bureau of Labor & Industries (BOLI). You can file a complaint with BOLI online, via phone or email:

**How do I apply for Paid Leave?**  
In September 2023, you can apply for leave with Paid Leave Oregon online at [paidleave.oregon.gov](https://paidleave.oregon.gov) or request a paper application from the department. If your application is denied, you can appeal the decision with the Oregon Employment Department.

**Web:** [www.oregon.gov/boli](https://www.oregon.gov/boli)  
**Call:** 971-245-3844  
**Email:** [help@boli.oregon.gov](mailto:help@boli.oregon.gov)

**Learn more about Paid Leave Oregon**  
**Web:** [paidleave.oregon.gov](https://paidleave.oregon.gov)  
**Call:** 833-854-0166  
**Email:** [paidleave@oregon.gov](mailto:paidleave@oregon.gov)

State of Oregon Employment Department  
Paid Leave Model Notice Poster

# Interaction with Other Leaves

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# How Does PLO Interact with Other Leaves?

- Other leaves that may intersect with PLO:
  - Family Medical Leave Act (FMLA)
  - Oregon Family Leave Act (OFLA)
  - (Paid) Sick Leave
  - Paid Time Off
- Leave Comparison Chart
  - <https://paidleave.oregon.gov/Pages/resources.aspx>



# How Does PLO Interact with Other Leave Laws?

Biggest differences between PLO and other leave laws for Oregon employees:

- Other leave laws:
  - No wages required for eligibility
  - Prior work time/hours required
  - Some different qualifying events
- PLO
  - \$1,000 wages in previous year
  - No prior work time/hours required for eligibility
  - Duration of leave

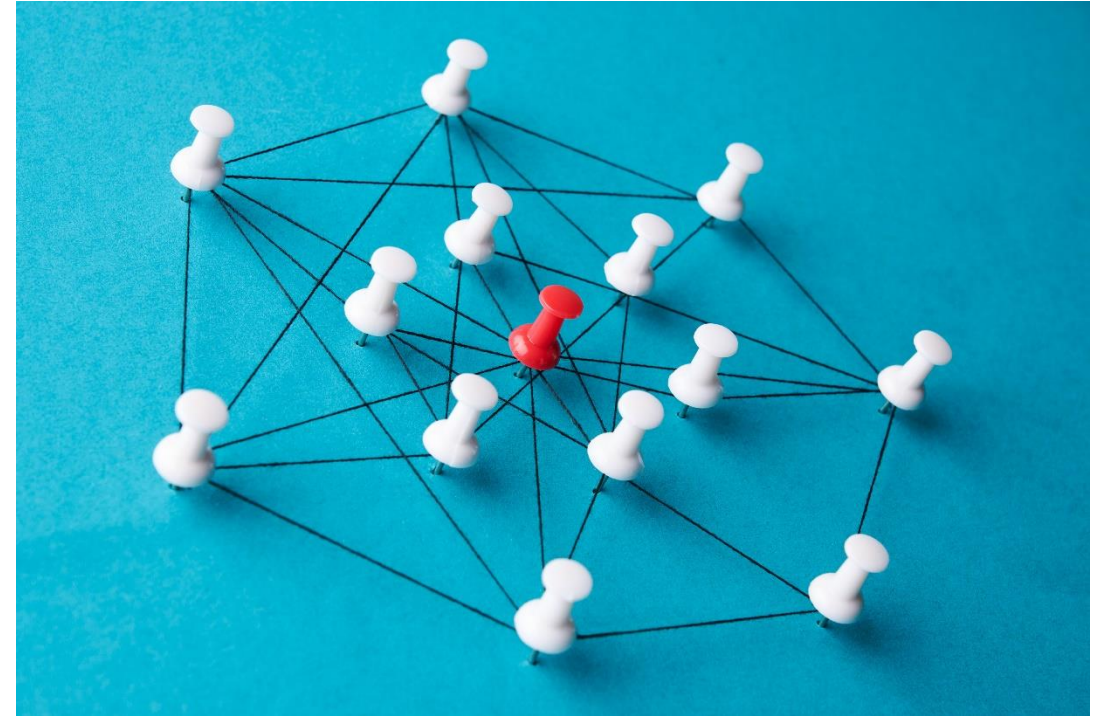
QUALIFYING PURPOSES	Paid Leave Oregon	OFLA	FMLA	Oregon Sick Leave
<b>Family Leave</b>				
Birth, adoption or foster placement	Yes	Yes	Yes	Yes
Family member's serious health condition <i>(family member definitions vary)</i>	Yes	Yes	Yes	Yes
<b>Medical Leave</b>				
Individual's own serious health condition	Yes	Yes	Yes	Yes
<b>Safe Leave</b>				
Domestic violence, sexual assault, harassment or stalking	Yes	No <i>Serious health condition and reasonable safety accommodations under ORS 659A may include leave.</i>	No	Yes
<b>Other Leave Types</b>				
Extended leave for a pregnancy* <i>*In addition to leave for serious health condition</i>	Yes	Yes	No	No
Sick child leave	No	Yes	No	Yes
Military family leave	No	Yes	Yes	No
Bereavement leave	No	Yes	No	Yes
Public health emergency	No	Yes Active Public Health Emergency allows for sick child leave for school/child care closures	No	Yes
<b>Covered</b>				
<b>Not Covered</b>				





# What is the Difference between PLO and STD?

- They're different!
- PLO is a public benefits program; Short-Term Disability (STD) is not
- Eligibility for STD depends on your plan documents
- Employees can be eligible for PLO and STD at the same time
- STD  $\neq$  PLO Equivalent Plan



# What about Unemployment and Workers' Comp?

- Employees who are currently receiving unemployment insurance or workers' compensation benefits are ineligible for PLO
- No double dipping with unemployment and workers' comp benefits





# ...But Some Double Dipping Is Allowed

- Employer may permit an employee to use paid sick leave, PTO, or any other paid leave earned by the employee while on PLO to replace an employee's wages up to 100% of the eligible employee's average weekly leave
- Employers **cannot** require employee to use PTO or paid sick leave before or while receiving PLO



# FMLA and OFLA



- If the employee takes PLO for a purpose that also qualifies for FMLA/OFLA, and the employee is eligible for FMLA/OFLA, **the leave runs concurrently**
- The same notice and certification rules apply for FMLA/OFLA
- Employers should begin their normal FMLA/OFLA process once they receive notice an employee will take PLO for an FMLA/OFLA qualifying reason



# Employees Working/Living in Oregon and Washington: Dividing the Pie

- Place of Performance
  - Employee is covered by PLO if employee's wages are earned for service:
    - Performed entirely within OR; or
    - Performed within and outside OR, but the service performed outside OR is *incidental* to the employee's service performed within OR





# Employees Working/Living in Oregon and Washington: Dividing the Pie

What is “incidental” service?

- “Incidental” means the majority of the employee’s service is performed within Oregon and the service outside of Oregon is *temporary or transitory in nature* or consists of *isolated transactions* and the employee’s service is not covered by a paid leave program in any other state or territory
- OED looks at several factors





# Questions?





# Resources

- Francesinfo.Oregon.gov
- Paidleave.oregon.gov
- PLO Phone: 833.854.0166
- Link to PLO rules:  
<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=6880>
- Presentation handout on PLO FAQs
- Your favorite Lane Powell employment attorney!

# Thank you!



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A photograph of a forest path. The path is made of dark mulch and leads through a dense forest of tall, thin trees. The ground is covered with green ferns. The lighting is soft, suggesting a late afternoon or early morning setting.

THANK YOU





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