



State & Local Compliance Update

USI EMPLOYEE BENEFITS

October 31, 2024

Paid Leave Oregon Updates, Part Two

The Oregon Legislature and Oregon Employment Department (“ED”) have implemented important changes and rules to the administration of Paid Leave Oregon (“PLO”). Among the key updates are reducing overlapping application of PLO and Oregon Family Leave (“OFLA”), elimination of the cap on replacement wages an employee may receive, and clarifying rules coordinating PLO and short term disability (“STD”) benefits.

BACKGROUND

As previously reported,¹ leave and wage replacement benefits under PLO became available on September 3, 2023. PLO is funded by employer and employee contributions² deducted from employee paychecks. ED administers PLO and sets the benefit amounts and contribution limits.³ Alternatively, employers may self-administer a PLO equivalent plan provided by insurance or self-funded to comply with PLO requirements. PLO has been updated repeatedly by the Oregon legislature as well as through the rule-making process to enhance benefits and administration of the program.⁴

SB 1515

During the 2024 legislative session, the Oregon legislature passed SB 1515 implementing several changes to improve interaction between PLO and OFLA. Changes include:

- Elimination of the 16-week cap on combined leave under PLO and OFLA
- Required alignment of the leave year to a look forward basis from the Sunday before an approved leave under both PLO and OFLA

¹ See USI's Compliance Update, [Oregon Delays Paid Family and Medical Leave](#) (Aug. 10, 2021).

² Briefly, employees pay 60% of the contribution rate. Employers with 25 or more employees pay 40% of the contribution rate. Small employers (fewer than 25 employees) are not required to pay into the program but must collect and submit employees' contributions and provide job protection.

³ Paid Leave Oregon Q&A accessible at: <https://paidleave.oregon.gov/resources/common-questions.html>

⁴ See USI's Compliance Update, [Paid Leave Oregon Updates](#) (Feb. 29, 2024) for information on recent PLO changes.

- Separation of valid reasons for leave to eliminate most overlap between PLO and OFLA

Prior to SB 1515, many of the leave reasons under OFLA and PLO were duplicative. This created the possibility that employees could claim leave twice for the same reason under the different programs. This was possible because an employee cannot be required to claim PLO when they requested leave under OFLA.

Leave under PLO is now available for:

- Birth, adoption, or placement of a foster child
- A family member's serious health condition
- Employee's own serious health condition
- Pregnancy disability leave – two additional weeks
- Safe leave
- Sick child leave – 12 weeks for serious health condition

Leave under OFLA is now available for:

- Pregnancy Disability leave – 12 weeks (in addition to twelve weeks for another covered reason)
- Sick child leave for non-serious health condition
- Bereavement leave – up to four weeks
- Military leave – up to 14 days

UPDATED RULES

PLO rulemaking is ongoing and there have been various updates to some rules that would be important for employers to understand. Additional rules have also been added to clarify employer and employee rights and responsibilities relative to PLO.⁵ Some of these rules include:

- Employers may not discontinue benefits for employees during PLO if doing so would prohibit the reinstatement of the employee's benefits upon their return to work
- Employees that do not pay for coverage while on PLO may be required to repay their usual cost upon their return in arrears with a limitation on such a deduction of 10% of the employee's gross pay per pay period until the amount owed is repaid
- If an employee does not return to work following PLO, employers may use any legal means available to recover the employee's share of unpaid health insurance premiums, including deducting the amount from the employee's final paycheck
 - This does not apply when the employee's failure to return to work is due to
 - A serious health condition
 - Safe leave
 - Circumstance beyond the employee's control
- An employer may discontinue health care benefits upon receiving clear notice of an employee's intent to not return to work following PLO effective the date the notice is received

⁵ <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=6880>

- The cap on wage replacement is eliminated. Employers may allow employees to receive benefits or use accrued paid leave to top-off their weekly amount in excess of the amount the employee would normally earn during a work week

STD COORDINATION

On October 10, 2024, the Oregon Department of Financial Regulations (“DFR”) issued Bulletin No. DFR 2024-8 related to PLO benefits reducing short term disability benefits. The guidance in the bulletin applies to STD policies that treat PLO benefits as “other income” or “other benefits” for which an individual must apply before receiving STD benefits. STD benefits are also commonly reduced by the amount received as other benefits.

Such STD policies will now be required to update all plan documents to clearly inform participants that:

- They might be eligible for leave benefits under PLO;
- The carrier might require the participant to apply for PLO and, the extent to which they must pursue a claim if denied, and;
- The extent of the reduction of STD benefits due to PLO benefits received

Carriers will also be required to submit updated plan documents for DFR approval. Premiums for STD policies that require participants to apply for PLO benefits should reflect the decrease in cost to the STD policy represented by the PLO offset. This means premiums should be less for an STD policy that requires the PLO offset as compared to a policy that does not require offset.

EMPLOYER NEXT STEPS

Employers with equivalent plans are required to provide PLO benefits that are at least as good as the state program. The requirements in SB 1515 should be adopted by all equivalent plans and leave policies may need to be updated to reflect the distinction in reasons for leave between PLO and OFLA.

Similarly, PLO equivalent plans and leave policies may need to be updated to reflect the changes reflected in the updates to PLO rulemaking. While PLO now allows for changes to benefit continuation and provides additional avenues for employers to collect unpaid employee premiums, employers must still be aware that employee protections under FMLA may require different procedures and updates may be needed to plan documents and leave policies to implement these changes. Employers should work with their carriers or counsel as appropriate to identify needed changes and obtain updated documents and policies.

Finally, employers sponsoring STD plans with PLO offset should confirm when their policies will be updated to reflect the new requirements and obtain the required disclosures from the carriers. This could apply to any STD policy and not just those that are a part of a PLO equivalent plan.

RESOURCES

- Oregon PLO website, <https://paidleave.oregon.gov/>
- Information on SB 1515, <https://olis.oregonlegislature.gov/liz/2024R1/Measures/Overview/SB1515>

- Oregon PLO Rules, <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=6880>
- Oregon Division of Financial Regulation Bulletin No. DFR 2024-8, [Bulletin 2024-08: Paid Leave Oregon as an “Other Benefit” that reduces Short-Term Disability benefits](#)

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