BARRAN LIEBMAN LLP

ATTORNEYS

Employment | Labor | Benefits | Higher Education
www.barran.com | 503.228.0500

OED Begins Accepting Equivalent Plan Applications on September 6:
The Sooner Your Plan is Approved, the Less You May Pay (to the State)

By Stacie Damazo

In less than five months, contribution requirements under Paid Leave Oregon—initially referred to as the Paid Family and Medical Leave Insurance ("PFMLI") program—begin. In general, Paid Leave Oregon will provide eligible individuals up to 12 weeks (or, in case of pregnancy, up to 14 weeks) of paid time off for certain qualifying purposes. While eligible individuals will not be able to apply to receive benefits under the program until September of next year, beginning on January 1, 2023, most Oregon employers with 25 or more employees are expected to begin making contributions to the PFMLI Fund.

Contributions under Paid Leave Oregon are shared by both employers and employees. Beginning in 2023, employees are responsible for paying (via payroll deductions) 60% of the total contribution rate, and covered employers must pay an amount equal to 40% of the total contribution rate. 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 in covered wages.

In lieu of contributing to and participating in the state's program, employers may apply to administer an equivalent plan. To be approved, an employer's proposed equivalent plan must meet specific minimum requirements, including but not limited to offering benefits to eligible employees that are equal to or greater than the weekly benefits and duration of leave that eligible employees would qualify for under the state's program.

On September 6, 2022, OED will begin accepting equivalent plan applications. Regardless of the date an equivalent plan is approved, equivalent plans will not go into effect until September 3, 2023—the same date eligible individuals may begin applying for benefits under Paid Leave Oregon. Employers may apply for an equivalent plan at any time. However, to be in effect by September 3, 2023, employers must submit their equivalent plan application by May 31, 2023.

Employers who are not quite ready to apply for an equivalent plan may alternatively submit a Declaration of Intent, which is a legally binding agreement, documenting an employer's intent and commitment to apply for an equivalent plan with an effective date of September 3, 2023. Importantly, Declarations of Intent do not relieve employers of their obligation to collect employee contributions, and may not relieve employers of their contribution obligations, depending on the circumstances. For example, if the Declaration of Intent is canceled, employers must immediately pay and remit all unpaid contributions due to the OED. The OED may also impose penalties and interest on these unpaid amounts, so employers should only submit a Declaration of Intent if they are certain they will apply for an equivalent plan.

While an equivalent plan may grant an employer more flexibility to design a program or policy that better suits the needs of its workforce, equivalent plans will not be the best choice for every employer.

To determine whether to apply for an equivalent plan, employers should consider the following:

- Do you already, or want to, offer more paid leave than the state allows under its program?
- Do you already offer and administer paid leave, such that modifications of your current policy would bring you into compliance with Paid Leave Oregon?
- Do you also operate in one of the other eight states that have passed state-mandated paid leave programs and, if so, is it an option to create a single plan that would satisfy the obligations of those programs?
- Are you, or a private third-party insurance company or administrator, better situated to administer benefits and meet the needs of your employees, as compared to the state agency?

In addition to considering whether an equivalent plan is an advantageous business decision, it is also important for employers to be strategic about when they apply (if they choose to do so). Depending on when an employer applies for an equivalent plan, the employer may still be required to contribute to the state's program for a certain period of time. In other words, the earlier an equivalent plan application is submitted to the OED, the less an employer may be required to pay to (or hold in trust for) the state's PFMLI fund.

For example, employers who submit an equivalent plan application by November 30, 2022, may be exempt from paying and remitting the requisite contribution payments beginning January 1, 2023. Employers who submit their equivalent plan applications between November 30, 2022, and February 28, 2023, however, will be required to contribute until April 1, 2023.

Whether you opt to apply for an equivalent plan, submit a Declaration of Intent, or forego this option altogether, ultimately, the decision to apply may come down to whether you have, want to create, or can purchase, the infrastructure necessary to administer the plan.

Stacie Damazo is an attorney at Barran Liebman, where she represents employers in employment advice and litigation matters. For questions about Paid Leave Oregon or other matters, contact her at (503) 276-2121 or sdamazo@barran.com.