

January 29, 2021

**Oregon Employment Department**  
875 Union St. NE  
Salem, OR 97311

**RE: Oregon Paid Family and Medical Leave Insurance – Proposed Draft Administrative Rules**

Interim Director Gerstenfeld:

The ERISA Industry Committee (“ERIC”) is writing to submit comments and questions pertaining to the Oregon Paid Family and Medical Leave Insurance program. Specifically, our comments address the Proposed Draft Administrative Rules (“Rules”) pertaining to equivalent employer plans as well as the program exemptions processes and standards.

ERIC is the only national association that advocates exclusively for large employers on health, retirement, and compensation policies at the federal, state, and local levels. The member companies that we represent are leaders in every sector of the economy and currently provide comprehensive and generous paid family and medical leave benefit programs that support millions of workers and their families across the country, including in the state of Oregon. You and your fellow Oregonians likely engage with an ERIC member company when you drive a car or fill it with gas, use a cell phone or a computer, watch TV, dine out or at home, enjoy a beverage, fly on an airplane, visit a bank or hotel, benefit from our national defense, receive or send a package, go shopping, or use cosmetics.

ERIC and our member companies recognize the critical value that paid family and medical leave benefits provide for workers in times of turmoil, which is why so many large, multistate employers currently provide these benefits to their nationwide workforces. Similarly, we recognize that state and local lawmakers have played an important role in helping secure access to paid family and medical leave benefits for those that are not already offered them through their employer. With this in mind, it is important to recognize that the aim of state programs and policies should be to expand access to and the quality of these important benefits, not to negatively impact the benefits already enjoyed by employees within the state.

ERIC applauds the recognition by Oregon lawmakers of the value of encouraging and providing an exemption for employer-provided paid family and medical leave benefit plans when the program was drafted, considered, and enrolled. As established by Section 43 of the law, employers may apply to the Director of the Employment Department for approval of an employer-offered benefit plan that provides benefits equal to or greater than the weekly benefits and the duration of leave that an eligible employee would qualify for under the Act.

While employer exemptions in other state paid family and medical leave insurance

programs have allowed many employers to continue operating their own generous paid leave benefit plans, what is certainly a good policy in theory does not always perfectly translate in practice. Because the majority of state program exemptions for equivalent plans are relatively new, cannot be applied flexibly to subclasses of employees, and do not always have a definitively established outline of the rights and protections that must be provided by an employer-provided program, many employers have concluded that an attempt to claim an exemption could end up being just as costly, if not more costly, than simply complying with the participation requirements of the state program.

Furthermore, many state program exemptions do not entirely relieve an employer from state reporting and administrative requirements even when granted, making the decision between employer-provided and state-administered benefits even more difficult. These realities ultimately discourage employers from seeking program exemptions for their privately-provided benefits and detract from the generous paid leave benefits that could have otherwise been available to their employees.

Similarly, while the inclusion of an employer exemption process is promising for the thousands of employees in Oregon that currently enjoy employer-provided paid leave benefits, the efficacy of the state equivalent plan exemptions really comes down to the fine details of the process and what they imply for employer compliance efforts. For employer exemptions to be successful and benefit Oregonians, the Employment Department must carefully consider the challenges that employers face in pursuing such an exemption, the effect that they can have on the benefits available to employees, and the need to establish clear and cohesive standards and guidelines for this critical aspect of Oregon's Paid Family and Medical Leave Insurance.

### **Specific Comments**

**The equivalent employer plan exemption process needs to clarify the information that must be included on applications and maintained for future reapproval.** While the current text of PFMLI Draft #20210107 briefly outlines the cost and timeline of employer exemption applications, it does little to prepare employers for the enormous administrative and compliance hurdles that they are sure to face when applying for an exemption. It is critical that the costs of compiling and submitting administrative records for an application be made clear and are not prohibitive to employers that want to provide their own paid leave benefits via a program exemption. For the large, multistate employers that currently offer generous paid leave benefits to thousands of employees within Oregon and wish to continue doing so, the costs of burdensome reporting requirements can be astronomical, making the importance of clear application, recordkeeping, and reporting requirements all the more clear.

**Equivalent plan minimum standards should be clearly and concisely summarized and provided to employers.** While many employers would prefer to retain direct control of their

paid leave benefits programs, they often find it extremely difficult to clearly identify which standards, definitions, protections, and rights established by the state program must be mirrored, or exceeded, by their voluntary benefit program. The current text of PFMLI Draft #20210108 falls short of clearly stating the minimum standards that must be met by employer plans in order to be granted an exemption, simply stating that employees are provided a) equal or greater duration of leave, b) equal or greater leave benefit amounts, and c) at least the same qualifying purposes as provided by the state program. While the minimum standards that employers must follow are presumably dispersed throughout the legislative text, employers must be given minimum exemption standards to follow in restructuring their benefits and applying for an equivalent plan exemption.

**Administrative and reporting requirements should avoid placing unnecessary or redundant burdens on employers.** Equivalent plan exemptions granted to employers should also grant relief from overly burdensome recordkeeping and reporting requirements often associated with participation in a state paid family and medical leave insurance program. While Section 43(11)(b) of HB 2005 references “all reports, information and records relating to the plan, including payroll and account records that document employee contributions and expenses”, the legislative text identifies neither the extent to which all employer records relate to a paid leave benefit plan nor the manner in which these records must be maintained by employers. Similarly, the nature of these recordkeeping and reporting requirements are not covered by the Rules.

These specific recordkeeping and reporting requirements stand to have a massive impact on large, multistate employers who may be forced to radically restructure their national recordkeeping practices in order to be granted an exemption in Oregon. While the cost of these administrative burdens would do nothing to increase the value of benefits ultimately received by employees, they could in fact have the opposite unintended effect by detracting from resources that otherwise would have gone to bolstering employee benefits.

**Model employee notices should be created by the Department and provided to employers.** Section 43(11)(c) of HB 2005 establishes that, in order to be granted an exemption, employers must provide adequate notice to their employees to make them aware of a wide range of aspects of the employer-provided benefit plan. To encourage employers to design and provide innovative paid family and medical leave benefits, it is critical that they be given as much information as possible regarding equivalent plans and employer exemption procedure. The Department must therefore create model notice examples for employers to emulate and provide to employees instead of forcing a trial and error method of exemption application.

**Different sources of paid leave benefits must be better coordinated to avoid stacking of leave by employees.** As the complex patchwork of conflicting state paid leave laws and fromgrams continues to expand, employers find themselves attempting to coordinate between a

growing number of paid leave benefit sources. Whether it is federal FMLA leave, a state paid family and medical leave program, state paid sick leave, federal emergency COVID-19 leave, or one of the wide range of specific paid leave benefits offered by private employers, the ability of employers to track and consolidate these sources has grown untenable. While PFMLI Draft #20210109 is clear in its coordination with state mandated paid sick leave and grants employers discretion in allowing employees to use concurrent employer-provided paid leave benefits, it explicitly prohibits employers from providing an employee with employer-provided paid family and medical leave benefits when the employee is also eligible for state worker's compensation benefits. Due to the impact that paid leave benefit coordination has on employer-provided benefit administration, as well as the future of the Oregon program, the Rules must be further developed to address the broader range of leave benefit sources available to employees today.

### **Conclusion**

ERIC greatly appreciates the recognition by Oregon lawmakers of the value that employer-provided paid leave benefit plans offer to their employees as well as the inclusion in the program of an exemption for equivalent employer paid leave plans. However, we strongly encourage the Oregon Employment Department to carefully consider the challenges that employers face in pursuing such an exemption, the effect that these challenges can have on the benefits available to employees, and the need to establish clear and cohesive standards and guidelines for this critical aspect of Oregon's Paid Family and Medical Leave Insurance.

The aim of state paid family and medical leave efforts today should be to secure access to these benefits for those most in need of them and to maximize the quality of benefits available, not to control the administration of successful employer-provided benefit programs that already provide generous paid leave benefits to their workforce. ERIC appreciates the opportunity to provide comments on the Proposed Draft Administrative Rules, as well as to discuss ways in which to avoid administrative burdens, encourage innovation in paid leave, and maximize the benefits available to employees throughout Oregon.

If you have any questions concerning our comments, or if we can be of further assistance, please contact us at (202) 789-1400 or [arobinson@eric.org](mailto:arobinson@eric.org).

Sincerely,



Aliya Robinson  
Senior Vice President, Retirement and Compensation Policy