



Equivalent Plan Guidebook



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About this guidebook

This guidebook provides information for Oregon employers on how to provide paid family, medical, and safe leave benefits through an equivalent plan instead of using the state Paid Leave Oregon program. More information can be found at paidleave.oregon.gov.

What is an equivalent plan?

An equivalent plan provides benefits to employees that are equal to or greater than those provided by the state through the Paid Leave Oregon program. Employers must submit an equivalent plan application to Paid Leave Oregon for approval. Once an approved plan is effective, the employer is not required to collect and pay contributions to Paid Leave Oregon, and employees apply for and receive paid leave benefits through their employer's equivalent plan.

What are the types of equivalent plans?

Employers may be approved for an employer administered or fully insured equivalent plan.

- With an employer administered plan, the employer assumes all financial risk associated with the benefits and administration of the equivalent plan, whether the plan is administered by the employer or a third-party administrator.
- With a fully insured plan, the employer purchases an insurance policy from an insurance company approved to sell Paid Leave Oregon products by the Oregon Department of Consumer and Business Services (DCBS), Division of Financial Regulation. The benefits related to the plan are administered through the insurance policy.

How can employees covered by equivalent plans apply for benefits?

Employees covered under an equivalent plan apply for benefits directly with their employer or the equivalent plan administrator (designated agent or insurance carrier), depending on their plan type. Employers with an equivalent plan are legally responsible for compliance with Paid Leave Oregon [laws](#) and [rules](#) that pertain to equivalent plan employers, regardless of who was delegated administration or whether they have purchased an insurance product.

How can employers apply for an equivalent plan?

Employers must submit an application to Paid Leave Oregon for approval to offer paid leave benefits through an equivalent plan. A separate application must be submitted for each business, based on Business Identification Numbers (BINs).

An equivalent plan application must be submitted for:

- Initial approval of the equivalent plan
- Reapproval of a previously approved equivalent plan, required every year for the first three years
- Changes to a previously approved equivalent plan

Application process

Employers can submit equivalent plan applications online or by mail. Employers can access applications online through their [Frances Online](#) account. They can also download and print an application (to submit by mail) on the [Paid Leave website](#), or request one by phone at 833-854-0166.

The application requires:

1. Information about the employer applying for the equivalent plan, including:
 - Business Identification Number (BIN) and Federal Employer Identification Number (FEIN)
 - Business name
 - Business address
 - Business contact's name and contact information
2. A copy of one of the following:
 - Employer administered equivalent plan; or
 - Insurance policy or the insurance product forms and chosen options/variables
3. A completed questionnaire (provided within application) showing that the plan meets all requirements for equivalent plans

4. Proof of solvency (only required for employer administered plans):
 - Proof of sufficient assets; or
 - A bond or an irrevocable letter of credit with the Oregon Employment Department named as the payee or beneficiary, issued by an insured institution
5. Information about the insurance policy and carrier (only required for fully insured plans):
 - Business and contact information for the insurance carrier
 - Date the policy begins and ends
6. Payment of the required application fee (see fees below)

Application fees

The non-refundable fees for equivalent plans are as follows:

Initial approval of an equivalent plan	\$250
Reapproval of an equivalent plan with substantive changes	\$250
Reapproval of an equivalent plan with non-substantive or no changes	\$150
Reapproval of an equivalent plan with substantive changes due only to legal changes to Paid Leave	\$0
Updates to an equivalent plan that do not require reapproval	\$0

When can I apply for an equivalent plan?

Employers can apply for an equivalent plan beginning Sept. 6, 2022. Paid Leave Oregon has up to 30 days to issue a decision on an equivalent plan. Once approved, an equivalent plan becomes effective at the start of the next quarter.

Equivalent plan deadlines for 2023

Contributions start Jan. 1, 2023 and benefits start Sept. 3, 2023. The department will begin accepting equivalent plan applications in September 2022.

To be exempt from the required quarterly contribution payments, employers must submit their equivalent plan application as follows:

- By **Nov. 30, 2022**, to be exempt from paying contributions beginning with the first quarter that starts Jan. 1, 2023.
- By **Feb. 28, 2023**, to be exempt from paying contributions beginning with the second quarter that starts April 1, 2023.
- By **May 31, 2023**, to be exempt from paying contributions beginning with the third quarter that starts July 1, 2023.

Equivalent plans will be effective starting on Sept. 3, 2023, when benefits start. If an equivalent plan approval is cancelled for any reason before Sept. 3, 2023, the employer must collect and pay contributions for all unpaid periods since Jan. 1, 2023 and is subject to penalties and interest. If the approval was cancelled, the employer cannot withhold additional funds from an employee's wages to pay for contributions.

Declaration of intent to obtain an equivalent plan for 2023

For 2023 only – if employers are unable to complete an equivalent plan application in advance, they can submit a declaration of intent on [Frances online](#) instead.

- **Nov. 30, 2022** – Last day to submit a declaration of intent.
- **Jan. 1, 2023** – Employer can begin withholding contributions from employees' pay to put toward Paid Leave Oregon or a proposed equivalent plan.
- **May 31, 2023** – Equivalent plan applications due for employers that submitted a declaration of intent.
- **June 30, 2023** – If the employer does not have an approved equivalent plan by June 30, 2023, the employer must collect and pay contributions for all unpaid periods since Jan. 1, 2023, with all due penalties and interest. If their equivalent plan is not approved, employers cannot retroactively withhold contributions from employees' wages to pay the contributions due.

Appeals for denied applications

If an equivalent plan application is denied, the employer remains covered by the state's Paid Leave Oregon program and must continue to collect and pay contributions as required. Employers can appeal denials by submitting a request in writing to the Oregon Employment Department or to the Office of Administrative Hearings online or by mail. Directions on how to submit a hearing request will be included in the decision letter.

Re-approval of an approved plan

Employers or plan administrators must apply for re-approval of their equivalent plans as follows:

- Annually for the first three years, due 30 days prior to the anniversary date of the effective date of the approved plan
- When substantive changes are made to their approved plan

Employers or plan administrators can request changes to their approved equivalent plan at the same time they apply for their annual reapproval during the first three years.

Substantive changes can be requested separately at any time by submitting an application for reapproval.

When a plan is reapproved with substantive changes, the employer must apply for reapproval again annually for the following three years, unless the changes were due to legal changes to Paid Leave Oregon.

Substantive changes

The Oregon Employment Department considers the following changes to an approved equivalent plan as substantive and requires reapproval:

- Changing from a fully insured equivalent plan to an employer administered equivalent plan
- Changing from an employer administered equivalent plan to a fully insured equivalent plan
- Changing fully insured equivalent plan policies, regardless of whether the new equivalent plan is from the same insurance provider or another insurance provider
- Changes to answers on the equivalent plan application questionnaire
- Any changes that amend an employer administered equivalent plan, except as identified as non-substantive amendments below

Substantive changes to a previously approved equivalent plan become effective on the first day of the calendar quarter following the date of the reapproval. If the reapproval is denied, the employer must continue to follow the originally approved equivalent plan.

Non-substantive changes

Non-substantive changes can be made to an equivalent plan at any time by updating the equivalent plan application information. There is no fee for non-substantive changes and no reapproval is required unless the changes are made as part of the annual reapproval.

The following changes to an approved equivalent plan are considered non-substantive:

- Changes to employer or insurer contact information
- Correction of typographical or grammatical errors
- Changes to statutory references
- Changes to benefit amounts or approved leave types

Non-substantive changes become effective when the employer makes updates.

What are the requirements for equivalent plans?

To be approved, an employer must demonstrate that their equivalent plan or insurance policy meets the following requirements.

Coverage

An equivalent plan must cover all employees who work for the employer, including full and part-time, seasonal, and temporary employees as follows:

- Employees who were previously covered under the state paid leave program or who are new to the Oregon workforce must be covered within 30 days of hire.
- Employees who were previously covered by an approved Oregon equivalent plan must be covered on the date of hire.

Employers or plan administrators can request information from the Oregon Employment Department to determine when they need to cover a new hire. If an employer does not provide coverage at the time of hire, they may be required to withhold employee contributions and send payments to the state Paid Leave Oregon program for the period prior to coverage starting under the equivalent plan.

Contributions

Employers with an approved equivalent plan may assume all or part of the costs relating to an approved equivalent plan.

However, an employer or plan administrator may not withhold more than the amount employees would have paid in contributions for the state Paid Leave program.

The contribution rate and maximum wage amount for 2023 is 1% of each employee's wages up to \$132,900. Employee contributions are 60% of the rate. For every \$1,000 in wages, an employer may not withhold more than \$6 to fund an equivalent plan. The contribution rate and maximum wage amount are set annually by November 15.

Employers or plan administrators may not withhold more from their employees' paychecks than stated in their equivalent plans. Employers cannot retroactively withhold additional contributions, even if the equivalent plan is withholding less than the amount allowed by Paid Leave Oregon.

Employee contributions must be used for equivalent plan expenses only and cannot be considered part of an employer's assets for any purpose. Misuse of employee contributions may result in termination of the equivalent plan.

Benefits

An equivalent plan must provide benefits equal to or greater than those provided by Paid Leave Oregon. This includes at least the same qualifying leave purposes, leave durations, benefit amounts, and job protections.

Employees covered by an equivalent plan apply for benefits through the equivalent plan. The equivalent plan must not impose any additional conditions or restrictions on the use of paid leave beyond the requirements in statute and rule for Paid Leave Oregon.

When an employee applies for benefits under an equivalent plan, the employer or administrator may request consent from the employee to obtain benefit information from the Oregon Employment Department to ensure benefits are equal to or greater than those provided by the state plan. The request should include the employee's name, Social Security Number or Individual Taxpayer Identification Number, and the employee's contact information submitted online.

If the employee does not give consent, the employee can request the benefit information from the Oregon Employment Department. Once a request for benefit information is received, the Oregon Employment Department will respond within 10 calendar days of the date of the request and may contact the employee directly for more information.

Decisions on benefit claims must be in writing, either in hard copy or electronically, and include the amount of leave approved, the weekly benefit amount, and how the employee may contact the Oregon Employment Department to request their average weekly wage amount if the employee believes the benefit amount may be incorrect.

Denial decisions must include the reason(s) for the denial and an explanation of the employee's right to appeal the decision, as well as instructions on how to submit an appeal.

Benefit Eligibility

An equivalent plan must provide benefits to all covered employees who have earned a minimum of \$1,000 in gross wages during the previous year and experience a qualifying event. This includes wages from all employment in Oregon. The period used to confirm benefit eligibility is either:

- The first four of the five completed quarters before the start of the benefit year (base year); or
- The four most recently completed quarters before the start of the benefit year (alternate base year)

Employers can verify employee eligibility with the Oregon Employment Department.

Types of leave

An equivalent plan must cover at least the following types of leave:

- **Family Leave:** to bond with a new child within the first 12 months after birth, adoption, or foster placement. Additional leave (limited to two weeks) related to pregnancy issues for a birth parent in addition to the 12 weeks provided for family, medical, and safe leave.
- **Family Leave:** to care for a family member experiencing a serious health condition. Family members include spouses and domestic partners, children, parents, siblings or stepsiblings, grandparents, grandchildren, and any individual related by blood or affinity whose relationship is equivalent to family.
- **Medical Leave:** for an employee's own serious health condition.
- **Safe Leave:** for survivors of sexual assault, domestic violence, harassment, or stalking, or to obtain legal or law enforcement assistance, seek medical treatment to recover from injuries, obtain counseling or support services, to relocate or take other steps to secure the health and safety of themselves or their dependent child(ren).

Duration and increments

An equivalent plan must provide at least 12 weeks of paid leave per benefit year in any combination of family, medical, and safe leave. The plan must also provide an additional two weeks of paid leave for limitations related to pregnancy.

An equivalent plan must allow employees to take paid leave in increments equal to one workday or one workweek. Employees can take leave in consecutive or non-consecutive periods.

The benefit year starts on the Sunday before the period of leave and lasts for 52 weeks. An employee who has started a benefit year under previous coverage continues the same benefit year under the equivalent plan until it is complete.

Employers can request information on previously established benefit years from the Oregon Employment Department.

Verification of qualifying purpose

Equivalent plans cannot have additional requirements to verify qualifying leave beyond those established for employees covered by Paid Leave Oregon.

- For **Family Leave**, documentation may required to show:
 - » The birth, adoption, or placement of a child
 - » That a family member is experiencing a serious health condition
 - May require description of the family relationship
 - May **not** require additional information detailing that care is necessary or to verify the type of family relationship
- For **Medical Leave**, documentation may be required to show a serious health condition.
- For **Safe Leave**, documentation may be requested, but must accept self-attestation when the employee cannot provide documentation for good cause.
- For limitations related to pregnancy, documentation may be required to show that the employee birthed a child, but not to verify related limitations.

Benefit amounts

An equivalent plan must provide benefit amounts that are equal to or greater than benefit amounts under Paid Leave Oregon. The employee's previous wages and the state average weekly wage determine the benefit amount. Benefits are calculated using the following information:

1. The Oregon Employment Department sets the state average weekly wage. The state average weekly wage is used to set a minimum weekly benefit amount that is 5% of the state average weekly wage and a maximum that is 120% of the state average weekly wage. The state average weekly wage and both the minimum and maximum weekly benefit amounts will be published annually by July.
2. The Oregon Employment Department calculates an employee's average weekly wage based on the employee's wages before the start of the benefit year. Specifically, all wages from the first four of the previous five completed quarters are added together and then divided by the number of weeks in those quarters. If an employee does not have \$1,000 in those quarters, then wages from the most recent four quarters are used. Employers and employees can obtain the employee's average weekly wage from the Oregon Employment Department.

Benefit amounts are as follows:

- If the employee's average weekly wage is equal to or less than 65 percent of the state average weekly wage, the employee's weekly benefit amount is 100 percent of the employee's average weekly wage.
- If the employee's average weekly wage is greater than 65 percent of the average weekly wage, the employee's weekly benefit amount is the sum of:
 - » 65 percent of the average weekly wage, and
 - » 50 percent of the employee's average weekly wage that is greater than 65 percent of the average weekly wage
- An employer with an equivalent plan can choose to pay the same or greater benefits than the state program, but cannot pay less than the state program.

Simultaneous coverage

If an employee has coverage under more than one plan at the start of leave, the employee must apply for benefits with each plan separately. To identify other coverage, an employer may ask an employee whether they have additional paid leave coverage but may not require that the employee provide details on other employers or plans.

The employer may then request from the Oregon Employment Department the employee's average weekly wage, whether a benefit year was started, and whether the leave was exhausted.

If the department is aware of simultaneous coverage, the department will adjust the weekly benefit amounts by prorating the current days worked for each respective plan for which an employee has coverage. The Oregon Employment Department will notify employers of the prorated benefit amount, and the employer with the equivalent plan must pay at least its portion of the weekly benefit to the employee.

Benefit payments

Employers or plan administrators must make a reasonable effort to issue the first benefit payment to an employee within two weeks after receiving the claim or the start of leave, whichever is later. Benefit payments must be weekly, if fully insured, or according to the employer's regular pay schedule, if the plan is employer administered.

Job protections

An equivalent plan must provide job protections to all employees employed for at least 90 calendar days.

When an employee returns to work from paid leave, they are entitled to return to the position they held before the start of leave, if that position still exists.

If the position no longer exists, then job protections depend on the size of the employer:

- For large employers (25 or more employees), the employee is entitled to be restored to any available equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

- For small employers (fewer than 25 employees), the employer may, at the employer's discretion and based on business necessity, restore the employee to a different position with similar job duties and the same employment benefits and pay.

Failure to provide the required job protections is an unlawful employment practice. An employee that alleges a violation of job protections may bring a civil action against the employer or file a complaint with the Commissioner of the Bureau of Labor and Industries.

Continuation of health benefits

Employers are required to continue existing health benefits for an employee receiving paid leave benefits until their paid leave ends or the employee returns to work after taking their leave. The employer can require that the employee continue to pay their share.

Appeals and disputes

Employers or plan administrators must provide an appeal process to review benefit determinations when requested by an employee. The employer must provide a written decision (either via hard copy or electronically) regarding the appeal to the employee.

If the employee and employer or administrator are unable to resolve an appeal through the equivalent plan's appeal process, the employee may request dispute resolution assistance through the Oregon Employment Department. The department will review the dispute and provide the employee and employer with an advisory decision.

If the employer or administrator does not follow the department's advisory decision, the employee may submit a [wage claim](#) with the Oregon Bureau of Labor and Industries under ORS chapter 652.

What are the responsibilities of employers with equivalent plans?

An equivalent plan employer must adhere to the terms of their approved equivalent plan and meet the following responsibilities to maintain their equivalent plan.

Notice to employees

Employers must provide notice to employees about the coverage provided under the equivalent plan. Employers must give notice to employees at the time of hire and each time the policy or procedure changes. The notice must be in the language that the employer typically uses to communicate with the employee.

Employers must display the notice in each building or worksite in an area that is accessible to and regularly frequented by employees. Employers must provide notice to remote-work employees by hand delivery, electronic delivery, or regular mail upon the employee's hire or assignment to remote work.

Paid Leave Oregon will provide an employee notice template for employers offering equivalent plans that will include the following required information:

- Benefits available under the approved plan, including the duration of leave
- How to file a claim to receive benefits under the plan
- Employee contributions withheld for the plan
- The process to appeal benefit decisions
- Job protections and the continuation of health benefits during paid leave
- Prohibition of discrimination and retaliation related to paid leave and the right of an employee to bring civil action
- Confidentiality of any health information provided

Reporting requirements

Employers with an equivalent plan are required to follow both reporting requirements for all employers and specific reporting requirements for equivalent plans.

Combined payroll reports

Employers with an approved equivalent plan are required to file combined payroll reports and provide Paid Leave Oregon wage information for all employees on Form 132 - Employee Detail Report and employee count information on Form OQ - Oregon Combined Quarterly Report. The only difference in payroll reporting for equivalent plan employers is that the contribution amount due is zero. Tax forms and more information on payroll reporting can be located [here](#).

Annual equivalent plan reports

Employers must submit an annual report on benefits usage, and employers who withhold employee contributions must additionally report financial information. The report is due on or before Jan. 31 or along with the application for re-approval. Employers must submit an additional report at the time a plan is terminated or withdrawn.

The equivalent plan report collects the following information:

- Number of benefit applications received during each quarter and the qualifying purposes
- Number of benefit applications approved during each quarter, the qualifying purposes, and total amount of leave
- Number of benefit applications denied during each quarter, the qualifying purposes, the number of appeals/disputes made on denials, and the outcome of the appeals/disputes

If the employer withholds employee contributions, they must also report the aggregate financial information:

- Total amount of employee contributions withheld during the year
- Total plan expenses paid during the year, including the total benefit amount paid, and total administrative costs, if applicable
- Balance of employee contributions held in trust at year end
- Balance of benefits approved but not yet paid, if the plan is an employer administered plan
- Insurance premiums and administrative costs due for each quarter, but not yet paid.

Employee coverage reporting at the Oregon Employment Department's request

Employers must respond to any request from the Oregon Employment Department for information about current and prior employees employed in the base year within 10 calendar days from the date of the notice. This includes reporting changes to coverage when a plan becomes effective, is terminated, or withdrawn.

The information requested can include:

- If a benefit year was established
- The start and end date of the established benefit year
- Total amount of benefits paid in the benefit year
- The duration of leave remaining in the benefit year

Recordkeeping and compliance reviews

The Oregon Employment Department will conduct periodic reviews of benefits provided under an approved equivalent plan in order to ensure compliance with the requirements of an approved equivalent plan.

Employers with an equivalent plan must keep the following records for six years and provide the records to the Oregon Employment Department when requested, including all required reports, information, reporting requirements, and records relating to the equivalent plan, including employee leave applications, and benefits paid or denied.

How can I withdraw my equivalent plan?

An employer can withdraw an equivalent plan that has been in effect for at least one year. The employer must provide the Oregon Employment Department with at least 30 days' notice.

The withdrawal will become effective 30 days from the later of the following dates:

- The date the withdrawal form is received by the Oregon Employment Department
- The date that the equivalent plan has been in effect for one year
- The effective date of the withdrawal requested by the employer

The employer must provide notice of the withdrawal from an equivalent plan to its employees at least 30 days prior to the effective date of withdrawal. If an employee's leave overlaps the effective date of withdrawal, the employer must continue all equivalent plan requirements and pay benefits until the total amount of the benefit is paid or the duration of leave ends, whichever occurs first.

When an equivalent plan is withdrawn, the employer must pay the balance of employee contributions into the Paid Leave Oregon Trust Fund. The Oregon Employment Department assesses the amount based on the most recent financial reports and any other financial information. The balance will be any employee contributions that are held by the equivalent plan employer minus the benefits paid and administrative expenses. Interest will accrue from the date of the withdrawal until paid.

When can the Oregon Employment Department terminate an equivalent plan?

The department may terminate an equivalent plan for the following reasons:

- Misuse of employee contributions received or retained by the employer
- Failure to adhere to the department-approved equivalent plan or to report equivalent plan changes to the department
- Failure to adhere to program requirements and reporting requirements
- Failure to file for reapproval
- Employer insolvency
- Termination of the insurance policy by the plan administrator
- Failure to respond timely to the department's reasonable inquiries for information about the equivalent plan

If the department intends to terminate an equivalent plan, it will provide the employer with the reason(s) for termination and instructions regarding how to resolve the termination reason(s). The equivalent plan will be terminated if the issue is not resolved. The Oregon Employment Department will send a notice with the effective date of termination, which will be the last day of the calendar quarter.

The employer must notify employees of an equivalent plan termination within ten business days of the date on the notice of termination sent by the Oregon Employment Department. All applicable equivalent plan requirements must remain in effect until the effective date of termination. If the employer does not agree with the reason(s) for termination, the employer may appeal.

Upon the effective date of termination, the employer must provide the Oregon Employment Department an updated equivalent plan report with financial and benefit use information. The employer must pay the balance of employee contributions into the Paid Leave Oregon Trust Fund. The Oregon Employment Department assesses the amount based on the most recent financial reports and any other financial information. The balance will include employee contributions held by the equivalent plan employer minus the amount of benefits paid and administrative expenses. Interest will accrue from the date of the withdrawal until paid.

Upon the effective date of an equivalent plan termination, the employer must begin withholding and paying employee contributions and paying employer contributions to the state Paid Leave Oregon program.

An employer whose equivalent plan was terminated cannot apply for another equivalent plan for three years from the date of termination.

What happens if I sell or transfer my business?

If there is a complete business transfer, including the transfer of the BIN associated with the equivalent plan, the previously approved equivalent plan stays in place. If the new owner chooses to end an equivalent plan, they may terminate the plan within 90 days from the date of the acquisition for any reason, or whenever there is a substantial reduction in personnel (33% or more). If outside of the 90-day window without a substantial reduction of personnel, they may go through the standard process of withdrawal of an equivalent plan.