

October 27, 2020

Oregon Employment Department

875 Union St. NE
Salem, OR 97311

**RE: Oregon Paid Family and Medical Leave Insurance – Virtual Town Hall –
Equivalent Plans Comments and Questions**

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 equivalent employer plans as well as the program exemptions that were established under House Bill 2005 (“HB 2005”) and that will be developed through future regulatory action.

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 HB 2005 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 and detract from the paid leave benefits that could have been available to employees through their employer.

Similarly, while the inclusion of an exemption process in HB 2005 is promising for the thousands of employees in Oregon that currently enjoy generous, 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 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.

Specific Comments

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. Many state administrators create educational literature to explain new paid leave program benefits to employees, but do not provide a central checklist for employers that are attempting to gain an equivalent plan exemption. Section 43(2)(b) of HB 2005 states that exemptions may be granted to employers when the “benefits afforded to employees covered under the plan are equal to or greater than the weekly benefits and the duration of leave that an eligible employee would qualify for under sections 1 to 51 of this 2019 Act”. While the minimum standards that employers must follow are presumably

dispersed throughout the legislative text, there should be a more accessible format containing the minimum exemption standards for employers to follow through this process.

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. 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. As the Oregon Employment Department develops rules governing these requirements, it is critical that employers are given the flexibility that they need to ensure that their paid leave plan and general employee benefits administration remain compatible.

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. Even if employers may need to add materials to cover unique aspects of their paid leave benefit plan, it is critical that the Department create model notice examples for employers to emulate and follow to ensure that employers are including the information considered adequate under the statute.

The Department should establish clear guidelines for the employer exemption processes governing application, renewal, termination, and decision review. An employer’s decision to participate in a state paid leave program or maintain an employer-provided plan is not easy to make and is only further complicated when their path toward exemption is left unclear. The legislative text of HB 2005 references the Department’s general responsibilities in receiving, reviewing, and deciding on applications for employer equivalent plan exemptions but does not outline details as to the specific process or timeline for the application process. Similarly, Sections 44 and 45 outline circumstances under which the Department can reevaluate an employer-provided plan and even revoke its exempt status without explanation as to when, why, or how such a circumstance could arise. In order for employers to plan for and depend on equivalent plan exemptions, it is critical that the timelines and administrative procedures for these steps are concisely summarized and clearly provided for employers to use.

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 HB 2005 of exemptions for equivalent employer 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 legislation, as well as to discuss ways in which the patchwork of existing paid leave benefits can be consolidated and coordinated to best benefit employers and employees alike.

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.

Sincerely,



Aliya Robinson
Senior Vice President, Retirement and Compensation Policy