

ADMINISTRATIVE RULE REVIEW

Adopt New Rule Permanent Rule	Rule No. PFMLI Draft Rule #20210101	
	Page Page 1 of 4	Last Revised Date January 4, 2021
	NOTICE OF INTENDED ACTION	
	Bulletin Dated	Hearing Scheduled

PURPOSE:

This rule provides guidance on how employees are counted and how employee counts are used to determine employer size for purposes of the Paid Family and Medical Leave Insurance (PFMLI) program.

1 PFMLI Draft Rule #20210101

2 Method to Count Employees and Determine Employer Size

- 3 (1) “Employee count” means a headcount of all employees employed by an employer.
 4 (2) “Employer size” means the average number of employees employed by an employer.
 5 (3) “Small employer” means an employer whose employer size is less than 25 employees.
 6 (4) Employers shall determine their employee count each month by counting the number of employees
 7 on their payroll for the pay period that includes the twelfth of the month.
 8 (a) The employee count includes all individuals performing services for an employer for remuneration or
 9 under any contract of hire, written or oral, express or implied and home care workers as defined in ORS
 10 410.600. The employee count includes, but is not limited to:
 11 (A) Full-time employees;
 12 (B) Part-time employees;
 13 (C) Temporary employees;
 14 (D) Seasonal employees; and
 15 (E) Employees working outside of Oregon.
 16 (b) The employee count does not include:
 17 (A) Replacement employees hired to temporarily replace eligible employees during periods of family
 18 leave, medical leave, or safe leave;
 19 (B) Independent contractors as defined in ORS 670.600;
 20 (C) Participants in work training programs administered under state or federal assistance programs;
 21 (D) Participants in work-study programs that provide students in secondary or postsecondary educational
 22 institutions with employment opportunities for financial assistance or vocational training;
 23 (E) Railroad workers exempted under the federal Railroad Unemployment Insurance Act; and

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- 1 (F) Volunteers.
- 2 (c) ***Example employee counts:***
- 3 (A) A coffee shop has 20 employees on payroll for the pay period that includes the twelfth of April,
- 4 which includes 8 full-time and 12 part-time employees. The employee count for April is 20 employees.
- 5 (B) A public library has 27 employees on payroll for the pay period that includes the twelfth of
- 6 November, which includes a replacement worker hired to temporarily replace an employee taking paid
- 7 medical leave. The employee count for November is 26 employees.
- 8 (C) A non-profit organization has 15 employees on payroll for the pay period that includes the twelfth of
- 9 June, which includes three full-time employees, eight part-time employees, two seasonal employees, and
- 10 two postsecondary school students that are participating in a work-study program that provides
- 11 employment opportunities for financial assistance. The non-profit also has five volunteers. The employee
- 12 count for June is 13 employees.
- 13 (D) A logistics company has 15 employees on payroll for the pay period that includes the twelfth of
- 14 December, which includes five temporary employees and one replacement worker hired temporarily to
- 15 replace an employee taking safe leave. In addition, the logistics company hired 40 independent
- 16 contractors as drivers for December. The employee count for December is 14 employees.
- 17 (E) A marketing company has 30 employees on payroll for the pay period that includes the twelfth of
- 18 March, which includes 10 employees in Oregon, 10 employees in Washington, eight employees in
- 19 California, and two employees teleworking from Japan. The employee count for March is 30 employees.
- 20 (5) Employee counts are used to calculate employer size. Employers shall report employee counts to the
- 21 department in a manner prescribed by the department.
- 22 (6) Employers shall determine their employer size by calculating the average monthly employee count
- 23 for the 12-month period from October to September preceding the determination. The monthly employee

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- 1 counts for that period are summed and divided by twelve.
- 2 (7) Employers shall determine their employer size each year by October 31 and shall report their
- 3 employer size to the department in a manner prescribed by the department.
- 4 (8) Employer size is effective for the following calendar year.
- 5 (9) For purposes of determining whether an employer has fewer than 25 employees, the employer size is
- 6 not rounded.

7 (10) ***Example employer size determination:***

8 (a) A dental clinic has the following employee counts:

9 Month and Year	Employee Count
10 October 2024	19 employees
11 November 2024	35 employees
12 December 2024	35 employees
13 January 2025	30 employees
14 February 2025	23 employees
15 March 2025	20 employees
16 April 2025	18 employees
17 May 2025	19 employees
18 June 2025	27 employees
19 July 2025	28 employees
20 August 2025	23 employees
21 September 2025	20 employees

22 By October 31, 2025, the dental clinic determines their employer size by summing the monthly employee

23 counts from October 2024 to September 2025 (19 + 35 + 35 + 30 + 23 + 20 + 18 + 19 + 27 + 28 + 23 +

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- 1 20 = 297) and dividing the total by twelve ($297 \div 12 = 24.75$). The dental clinic's average number of
- 2 employees is 24.75. The dental clinic is considered a small employer from January 1, 2026 to December
- 3 31, 2026.
- 4 **Stat. Auth.:** ORS 657B.360
- 5 **Stats. Implemented:** ORS 657B.060, 657B.150, 657B.200, 657B.360, 657B.380