

**Question:** What job protection does an employee have when they take Paid Leave?

**Answer:** An employee generally has the right to return to their original position if the employee has been employed for a minimum of 90 straight days with that employer before taking Paid Leave. The 90 days includes any days the employee is not scheduled to work but is still employed with that employer.

**Question:** Does an employee have the right to job protection if the employee was denied Paid Leave benefits?

**Answer:** If an employee takes leave that isn't approved for Paid Leave benefits, they don't have job protection under Paid Leave. However, the employee could have job protections under another law, and they may wish to consult with an attorney or contact the [Oregon Bureau of Labor & Industries](#) (BOLI).

**Question:** What is considered an “equivalent position?”

**Answer:** An “equivalent” position is one that is basically identical to the employee's former position in as many ways as possible in terms of employment benefits and pay, and similar working conditions, including privileges, perks, and status. It must involve substantially the same or similar duties and responsibilities, which must include equivalent skill, effort, responsibility, and authority.

**Question:** What is an available position?

**Answer:** An available position is one that is vacant and not permanently filled.

**Question:** What if the employer filled the position with someone else while the employee was out on Paid Leave?

**Answer:** An employer must have the employee's former position available when they return to work from Paid Leave. This is true if the position still exists or if the employer filled the position with a replacement worker during the employee's leave.

If the position no longer exists, the employee has the right to any available position with equivalent employment benefits, pay, and other terms and conditions of employment.

If an equivalent position is not available at the employee's previous job site, large employers (employers with 25 or more employees on average) must offer the employee any equivalent position at a job site located within 50 miles of the employee's former job site, if such a position is available. (See the next question for small employers).

**Question:** What if the employer is considered a small employer and the employee's position no longer exists?

**Answer:** For a small employer (with fewer than 25 employees), if the position held by an eligible employee no longer exists, an employer may, at the employer's discretion based on business need, give the eligible employee a different position with similar job duties and the same employment benefits and pay. This includes offering similar working conditions, including the privileges, perks, and status of the former position.

**Question:** Are employers required to let employees know that employees have the right to job protection and that discrimination and retaliatory actions are prohibited?

**Answer:** Yes. Employers are required to provide written notice advising employees of rights and duties regarding Paid Leave ([notice posters](#) are available on the Paid Leave Oregon website). This notice must include the right to job protection and protection from discrimination and retaliatory personnel actions against an employee for asking about Paid Leave. The notice must also let the employee know about the right to bring a civil action against the employer or to file a complaint for violation with [BOLI](#). Employers must provide notices to employees in the language the employer typically uses to communicate with the employee.

**Question:** Does an employee have the right to job protection if they take Paid Leave before they have worked for their employer for 90 days? Even if they are still employed after they have completed 90 days of employment?

**Answer:** Not under Paid Leave, but possibly under other laws. Under Paid Leave, an employee must be employed at least 90 straight days **before** taking Paid Leave to receive job protection. For example, if the employee applies for Paid Leave after working 80 days with their employer, they may be approved for Paid Leave, but the employer does not have to protect their job.

**Question:** If an employee takes leave before they have worked for an employer for 90 days, and their employer terminates them, or ends their employment, what can the terminated employee do?

**Answer:** An employer may not discriminate against an employee because they have taken Paid Leave. But, until an employee works for an employer for at least 90 days, the Paid Leave statute doesn't protect their job. If the employee believes they were wrongfully terminated, they may wish to consult with an attorney or contact [BOLI](#).

**Question:** If an employee provides notice to the employer that they are planning on taking Paid Leave and the employer fires them as a result, are there any rights for the employee?

**Answer:** Yes, it is an unlawful employment practice for an employer to retaliate or in any way discriminate against an employee because they ask about Paid Leave. Employees can bring a civil suit in court or file a complaint with [BOLI](#).

**Question:** What can I do if my employer does not give me my original position after I return from Paid Leave?

**Answer:** If your employer does not give you the position you held before taking Paid Leave, you have the right to bring a civil suit in court or to file a complaint with [BOLI](#).

**Question:** What can I do if I feel I have been treated unfairly, discriminated against, or if I have experienced retaliation or termination from employment for taking Paid Leave?

**Answer:** You can bring a civil suit in court or file a complaint with [BOLI](#). It is unlawful for your employer to discriminate or retaliate against you because you either asked about or claimed Paid Leave benefits.

**Question:** If an employee who has been working for an employer for a year takes vacation during the 90 days before taking Paid Leave, does the employee have job protection?

**Answer:** Yes. The employee has worked for the employer for more than 90 straight days, even if they take vacation during that time.

**Question:** Are health benefits protected while an employee takes Paid Leave?

**Answer:** Yes. While an employee (who has worked for their employer for 90 straight days) takes Paid Leave, the employer must maintain the same health care benefits the employee had before their leave. The employee must continue to make their regular contributions for health insurance premiums while taking Paid Leave.

**Question:** Can an employer change the employee's job location while the employee is on Paid Leave?

**Answer:** Yes, if the employer has not treated the employee differently because they took Paid Leave. The employer can change the job location if the employer can show that the decision would have been the same had the employee not taken Paid Leave.

**Question:** If a business shuts down while an employee is on Paid Leave, are there protections?

**Answer:** No. Job protections under Paid Leave would not apply if the employee would have lost their job anyway due to general layoffs or downsizing. But, the employer can't include an employee in layoffs specifically because the employee took Paid Leave.

Additionally, an employee may lose Paid Leave benefits if a business closes, or the employee is subject to widespread layoffs. To be eligible for Paid Leave, an employee needs to be currently employed. The employee will need to notify Paid Leave if that happens.