



October 7, 2022

Employers of Oregon and Washington

Re: Letter on Place of Performance and Localization

Officials in both Oregon and Washington have received several questions on how to report employees for their respective state paid leave programs. This letter is intended to provide guidance regarding several scenarios related to “place of performance” or “localization” and to clarify to which state an employee’s subject wages should be reported.

Representatives from Oregon and Washington have been working together to ensure that both paid leave programs are aligned in advising employers to which state an employee’s subject wages should be reported.

Both states first consider the physical location where the work is performed before considering other aspects of employment.

Plainly, “place of performance” or “localization” considers:

1. Where is the work performed?
 - a. If all the work is physically performed in Oregon, all of the employee’s **wages** associated are reportable to **Oregon**.
 - b. If all the work is physically performed in Washington, all of the employee’s **wages and hours** associated are reportable to **Washington**.

2. If the work is performed in multiple states with regularity, including Oregon and Washington, from which state is the base of operations, or if there is no base of operations, where does direction and control come from?
 - a. If the base of operation or direction and control comes from Oregon, all of the employee’s **wages** associated are reportable to **Oregon**.
 - b. If the base of operation or direction and control comes from Washington, all of the employee’s **wages and hours** associated are reportable to **Washington**.

3. If the work is performed in multiple states with regularity, including Oregon and Washington, and the direction and control does not come from any state in which the employee works, which state does the employee reside?
 - a. If the employee resides in Oregon, all of the employee's **wages** associated are reportable to **Oregon**.
 - b. If the employee resides in Washington, all of the employee's **wages and hours** associated are reportable to **Washington**.

For Oregon:

Place of performance is described under statute ([ORS 657B.175](#)) and further clarified in administrative rule (OAR 471-070-3100).

For Washington:

Localization is described under the definition of "employment" in [RCW 50A.05.010\(8\)\(a\)](#) and further clarified in the Washington Administrative Code, [WAC 192-510-070](#).

Also, [RCW 50A.05.010\(24\)](#) "Services is localized in this state" has the same meaning in Unemployment Insurance law, [RCW 50.04.120](#).

Below are common scenarios:

Scenario 1: An employee of an Oregon employer began working full-time in Washington in March 2020 and continues to work there today and for the foreseeable future. The employee **performs** all of their duties in Washington, and the work is directed and controlled from Oregon.

The employee's work is localized to Washington. Although the direction and control comes from Oregon, there is no need to further evaluate since all of the employee's duties are physically performed in Washington, so the work is localized to Washington. The employer should report all of the employee's hours and wages and pay Paid Leave contributions to Washington.

Scenario 2: An employee of an Oregon employer began working primarily full-time in Washington in March 2020, but **on occasion (without regularity)** reports to an Oregon worksite to perform their job duties.

The employee's work is localized to Washington. Although the direction and control comes from Oregon, there is no need to further evaluate based on the fact that the work performed in Oregon is intermittent and irregular (temporary, transitory or isolated in nature), and most of the work is physically performed in Washington, the work is localized to Washington. The employer should report all of the employee's hours and wages and pay Paid Leave contributions to Washington.

Scenario 3: An employee of an Oregon employer began working full-time in

Washington in 2020. Beginning October 1, 2022, the employee will report **regularly** one or two days a week to an Oregon worksite to perform their job duties and teleworks the rest of the week from their home in Washington.

The employee's work is localized to Oregon. Since the work is performed with regularity in both Washington and Oregon, the employer needs to look at the base of operation and direction and control which comes from Oregon; therefore, all of the employee's work is localized to Oregon beginning October 1, 2022 as the work is being performed in more than one state, and direction and control comes from Oregon. In the fourth quarter of 2022, the employer should begin collecting appropriate Paid Leave contributions and report all of the wages to Oregon.

Scenario 4: An employee works for an Idaho employer full-time. The employee works both in Washington and Oregon with regularity. The employee **resides** in Oregon.

The employee's work is localized to Oregon. Work is performed in both Washington and Oregon, however the base of operation and direction and control does not come from either state in which the employee works. Since the employee resides in Oregon, the employer should report all of the employee's wages and pay Paid Leave contributions to Oregon.

We understand that this is a complicated topic and in general, we rely on employers to review related laws and guidance to make a good faith determination on which state to report the employee's hours and wages. Please understand that these recommendations do not constitute legal advice.

For more information about Paid Leave **Oregon**, visit paidleave.oregon.gov.

For more information about **Washington's** Paid Leave program, visit paidleave.wa.gov.

Karen Humelbaugh
Director, Paid Leave Oregon
Oregon Employment Department

Justin DeFour
Director, Leave and Care Division
Employment Security Department, WA

Cc: April Amundson, Leave and Care Policy Manager, Employment Security Department
Cc: Kelley Ofoni, Paid Leave Oregon Policy Manager, Oregon Employment Department