

Family and Medical Leave Employee Packet A

Leave for a Serious Health Condition, Parental Leave and OFLA Sick Child

Please read this statement before proceeding.

This packet is a summary of Family and Medical leave policy and procedures. In all cases applicable state and federal laws, rules, policies and collective bargaining agreements govern the employee's and the agency's rights and obligations, not this document.

FMLA and OFLA are not optional. The law requires the agency to provide these entitlements.

Federal and state law prohibit retaliation against an employee with respect to hiring or any other term or condition of employment because the employee asked about, requested or used Family and Medical Leave.

Authority for Family and Medical Leave:

The Federal Family and Medical Leave Act, as amended, 29 USC §§ 2601 et seq; section 585 of the National Defense Authorization Act for FY 2008 and federal regulations 29 CFR Part 825.

<http://www.dol.gov/esa/whd/regs/statutes/fmla.htm>

The Oregon Family Leave Act as amended, Oregon Revised Statutes (ORS) 659A.150 through 659A.186 and ORS 659A.306 <http://www.leg.state.or.us/ors/vol14.html> and Oregon Administrative Rules (OAR) 839-009-0200 through 839-009-035, OAR 166-300-0010 through 166-300-0045, and OAR 101-030-0005 through 101-030-0027

http://arcweb.sos.state.or.us/rules/number_index.html

State HR Policy 60.000.15 Family and Medical Leave <http://oregon.gov/DAS/HR/rules.shtml>

Any applicable Collective Bargaining Agreement <http://oregon.gov/DAS/HR/CBAs.shtml>

What is Family and Medical Leave?

The Family and Medical Leave Act (FMLA) and the Oregon Family and Medical Leave Act (OFLA) protect an eligible employee's absence from work under certain conditions. Federal and state laws determine if you are eligible and if your absence qualifies as FMLA or OFLA and how much leave time you may take.

For more information refer to the following:

- DAS Process: <http://oregon.gov/DAS/OP/docs/policy/process/PROC-04-0020.pdf>
- Contact DAS Employee Services (503) 378-3622
- Find this document on the Web at: http://oregon.gov/DAS/OP/ES2/FMLA_OFLA.shtml

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Am I Eligible for FMLA and OFLA Leave?

The state uses a "rolling backward year" to determine an employee's FMLA and OFLA leave entitlement. This means the agency looks backward on the calendar for one year from the first day of your requested leave. This method tells the agency if you are eligible for FMLA or OFLA leave and how much of this leave you have available to use.

To be eligible for FMLA or OFLA leave you must meet the following requirements:

Employees Eligible for FMLA	Employees Eligible for OFLA
Employee must have been employed by the State of Oregon for a total of at least 12 months (if months are non-consecutive there can be no more than a seven-year break in service); and	Employee must have been employed by the State of Oregon for a period of 180 calendar days immediately preceding the date leave begins; and
Employee must have worked at least 1250 hours during the 12-month period immediately preceding the leave.	Employee must have worked an average of 25 hours per week during the 180-day period, unless the leave is to care for a newborn child or newly placed adopted or foster child (Parental leave).

When counting the number of hours worked to determine eligibility, the agency counts all hours the employee was actually at work, employment as a state temporary worker, and qualifying absences for military leave. Paid or unpaid leave time does not count as hours worked.

What are Qualifying Reasons to Take FMLA and OFLA Leave?

Under both FMLA and OFLA, you may take leave for these reasons

To recover from or seek treatment for your own serious health condition that renders you incapacitated. This includes pregnancy related disability and absence for prenatal care.

1. To care for your husband or wife, your parent or your biological, adopted, step or foster child with a serious health condition who is 17 years of age or younger or incapable of self-care due to a physical or mental disability. Parent includes someone who stood "in loco parentis" (in place of a parent) when the employee was a child. Child includes someone to whom the employee stands "in loco parentis".
2. For Parental leave, which is leave to care for your newborn, newly adopted or newly placed foster child in your home.

Under FMLA, you may also take leave for these reasons

1. For FMLA Military Caregiver Leave, which is leave to care for your husband or wife, parent, child, or next of kin, who is a covered servicemember, with a serious injury or illness incurred in the line of duty on federal active duty.
2. For FMLA Qualifying Exigency Leave, which is leave to tend to exigencies resulting from your spouse, parent, or child being called into federal active duty.

Under OFLA, you may also take leave for these reasons

1. To care for your same-sex domestic partner with a serious health condition.
2. To care for your or your domestic partner's biological, adopted, step or foster child of any age with a serious health condition.
3. To care for your parent-in-law or your domestic partner's parent with a serious health condition.
4. To care for your grandparent or grandchild with a serious health condition.
5. For Sick Child leave, which is leave to provide care for your child or your spouse's or domestic partner's child with a non-serious health condition who needs home care. The child must be 17 years of age or younger or be incapable of self-care due to a physical or mental disability.

This packet specifically addresses FMLA and OLFA leave for:

- Leave for your serious health condition
- Leave for the serious health condition of your family member
- Parental leave
- OFLA Sick Child leave

If you need information about FMLA Military Caregiver Leave or FMLA Qualifying Exigency Leave, contact DAS Employee Services at (503) 378-3622.

What is a Serious Health Condition?

Serious Health Condition: An illness, injury, impairment, or physical or mental condition that involves one or more of the following:

- **Hospital care:** Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or as a consequence of inpatient care.
- **Absence plus treatment:** A period of incapacity of more than three consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves one or both of the following:

- o Treatment received in person, two or more times by a health care provider, a nurse, or a physician's assistant under direct supervision of a health care provider, or a provider of health care services (e.g., physical therapist) under orders of or referred by a health care provider.
- o Treatment by a health care provider on at least one occasion resulting in a regimen of continuing treatment under the supervision of the health care provider.
 - Note that a "**Regimen of Continuing Treatment**" includes a course of prescription medication such as an antibiotic or physical therapy requiring special equipment to resolve or alleviate the health condition. A regimen of continuing treatment does not include taking over-the-counter medications such as aspirin, antihistamines or salves, bed-rest, drinking fluids, exercise, and other similar activities that could be initiated without a visit to a health care provider.

•**Any period of incapacity for pregnancy, pregnancy-related illness, or for prenatal care (pregnancy disability).**

The following absences related to pregnancy disability qualify:

- o Part-day or full-day absences for severe morning sickness.
- o Periods of bed rest ordered by the physician of the pregnant employee.
- o A reduced work schedule because of pregnancy complications.
- o Routine prenatal visits to the doctor.
- o Leave following childbirth if the employee is incapacitated since the definition of pregnancy disability includes incapacity due to pregnancy or childbirth. Pregnancy is a temporary condition and not a covered disability that requires reasonable accommodation under the Americans with Disabilities Act Amendments Act (ADAAA).

•**Chronic conditions:** A chronic condition is one which:

- o Requires periodic in-person treatments by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider.
- o Continues over an extended period of time, including, recurring episodes of a single underlying condition.
- o May cause episodic rather than a continuing period of incapacity; for example, asthma, diabetes, epilepsy.

•**Permanent or long-term conditions requiring supervision:** A period of incapacity that is permanent or long-term due to a condition for which treatment is potentially ineffective. The employee or family member is under supervision of a health care provider, not necessarily receiving active treatment. Examples are Alzheimer's disease, a severe stroke, the terminal stages of a disease.

•**Multiple treatments (non-chronic conditions):** Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by a health care provider for one or both of the following reasons:

- o Restorative surgery after an accident or other injury.
- o For a condition that in the absence of treatment or medical intervention, will likely result in a period of incapacity of more than three consecutive calendar days. For example: chemotherapy or radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease.

Some other definitions that are important for understanding what qualifies as a Serious Health Condition include:

- **Incapacity:** The inability to work, attend school or perform other regular daily activities due to a serious health condition or treatment for or recovery from a serious health condition.
- **Treatment:** Includes examinations to determine if a serious health condition exists and for evaluations of the condition. The definition does not include routine physical examinations, eye examinations or dental examinations.

How Much FMLA and OFLA Leave Do I Get?

Under both FMLA and OFLA you are entitled to: Up to 12 weeks of leave during a 12-month period if you meet the eligibility and purpose requirements, measured using the rolling backward method. Some reasons qualify under both leaves and some qualify only as one leave type. Leave qualifying under both FMLA and OFLA are designated at the same time.

OFLA may entitle you to additional leave under the following circumstances:

1. If you are a female employee and you take any amount of leave for your own pregnancy-related disability, you may take up to an additional 12 weeks of OFLA leave for any OFLA-qualifying purpose.
2. If you are a male or female employee and use a full 12 weeks of Parental leave under OFLA, you may take up to 12 additional weeks of OFLA leave in the same leave year for Sick Child leave.

Leave entitlement for part-time employees and using FMLA and OFLA leave intermittently. If you are a part-time employee your leave entitlement is pro-rated. For example, if you normally work 30 hours per week, you are entitled to up to 12 weeks of leave at 30 hours per week. Leave taken on an intermittent basis is calculated by the hour. If you are a full-time employee working 40 hours per week, you are entitled to up to 480 hours of leave. A part-time employee's hourly entitlement is prorated. For example, if you normally work 30 hours per week, your hourly entitlement is 360 hours.

More than one qualifying condition: You may need FMLA or OFLA leave for more than one qualifying condition or purpose at the same time or in the same leave year. Having more than one qualifying condition does not extend the amount of your entitlement.

Spouses and family members working for Oregon state government:

Oregon state government is one employer for purposes of OFLA and FMLA. If you and your spouse both work for Oregon state government you must share the 12-week FMLA entitlement for Parental leave (for the birth, adoption, or foster child placement) or to care for a parent with a serious health condition. Under special circumstances, the agency (or agencies) may lift the requirement that spouses share the entitlement.

If you and a family member both work for Oregon state government you may not take OFLA leave at the same time except under one of the following circumstances: 1) one of you needs to care for the other who has a serious health condition; 2) one of you needs to care for a child with a serious health condition while the other is suffering from a serious health condition; 3) you both have a serious health condition or; 4) an agency grants an exception under special circumstances.

What if I am on Time Loss Due to Workers' Compensation?

Only FMLA leave is applied when you are absent from work for a disabling compensable injury or you have a pending determination of a workers' compensation claim, if you meet eligibility and purpose requirements.

If your pending workers' compensation claim is denied, OFLA leave will immediately begin if you meet eligibility and purpose requirements.

If you have a disabling compensable injury and refuse an offer of transitional work, OFLA leave will immediately begin if you meet eligibility and purpose requirements.

Do I have to take all my FMLA and OFLA at Once?

There are three types of FMLA and OFLA leave schedules.

1. Continuous leave: leave taken in a block of time. For example, an employee takes six weeks of leave due to a serious health condition.
2. Intermittent leave: Leave taken sporadically. For example, an employee misses five days of work a month due to a serious health condition.
3. Reduced schedule leave: Leave taken where the employee is scheduled to work less than the employee's normal work hours in a day or week. For example, an employee normally scheduled to work eight hours a day, instead works six hours and takes the remaining two hours as FMLA and OFLA due to a serious health condition.

What if I Don't Want to Use FMLA and OFLA Leave? If you are an eligible employee who is absent from work for a reason that qualifies as FMLA or OFLA leave, the agency has no choice but to designate the absence as FMLA, OFLA or both. The amount of paid leave an employee has accrued or the employee's desire to "save FMLA and OFLA until later" are not a factor. FMLA and OFLA are not benefits. They are an entitlement that must be applied as the need occurs.

How Do I Request FMLA or OFLA Leave for a Serious Health Condition or Parental Leave?

You must generally give 30 calendar days notice for planned absences (paid or unpaid) related to family and medical leave. Follow agency procedures for submitting a request for leave. If you are unable to request leave in advance due to an emergency or unforeseeable event, let the agency know as soon as possible. You are not required to specifically state the leave is for FMLA or OFLA, but you must provide enough information so the agency can determine if the leave qualifies. The agency may ask for more information if necessary.

Because FMLA and OFLA are not optional, the agency can designate leave as FMLA and OFLA without your agreement.

What Happens After I Request FMLA or OFLA Leave?

Notice of eligibility: After you make a request for FMLA or OFLA leave, the agency will generally let you know within five business days if you are eligible for the leave entitlement and if the agency needs more information such as a medical certification.

Medical Certification: If you are required to provide a Medical Certification, the agency will give you a Medical Certification to take to your medical provider. The agency uses this information to determine if your reason for the leave qualifies under FMLA or OFLA. The Medical Certification must be returned within 15 days or your leave can be denied. Denied leave means you do not have job protection under FMLA and OFLA. The agency will reimburse you for any out-of-pocket costs for obtaining a required Medical Certification that are not covered by your insurance. Submit those bills following the agency's procedure for requesting reimbursement. You may be asked to provide another Medical Certification under certain circumstances. At times, the agency may have enough information to designate FMLA or OFLA leave without requesting medical certification.

Final determination: The agency will inform you once the agency has enough information to determine whether your absence qualifies as FMLA or OFLA leave. The agency will tell you how much FMLA and OFLA leave time you have available, requirements to use your paid leave, information about insurance, your reinstatement rights, and if the agency will require you to provide a Fitness for Duty Certification before returning to work if you are absent for your own serious health condition.

What Else Do I Need to Know About Parental Leave?

Parental leave is time for you to bond with your child after the child's birth, adoption or foster placement in your home. Parental leave must be completed within one year of the birth, adoption or placement. You may take intermittent Parental leave prior to the adoption or placement of a foster child if your presence is required to affect the adoption or placement. In other situations, Parental leave must be taken in a continuous block unless the agency agrees to allow you to take it on an intermittent or reduced schedule that is agreed to by the agency and you.

What if I Need to Be Absent for OFLA Sick Child Leave?

OFLA Sick Child leave is part of your 12-week OFLA entitlement. It is used intermittently. Follow normal call in procedures each time you need to be absent for OFLA Sick Child leave to care for your child 17 years of age or younger (or incapable of self-care due to a mental or physical disability), who has a non-serious health condition (i.e. head cold, ear ache, flu), requiring home care. The agency will inform you whether you qualify for OFLA Sick Child leave. The agency may require you to provide a Medical Certification after the third time you take OFLA Sick Child leave in the leave year.

Am I Paid During FMLA and OFLA Leave?

FMLA and OFLA are unpaid leaves. However, while on FMLA or OFLA leave, you must use all your paid leave (except compensatory time) before using leave without pay. You may choose whether to use your compensatory time. All paid and unpaid leave used for FMLA and OFLA purposes counts against your FMLA and OFLA entitlement. Exceptions to the requirement to use your paid leave are: (1) If you are represented, your collective bargaining agreement may allow you to reserve a certain amount and type of leave while you are on FMLA and OFLA; (2) If you are unrepresented or management service you may reserve 40 hours of sick or vacation leave; (3) If you are also receiving worker's compensation time loss benefits or payments from your disability insurance, you are not required to use your paid leave except as required by the disability insurance contract.

How Do I Code My Timesheet?

Your FMLA and OFLA leave needs to be entered correctly using the appropriate timesheet code. If you are unable to enter your own time, your supervisor will do it for you. Stop coding your timesheet as FMLA or OFLA when your FMLA or OFLA entitlement ends. Also, stop coding your time as FMLA or OFLA if you were absent to provide care for a family

member and that person dies. Seek approval from your supervisor to use other leave or leave without pay as necessary. Refer questions about tracking your time to your supervisor, DAS Employee Services or Payroll.

Timesheet codes for FMLA and OFLA absences

Leave Type	OFLA Only	FMLA and OFLA Combination	FMLA Only	FMLA and Workers' Compensation	FMLA Exigency Leave	FMLA Exigency Leave and OFLA Combo	FMLA Military Caregiver Leave	FMLA Military Caregiver Leave and OFLA Combo
Sick (SL)	SL1	SL2	SLF	SL3	SL6	SL7	SL8	SL9
Vacation (VA)	VA1	VA2	VAF	VA3	VA6	VA7	VA8	VA9
Personal Business (PB)	PB1	PB2	PBF	PB3	PB6	PB7	PB8	PB9
Compensatory Time (PB)	CT1	CT2	CTF	CT3	CT6	CT7	CT8	CT9
Straight Time	ST1	ST2	STF	ST3	ST6	ST7	ST8	ST9
Leave Without Pay (LO)	LO1	LO2	LOF	LO3	LO6	LO7	LO8	LO9
Holiday (HO)	HO1	HO2	HOF	HO3	HO6	HO7	HO8	HO9
Governor's Leave (GL)	GL1	GL2	GLF	GL3	GL6	GL7	GL8	GL9
Bereavement Leave (FL)	FL1	FL2	FLF	FL3	FL6	FL7	FL8	FL9

Will My Insurance Continue?

Under FMLA only, if you use any amount of FMLA leave in a month, the agency pays its share of premiums for your medical, dental and employee-only basic life insurance for that month. Insurance is not paid if you are on OFLA only. Insurance continues under OFLA only as long as you work sufficient hours or use sufficient paid leave.

Your optional insurances continue under both FMLA and OFLA as long as you use sufficient hours or use sufficient paid leave. When you are on leave without pay you may continue some of your optional insurances by paying the premiums. If you normally pay a portion of the premiums for your health insurance, you must continue timely payments during the period of leave to avoid cancellation. You may self-pay these premium payments through Payroll.

If you are only on OFLA leave and in leave without pay, you have the option of continuing coverage under COBRA. You will be notified by a third party administrator, regarding how to continue your health and dental insurances while on leave without pay.

If your absence qualifies under OFLA only and if you are receiving donated leave, the donated leave is put toward the insurance premiums for medical and dental first. You must self-pay premiums to continue any optional insurance.

Your insurance will resume normally if you return from FMLA or OFLA leave immediately following your FMLA or OFLA absence. If you return beyond that timeframe, you must work a minimum 80 hours in the month to receive the employer contribution for the following month.

If you do not return to work following family and medical leave, you may be required to reimburse the agency for the full premium cost of health care coverage paid on your behalf, unless a recurrence, continuation, or onset of a serious health condition (or a serious illness or injury of a covered servicemember) occurs or the reason for not returning is beyond your control.

What Happens to My Job When I Take FMLA and OFLA Leave?

Before you return from FMLA or OFLA leave for your own serious health condition, the agency may require you to provide a statement from your medical provider verifying you are able to return to work, and if you have any limitations.

If you are returning from OFLA leave, or leave that qualifies for both FMLA and OFLA, you have a right to be restored to the position you held prior to your leave. If you are returning from FMLA-only leave, you have a right to be restored to the position you held prior to your leave or a position with equivalent pay and benefits. The following exceptions apply to both FMLA and OFLA:

- If your position was eliminated through an agency layoff process, you must be treated as if you were not on FMLA or OFLA leave and will be treated the same as similarly situated employees in accordance with an agency policy or an applicable collective bargaining agreement.
- If you are a temporary or limited duration employee, the agency will return you to your position to the extent the placement or position still exists.
- If you are unable to perform an essential function of your position and reasonable accommodations are not appropriate, FMLA and OFLA job protection ends. You may be subject to termination under an applicable law, rule, policy or collective bargaining agreement.

What if I Need to Extend My Leave Beyond My FMLA or OFLA Entitlement?

If you are unable to return to work following your FMLA or OFLA leave or cannot perform all essential functions of your job, you may request an extension of your absence. The agency may grant an extension when continuing your leave does not impose undue hardship for the agency and continuing your leave complies with law, policy, an applicable collective bargaining agreement, and reasonable accommodation provisions of the Americans with Disabilities Act Amendments Act (ADAAA).