



FAMILY AND MEDICAL LEAVE

EMPLOYEE PACKET A

Leave for:

1. Serious health condition of employee or family member
2. Parental leave
3. Sick Child leave
4. Bereavement leave

DISCLOSURE: 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.

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.

Family and Medical Leave follow:

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

The Oregon Family Leave Act as amended, Oregon Revised Statutes (ORS) 659A.150 through 659A.186 and ORS 659A.306 and Oregon Administrative Rules (OAR) 839-009-0200 through 839-009-0320, OAR 166-3000010 through 166-300-0045, and OAR 101-030-0005 through 101-030-0027 and OAR 839-009-0370 through 839-009-0460

State HR Policy 60.000.15 Family and Medical Leave

Any applicable collective bargaining agreement

For more information refer to agency policy and your agency Human Resource and Payroll offices.

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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 eligibility, if your absence qualifies as FMLA or OFLA and how much leave time you may take.

What is Paid Leave Oregon?

Paid Leave Oregon is an insurance fund that employees and employers pay into. It provides up to 12 weeks of paid leave during a 52-week period for a qualifying life event. It also protects your job by law while you're on paid leave if you have worked for at least 90 consecutive days for your employer (the state is one employer). When eligible, Paid Leave Oregon runs concurrently with FMLA and OFLA.

For eligibility and qualifying purposes please refer to the Paid Leave Oregon website.

Am I eligible for FMLA and OFLA leave?

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

Eligibility for FMLA	Eligibility for OFLA
Employee must have been employed by Oregon state government 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	To qualify for Parental leave (leave to care for a newborn child or newly placed adopted or foster child) employee must have been employed by Oregon state government for a period of 180 calendar days immediately preceding the date leave begins.
Employee must have worked for at least 1250 hours during the 12-month period immediately preceding the leave.	To qualify for leave for a serious health condition, Bereavement leave or Sick Child leave (to care for the employee's child with a non-serious health condition requiring home care) , in addition to the 180-day requirement above, the employee must have worked an average of 25 hours per week.
Both of the above requirements apply to all types of FMLA leave.	To qualify for OFLA Military Family leave, the employee must have worked an average of 20 hours per week (there is no 180-day requirement).

When counting the number of hours worked to determine eligibility, the agency counts all hours the employee was actually at work, employment as a temporary worker, and qualifying absences for military leave. Paid or unpaid leave time does not count as hours worked for eligibility purposes. Exception: Hours paid to an employee by workers compensation count towards their eligibility for OFLA leave.

This packet specifically addresses FMLA and OFLA leave for:

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

Qualifying purposes for the above leave types are outlined in the chart that follows.

Other FMLA and OFLA leave types can be found in the State HR Policy 60.000.15 Family and Medical Leave. Information packets describing FMLA Military Caregiver Leave, FMLA Qualifying Exigency and OMFLA Military Leave are in the policy toolkit.

What are qualifying purposes to take FMLA or OFLA?

Qualifying purposes under FMLA	Qualifying purposes under OFLA
<p>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.</p>	<p>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.</p>
<p>To tend to the serious health condition of your:</p> <ul style="list-style-type: none"> • Spouse: husband or wife as defined under Oregon state law and a same sex spouse of an employee if they are married in a state that legally recognizes same sex marriage • Parent: your biological or adoptive mother or father, or an individual who stood in loco parentis (in place of a parent) when you were a child • Son or daughter (child): your biological, adopted, foster or stepchild, a legal ward, or a child of whom you stand in loco parentis who is 17 years of age or younger. The age limit does not apply if the child is incapable of 	<p>To tend to the serious health condition of your:</p> <ul style="list-style-type: none"> • Spouse or domestic partner as defined under Oregon state law • Parent: your biological, adoptive, stepparent, foster parent, or legal guardian, or the parent of your spouse/domestic partner, or your parent’s spouse/domestic partner, or someone who stood in loco parentis) • Child: your biological, adopted, stepchild, or foster child; spouse/domestic partner’s child, or the child’s spouse/domestic partner • Grandparent or grandparent’s spouse or domestic partner

<p>selfcare because of a mental or physical disability</p>	<ul style="list-style-type: none"> • Grandchild or grandchild’s spouse or domestic partner • Affinity relationship: someone with whom you have a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship • Blood relation
<p>Parental leave: to care for your newborn, newly adopted child, or newly placed foster child</p>	<p>Parental leave: to care for your newborn, newly adopted child, or newly placed foster child</p>
	<p>Bereavement Leave: to deal with the death of your:</p> <ul style="list-style-type: none"> • Spouse or domestic partner as defined under Oregon state law • Parent: your biological, adoptive, stepparent, foster parent, or legal guardian, or the parent of your spouse/domestic partner, or your parent’s spouse/domestic partner, or someone who stood in loco parentis) • Child: your biological, adopted, stepchild, or foster child; spouse/domestic partner’s child, or the child’s spouse/domestic partner • Grandparent or grandparent’s spouse or domestic partner • Grandchild or grandchild’s spouse or domestic partner • Affinity relationship: someone with whom you have a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship • Blood relation

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 period of incapacity or subsequent treatment relating to the same condition), that also involves:
 - (a) Treatments two or more times by a licensed healthcare provider, nurse, or physician's assistant under direct supervision of a healthcare provider, or by a provider of healthcare services (e.g., physical therapist) under orders of, or on referral by, a healthcare provider **or**
 - (b) Treatment by a healthcare provider on at least one occasion which results in a regimen of continuing treatment under supervision of the healthcare provider.
 - (1) Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment **DOES NOT** include routine physical, dental, or eye examinations.
 - (2) A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment **DOES NOT** include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed rest, drinking fluids, exercise, or any other similar activities that can be initiated without a visit to a healthcare provider.
- **Any period of incapacity for** pregnancy, pregnancy-related illness, or for prenatal care (pregnancy disability). The following absences related to pregnancy disability qualify:
 - Part-day or full-day absences for severe morning sickness.
 - Periods of bed rest ordered by the physician of the pregnant employee.
 - A reduced work schedule because of pregnancy complications.
 - Routine prenatal visits to the doctor.
 - 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:
 - 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.
 - Continues over an extended period of time, including, recurring episodes of a single underlying condition.
 - 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:
 - Restorative surgery after an accident or other injury.
 - 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 in a leave year (the Sunday immediately preceding your first day of leave, running forward 52 weeks) if you meet the eligibility and purpose requirements. Some

reasons for leave 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 (they run concurrently).

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

1. An employee who takes any amount of leave for their own pregnancy-related disability, may take up to an additional 12 weeks of OFLA leave for any OFLA-qualifying purpose.
2. An employee who uses a full 12 weeks of Parental leave under OFLA, 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 FMLA and OFLA.

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, you take six weeks of leave due to a serious health condition.
2. Intermittent leave: Leave taken sporadically. For example, you miss five days of work a month due to a serious health condition.
3. Reduced schedule leave: Leave taken where you are scheduled to work less than your normal work hours in a day or week. For example, you are normally scheduled to work eight hours a day, instead work six hours and take the remaining two hours as FMLA and OFLA due to a serious health condition.

How do I request FMLA or OFLA leave for a serious health condition or parental leave?

Generally, you must give a 30-calendar day 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.

What happens after I request FMLA or OFLA leave?

Notice of eligibility

After you make a request for Family and Medical 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 for your own or your family member's serious health condition, the agency will give you a Medical Certification form to take to your medical provider. The agency uses this information to determine if your reason for 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. You may be asked to provide an updated medical certification under certain circumstances. In some circumstances, the agency may have enough information to designate FMLA or OFLA leave without requesting medical certification.

Affinity Attestation

When an employee uses OFLA to care for a family member who is related by affinity, the employer may require the employee to attest in writing that the employee and the person cared for have a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship. The agency will give you an attestation form for you to complete.

Final determination

The agency will inform you once it 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 your absence is 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. The birth, adoption, or foster placement of multiple children at one time entitles the employee to take only one 12-week period of parental leave. 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 allows you to take it on an intermittent or reduced schedule that is agreed to by the agency and you. If you are taking OFLA and

receiving Paid Leave Oregon benefits for parental leave, you are not required to take the OFLA leave in a continuous block of time. If you are taking OFLA and receiving Paid Leave Oregon benefits you are eligible for up to 16 weeks of OFLA protected leave but are not eligible for the additional 12 weeks of sick child leave or any additional OFLA leave.

What if I need to 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 are 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, earache, 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.

What is OFLA Bereavement Leave?

OFLA Bereavement leave is time for you to deal with the death of a family member by attending the funeral or alternative to a funeral, making arrangements necessitated by the death, or grieving. An eligible employee may take up to two weeks of leave in a block of time or intermittently. The leave must be completed within 60 days of the date on which the eligible employee receives notice of the death of a family member. Employees are entitled to take multiple periods of bereavement leave if more than one family member of the employee dies. OFLA Bereavement leave is deducted from the employee's overall (up to 12 weeks) OFLA entitlement and cannot exceed the yearly entitlement. Two or more eligible family members who are employees are allowed to take bereavement leave at the same time for the same family member.

Am I paid during FMLA and OFLA Leave?

FMLA and OFLA are unpaid leaves. Except for the reasons below, while on FMLA or OFLA leave, you must use your all paid leave (except compensatory time) before going into 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 during absences taken in a block of time 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 60 hours of sick or vacation leave; or (3) If you are receiving Paid Leave Oregon benefits you may use any amount of leave, up to your scheduled hours for the day, or may use Leave Without Pay. For any FMLA or OFLA absence you do not have to use your accrued paid leave if you are also receiving worker's compensation time loss benefits. For any FMLA or OFLA absence if you are receiving

payments from your disability insurance provider, you are not required to use your paid leave except as required by the disability insurance contract.

Will my insurance continue?

If you use any amount of FMLA or OFLA leave in a month, the agency pays its share of premiums for your medical, dental, and employee-only basic life insurance for that month. If you normally pay a portion of the premiums for your health insurance, you may 1) continue timely payments during the leave period to avoid cancellation or 2) opt to have the agency pay these premiums on your behalf. You may self-pay premium payments through payroll. Payments made by the agency are recoverable upon the first available paycheck(s) after the employee returns to work, not to exceed 10% of their gross pay of each pay period.

If you exhaust your Family and Medical Leave entitlements, are in leave without pay and not in a current Affordable Care Act (ACA) stability period, 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.

Your insurance resumes 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, unless you are in a current ACA stability period.

If you do not return to work following FMLA or OFLA, 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 service member occurs or the reason for not returning is beyond your control.

How do I show my absence as FMLA and OFLA leave?

Your FMLA and OFLA leave is documented and tracked in the Workday system. To show your absence as family and medical leave, enter an absence request which corresponds with the date you took paid or unpaid leave due to the qualifying condition. This absence request is separate from your request for paid or unpaid leave. Choose the type of leave you are using (this may be listed on a letter from your absence partner and will be FMLA, OFLA, Paid Leave Oregon, or a combination of the leaves). If you are unable to enter your own absence request, your supervisor will do it for you. Stop entering family and medical leave absence requests when your FMLA or OFLA entitlements end. Seek approval from your supervisor to use other leave or leave without pay as necessary. Refer questions about entering protected leave absence requests to your supervisor, human resources, or agency payroll.

What happens to my job when I take FMLA and OFLA leave?

Before returning 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 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 according to 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 and 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 an undue hardship for the agency and complies with law, policy, an applicable collective bargaining agreement, and reasonable accommodation provisions of the Americans with Disabilities Act Amendments Act (ADAAA).