
State of Oregon LEGISLATIVE BRANCH PERSONNEL RULES

Legislative Branch Personnel Rule 15: Family and Medical Leave - ~~OFLA~~

APPLICABILITY: This rule applies to all employees of the Legislative Branch, where not in conflict with an applicable collective bargaining agreement or law. This rule does not apply to members of the Legislative Assembly, except as provided in subsection (1)(b) of this rule.

(1) **Policy.** It is the policy of the Legislative Branch to comply with the ~~Family and Medical Leave Act (FMLA) and~~ Oregon Family Leave Act (OFLA) so its employees can meet family health and parental obligations and address their own serious health conditions. ~~Federal and s~~State law prohibits retaliating against an employee with respect to hiring or any other term or condition of employment because the employee asked about, requested or used any type of ~~FMLA or~~ OFLA leave. Application of the provisions of ~~FMLA and~~ OFLA may vary based on individual circumstances and eligibility. See subsections (4) and (6) of this rule for eligibility and types of specific conditions covered by ~~FMLA and~~ OFLA.

(2) **~~FMLA and~~ OFLA information.** Information about the requirements for eligibility and the length of leave authorized under ~~FMLA and~~ OFLA is available in this rule and on the Human Resources section of the Legislative Intranet. Employees are encouraged to contact Employee Services for detailed information and for assistance in requesting family and medical leave. Detailed information about ~~FMLA and~~ OFLA may also be obtained from ~~the U.S. Department of Labor at (https://www.dol.gov/whd/) or from~~ the Bureau of Labor and Industries (www.oregon.gov/BOLI).

(3) **Notice.** The branch shall:

- (a) Post official notice in the workplace in accordance with the provisions of ~~FMLA and~~ OFLA;
- (b) Include information about family and medical leave in new employee orientation materials; and
- (c) Post information about family and medical leave entitlements under ~~FMLA and~~ OFLA on the Human Resources section of the Legislative Intranet.

(4) **Eligibility requirements.** The following chart determines employee eligibility. Eligibility is not pro-rated for part time employees.

EMPLOYEES ELIGIBLE FOR OFLA

To qualify for leave for serious health condition, sick child, ~~home care of a child due to school or care provider closure from a public health emergency~~ or bereavement leave the employee must have worked for State of Oregon for a period of 180 calendar days immediately preceding the date leave begins **and** worked an average of 25 hours per week.

To qualify for parental leave, the employee must have worked for State of Oregon for a period of 180 calendar days immediately preceding the date leave begins.

To qualify for Oregon Military Family Leave (OMFLA), the employee need only work for State of Oregon for an average of 20 hours per week.

During a public health emergency declared under ORS 433.411, an eligible employee is one who has worked an average of ~~at least~~ 25 hours per week in the past 30 days prior to the leave. ~~or is reemployed within 180 days of separation.~~

An employee who is reemployed within 180 days of separation and was OFLA eligible at the time of separation is eligible for OFLA at the time of rehire.

(5) Duration of Leave.

(a) An eligible employee is entitled to up to 12 weeks (480 hours for a full-time employee who works 40 hours per week) of protected time off under ~~FMLA and~~ OFLA. An eligible part time employee receives a prorated amount of ~~FMLA or~~ OFLA leave entitlement. Examples: ~~(1) The entitlement for a part-time employee who works 30 hours a week is up to 12 weeks of leave at 30 hours a week or 360 hours of intermittent or reduced-schedule leave in a leave year; (2) An employee who uses FMLA Military Caregiver leave and works 30 hours a week is entitled to up to 26 weeks of leave at 30 hours a week or 780 hours of intermittent or reduced-schedule leave in a leave year when the employee has not applied for and been approved for benefits under Paid Leave Oregon through the Oregon Employment Department.~~

(a)(b) When leave is authorized under ~~FMLA and~~ OFLA and the employee receives benefits through the Paid Leave Oregon program, the leave and benefit time shall run concurrent ~~be designated as FMLA-qualifying and shall simultaneously exhaust both FMLA and OFLA leave entitlement~~ per ORS 657B.025. For qualifying reasons, eligibility and duration of leave under Paid Leave Oregon, visit the Paid Leave Oregon website. For a comparison chart (Attachment A) when the leave is taken concurrent, please see the Human Resources tab on the Legislative Intranet.

(b)(c) An eligible limited duration or temporary employee's ~~FMLA or~~ OFLA leave ends when the employee's assignment expires regardless of whether the person has exhausted their leave entitlement.

(6) **Qualifying Conditions for Leave.** Eligible employees may take ~~FMLA and~~ OFLA protected leave for the purposes listed in the chart below:

QUALIFYING CONDITION UNDER OFLA ONLY
(see Attachment A for a comparison between OFLA and Paid Leave Oregon)

To tend to the employee's own serious health condition.

NOTE: An eligible employee taking any amount of OFLA leave for their own pregnancy-related disability may take up to 12 more weeks of OFLA leave in the same leave year for any OFLA-qualifying purpose unless an employee applies for benefit through Paid Leave Oregon.

To tend to the serious health condition of the employee's family member which includes:

Spouse or domestic partner as defined by OAR 839-009-0210(8)¹; ~~or same-gender domestic partner as defined under Oregon state law.~~

Parent or the parent's spouse or domestic partner: the employee's the employee's biological, step, current or former foster, legal guardian or adoptive mother or father, and the parent of the spouse or domestic partner biological or adoptive mother or father, or an individual who stood in loco parentis (in place of a parent) when the employee was a child, and the parent of the spouse or same-gender domestic partner.

Sibling: the employee's sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner

Child: (of any age): ~~The employee's biological, adopted, foster or stepchild, a legal ward, or a child of an employee standing in loco parentis, and child or~~ the child of the a same-gender domestic partner. This includes a biological, adopted, foster, stepchild or legal ward of any age.

Grandparent or grandchild of the employee or the employee's spouse or domestic partner.

Family member: any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship as defined in OAR 839-009-0210(2).

Parental leave: to care for the employee's newborn infant, newly adopted child or newly placed foster care (17 or under unless they are unable to self-care under ORS 659A104(1)(a), (3) and (4)). ~~newborn, newly adopted child or newly placed foster child.~~

Sick child leave: to care for a child 17 years of age or younger who has a non-serious health condition and requires home care. The age limit does not apply if the child is incapable of self-care because of a mental or physical disability, including home care for a child in the event of a school care provider closure due to a public health emergency

NOTE: An eligible employee taking a full 12 weeks of parental leave under OFLA may take up to 12 additional weeks of OFLA leave in the same year for sick child leave.

¹ OAR 839-009-0210(8) states: "'Domestic partnership' for the purposes of ORS chapter 659A means two individuals who have received a Certificate of Registered Domestic Partnership from the State of Oregon in compliance with ORS 432.173 and rules adopted by the State Registrar of the Center for Health Statistics."

QUALIFYING CONDITION UNDER OFLA <u>ONLY</u> (see Attachment A for a comparison between OFLA and Paid Leave Oregon)
Military family leave (OMFLA): Up to 14 working days per deployment related to the deployment of an employee's spouse or same-gender domestic partner. The 14 days is included in the 12-week OFLA entitlement.
Bereavement leave: Up to two weeks per family member, in a one year period, to be taken within 60 days of notification of the death, 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. <u>These two weeks are included in the 12-week OFLA entitlement.</u>

(7) **Types of ~~FMLA~~/OLFA leave.**

(a) Continuous leave: Leave taken in a block of time. For example, an employee is out for a full eight weeks to recover from a serious health condition.

(b) Intermittent leave: Leave taken sporadically. For example, an employee is out for three days a month to help with a spouse's care during cancer treatment. Consult with Paid Leave Oregon on intermittent leave benefits.

(c) Reduced schedule leave: Leave taken where the employee is scheduled to work less than the employee's normal work hours. For example, a full time employee is released to work 6 hours per day while recovering from a serious health condition. The employee takes the remaining two hours as ~~FMLA~~/OFLA until released to work full time. Consult with Paid Leave Oregon for reduced schedule benefits.

(8) **Use of accrued leave.** The use of accrued leave is not required while on approved leave under ~~FMLA or~~ OFLA. The employee may elect the type of accrued leave to be used ~~during family or medical leave~~, including accrued compensatory time or benefits paid through Paid Leave Oregon. The employee may supplement their Paid Leave Oregon benefits with any type of accrued leave in any increments up to and including the equivalent to their normal scheduled hours. Employees who receive Paid Leave Oregon benefits are able to use up to 8 hours a day (when scheduled to work 8 hours) accrued leave until leave exhausts or employee returns to work.

(9) **Calculation of leave.** An eligible employee may use up to 12 weeks of ~~FMLA~~/OFLA leave for qualifying conditions, other than those exceptions listed in the chart above, when the employee has not applied for and been approved for paid leave under Paid Leave Oregon through the Oregon Employment Department. The OFLA leave year begins on the Sunday preceding the beginning of the leave, each calendar year beginning January 1 and ending December 31. No unused leave may be carried forward to the next ~~leave~~calendar year. For example, between January 1 and December 31 an employee used eight weeks of leave. The remaining balance of four weeks does not carry over to the next leave year.²

²~~FMLA Military Caregiver leave is based on a rolling forward leave beginning on the first day of the first occurrence and has a 26-week entitlement. The employee's FMLA entitlement is reduced by the number of hours used for FMLA Military Caregiver leave.~~

Any qualifying condition under both Paid Leave Oregon and OFLA, must be used concurrently, when eligible for both. A benefit year is a 52-week period beginning on the Sunday before the leave begins.

(10) **Notice to employer.** An employee shall provide notice at least 30 calendar days in advance for a planned absence under this rule. When a medical emergency or other unforeseeable event occurs, the employee shall contact the appointing authority or designee as soon as practicable, but not later than three days from date of the occurrence. The employee may be required to submit certification from a medical provider that documents their absence for their own serious health condition or for the serious health condition of a qualifying family member. The branch may require medical verification after an employee takes more than three days of OFLA sick child leave. Receipt of notice of application of benefits by employer from Oregon Employment Department, Paid Leave Oregon may prompt Employee Services to either designate the leave as OFLA-protected or to send OFLA paperwork to the employee. An approval of benefits by Paid Leave Oregon may not automatically qualify the employee for OFLA until additional information is received. To ensure OFLA review is timely, employees shall notify Employee Services and provide any necessary paperwork, when requested.

~~An employee is not required to provide a medical provider's certification for parental leave or bereavement leave and is not required to bear the cost of obtaining a medical provider's certification.~~

(11) Process for requesting and receiving Family and Medical Leave.

(a) Employee Services shall administer the process outlined in this rule for eligible employees to request and receive leave under this rule as follows:

(A) The employee submits a request in the system of record for ~~FMLA~~/OFLA. Within five days of the request or receipt of notice from Paid Leave Oregon, the employee is provided with notice of eligibility.

(B) Within five days of notice of eligibility, the medical certification form is sent to the requesting employee. If leave is OFLA designated, ~~as FMLA, OFLA or both,~~ an employee will still be required to pay the employee's share of core health care contributions and any optional benefits. Eligibility for benefits under Paid Leave Oregon may not automatically qualify an employee for protected leave under OFLA – not all leaves under Paid Leave Oregon are OFLA-qualifying events and eligibility may differ.

(i) Medical certification is not required for parental or bereavement leave;

(ii) Medical certification is not required for home care of a child in the event of a school or child care provider closure due to a public health emergency, but verification of school or child care provider may be required, including special circumstances that exist if child is older than 14 years of age ~~(applies to OFLA only).~~

(C) The employee returns the medical certification form within 15 days unless an extension is provided.

(D) Employee Services shall notify an employee if the medical certification is deficient. The employee has seven days to correct deficiencies and return the form to Employee Services.

(E) Within five days of receiving sufficient medical certification, Employee Services shall send the designation notification (approval/denial) to employee. If no medical certification is necessary, Employee Services shall send the designation within five days of notice.

(F) Employee Services can request an updated medical certification annually for a continuing condition. Employee Services may request an updated medical certification for a new condition or change to a continuing condition.

(G) When leave nears exhaustion, Employee Services may provide notice of exhaustion and invite the employee to contact Employee Services for options, if necessary.

(H) Employee Services shall ensure all documentation is maintained pursuant to subsection (13) of this rule.

(I) Employee Services does not administer the benefits paid through Paid Leave Oregon. Employees must apply for this benefit through the Oregon Employment Department's Frances Online. Not all qualifying conditions under Paid Leave Oregon are qualifying conditions under OFLA and vice versa.

(b) Employee Services shall assist members of the Legislative Assembly, leadership offices, ~~and caucus offices,~~ agency appointing authorities and supervisors in complying with the requirements of ~~FMLA and~~ OFLA, including procedures under which employees ~~of leadership offices, caucus offices or member offices~~ may request and receive ~~FMLA and~~ OFLA leave.

(12) Family and Medical Leave and workers' compensation.

(a) If the employee's injury qualifies as a serious health condition, an eligible employee's absence due to an accepted workers' compensation claim is not covered under ~~FMLA only~~ OFLA. ~~However, if an employee refuses a suitable offer of light duty or modified employment, an eligible employee's absence due to workers' compensation claim is also covered under OFLA. If that is the case, the 12-week leave entitlement under FMLA or OFLA runs concurrently.~~

(b) If an employee refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary under OAR 839-009-0210(21), or the employee's workers' compensation claim is denied, an eligible employee's absence due to workers' compensation claim qualifies for OFLA. In the case of a claim denial, f the employee's claim for workers' compensation is denied, the employee's OFLA entitlement is applied retroactively ~~and runs concurrent with FMLA.~~

(13) ~~FMLA and~~ OFLA recordkeeping. Employee Services- shall maintain the records detailing protected leave taken by employees. Such records shall be maintained in compliance with the requirements of applicable state ~~and federal~~ law and this rule.

Approved: ~~11-22-2021~~ DRAFT