Protected Leaves:
FMLA & OFLA, Military, Crime Victims

Supervisor Training
Learning Objectives

Learn basic information on Protected Leave
• What is Protected Leave?
• Who is eligible to take Protected Leave?
• What are the reasons for taking Protected leave?

Learn how Protected Leave is administered at OSU
• What is the process for requesting leave?
• What is required to get leave approved?
• What are the employee’s rights and obligations/responsibilities?
• How do employees report/record Protected Leave time?
• What are the supervisor’s obligations/responsibilities?
Military Leave under...
FMLA, OMFLA, Other
Military Leave – *Family Medical Leave Act (FMLA)*

<table>
<thead>
<tr>
<th>Qualifying Exigency Leave</th>
<th>Military Caregiver Leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligible family member is deployed to a foreign country or pending deployment.</td>
<td>Caring for an injured or seriously ill covered service member or veteran.</td>
</tr>
<tr>
<td>Exigency allows up to a total of 12 workweeks to address:</td>
<td>Allows up to 26 workweeks of unpaid leave during a single 12-month period* to take care of your military relative if he or she has a qualifying serious injury or illness.</td>
</tr>
<tr>
<td></td>
<td>Who can take Military Caregiver Leave?</td>
</tr>
<tr>
<td></td>
<td>• Parent</td>
</tr>
<tr>
<td></td>
<td>• Son or daughter</td>
</tr>
<tr>
<td></td>
<td>• In Loco Parentis</td>
</tr>
<tr>
<td></td>
<td>• Next of Kin</td>
</tr>
<tr>
<td>• Arrangements for childcare and related activities (<em>not for routine childcare</em>)</td>
<td></td>
</tr>
<tr>
<td>• To make or update financial/legal arrangements</td>
<td></td>
</tr>
<tr>
<td>• Attend military events and related activities</td>
<td></td>
</tr>
<tr>
<td>• To spend up to fifteen calendar days with a military member on Rest &amp; Recuperation leave during covered active duty (<em>only used during the military member’s R&amp;R leave</em>)</td>
<td></td>
</tr>
</tbody>
</table>

*combined total of 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period*
Military Leave – *Oregon Military Family Leave Act (OMFLA)*

Allows an employee who is the spouse or same-gender domestic-partner of a military member to spend time with him or her before deployment and during leave from deployment.

- An eligible employee must have worked an average of 20 hours per week
- Spouse or same-gender domestic-partner is a member of the Armed Forces of the U.S., the National Guard, or the military reserve forces of the U.S.
- Entitles the eligible employee 14 calendar days of leave per deployment (may be taken continuously or intermittently)
- Eligible employee is entitled to use accrued sick leave or any other paid leave during the period of OMFLA leave.
Military Leave - Other

Oregon Revised Statute 408.290 - *Benefits for public employees on temporary active duty in Armed Forces.*

- Provides leave of absence from duties for a period not exceeding 15 days in any one training year, without loss of time, pay or regular leave and without impairment of efficiency rating or other rights or benefits to which the officer or employee is entitled.
- For initial active duty for training and for all periods of annual active duty for training.
- Must be a member of the National Guard, National Guard Reserve or of any reserve component of the Armed Forces of the United States or of the United States Public Health Service.

**Veterans' Reemployment Rights Law - Title 38, USC Chapter 43.**

- Leaves of absence without pay will be granted to regular classified and unclassified employees who enter the military service of the United States.
State of Oregon Leaves for Victims of...

Domestic Violence, Sexual Assault, Stalking or Harassment

ORS 659A.290
Who is a victim?

- An individual who has been threatened with abuse or who is a victim of abuse
- Any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence committed against the victim, including a member of the victim’s immediate family

How does it impact the workplace?

- Victim may not be able to get to work
- Victim is scared at work
- Victim cannot concentrate because of trauma
- Leads to missed work, lost earnings, lost jobs
Protected Leaves – *for Victims of Crime*

Allows eligible employees to take a reasonable amount of time for purposes such as:

- Seeking legal or law enforcement assistance or to ensure safety of employee’s minor child or dependent
- Seeking medical treatment including counseling
- Obtaining services from a victim services provider
- Relocating or taking steps to secure an existing home

Provides up to 160 hours of leave with pay in each calendar year

- Employee must first exhaust all forms of paid leave available while on leave.
- Certification must be provided.

Protected leave is coordinated between the Office of Equity and Inclusion (requests and approval) and the Office of Human Resources (tracking)

Employers may not refuse reasonable safety accommodation requests unless there is an undue hardship on employer
Protected Leaves

Family Medical Leave Act (FMLA) & Oregon Family Leave Act (OFLA)
Protected Leaves - FMLA/OFLA

FMLA and OFLA are...

*OSU uses the “Rolling Back” method
Purpose of FMLA and OFLA was...

*Intended to lessen the stress that an employee may otherwise feel if forced to choose between work and family during a serious medical situation.*
Because FMLA/OFLA are entitlements...

It is important for OSU to administer the protected leave consistently, thus ensuring equal treatment of all employees.
Protected Leaves - FMLA/OFLA

FMLA/OFLA Provides...

- Job Protection
- Benefit Protection
  - Employee required to continue to pay the employee contribution
- Absences under FMLA/OFLA cannot be held against the employee in employment actions (hiring, promotions, performance reviews or discipline)
Health Benefits...

- OSU continues to pay the employer contribution towards health insurance even if the employee goes into LWOP (leave without pay) status

- Employee is responsible for continuing to pay their share of premiums for health insurance and optional benefits through payroll deduction or by self paying
Protected Leaves - FMLA/OFLA

Eligibility & Qualifying Conditions
## FMLA/OFLA – Eligibility Requirements

<table>
<thead>
<tr>
<th></th>
<th>FMLA</th>
<th>OFLA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employed by State of Oregon</td>
<td>• One year</td>
<td>Employed by State of Oregon</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• 180 days</td>
</tr>
<tr>
<td></td>
<td></td>
<td>*Exception: Oregon Military Leave has no employment requirement</td>
</tr>
<tr>
<td>Hours Worked</td>
<td>• 1250 hours in past 12 months</td>
<td>Hours Worked</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Average of 25 hours per week</td>
</tr>
<tr>
<td></td>
<td></td>
<td>*Exceptions:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Parental Leave has no hours requirement</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Oregon Military Leave has no employment requirement</td>
</tr>
</tbody>
</table>
### FMLA/OFLA – Qualifying Family Members

<table>
<thead>
<tr>
<th></th>
<th>FMLA</th>
<th>OFLA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Spouse</strong></td>
<td>Spouse</td>
<td>Spouse</td>
</tr>
<tr>
<td><strong>Son or Daughter</strong></td>
<td>Under age 18</td>
<td>Child</td>
</tr>
<tr>
<td></td>
<td>If 18 or older and incapable of self-care</td>
<td>Child of Domestic Partner (same gender)</td>
</tr>
<tr>
<td></td>
<td>due to mental or physical disability</td>
<td>• No age distinction</td>
</tr>
<tr>
<td><strong>Parent</strong></td>
<td>Can be individual who stood <em>in loco parentis</em></td>
<td>Parent</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Can be individual who stood <em>in loco parentis</em></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Parent of Domestic Partner (<em>same gender</em>)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Parent in-law</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Grandparent</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Grandchild</td>
</tr>
</tbody>
</table>
### FMLA/OFLA – Qualified Reasons

<table>
<thead>
<tr>
<th>FMLA</th>
<th>OFLA</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Employee’s own serious health condition. Includes disability related to pregnancy or childbirth</td>
<td>• Employee’s own serious health condition. Includes disability related to pregnancy or childbirth*</td>
</tr>
<tr>
<td>• Care of a family member with a serious health condition*</td>
<td>• Care of a family member with a serious health condition</td>
</tr>
<tr>
<td>• Care for / Bonding with a newborn</td>
<td>• Care for / Bonding with a newborn</td>
</tr>
<tr>
<td>• Bonding with a newly placed adopted or foster child under the age of 18 (or incapable of self-care)</td>
<td>• Bonding with a newly placed adopted or foster child under the age of 18 (or incapable of self-care)</td>
</tr>
<tr>
<td>• Qualified Exigency from a covered military member’s call to active duty</td>
<td>• Qualified Exigency from a covered military member’s call to active duty</td>
</tr>
</tbody>
</table>

*May be entitled to additional leave if caring for a covered military service member

*May be entitled to additional leave if for pregnancy related reasons (OFLA Pregnancy Disability)
**FMLA/OFLA – Serious Health Condition**

<table>
<thead>
<tr>
<th>FMLA</th>
<th>OFLA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee unable to perform the functions of their job</td>
<td>Employee unable to perform at least one essential function of their position</td>
</tr>
</tbody>
</table>

**Serious Health Condition**

- Inpatient/overnight care
- Terminal stages of a disease
- Conditions requiring “constant” or “continuing” treatment
  - Ex. Condition requires home care by health care professional
- Permanent or long-term incapacity due to a condition for which treatment may not be effective
  - Ex. Alzheimer’s, severe stroke
FMLA/OFLA – *Serious Health Condition*

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**Serious Health Condition (continued)**

- Absence plus treatment - period of incapacity of more than 3 consecutive calendar days (*including any subsequent treatment or period of incapacity relating to the same condition*), that also involves:
  - Two or more treatments by a health care provider
  - One treatment plus a regimen of continuing treatment
- Pregnancy related disability or prenatal care
- Chronic conditions
- Treatments for conditions that left untreated would likely result in incapacity of more than three days
Conditions that would generally NOT be considered a serious health condition, would include...

- Common Cold
- Flu
- Ear Aches
- Upset Stomach
- Minor Ulcers
- Headaches (other than Migraines)
OFLA – *House Bill 2950, effective January 2014*

- Provides for up to two weeks of protected unpaid leave for bereavement of qualifying family members as defined under OFLA.
- Eligible employee – is one that has worked for at least 180 days and averaged 25 hours per week.
- Leave must be completed within 60 days of notice of death of family member.
Protected Leaves

Protected Leave & Accrued Paid Leave Usage
FMLA/OFLA leave...

- May be taken continuously, intermittently, or work a reduced schedule
- Generally runs concurrently
- Is *unpaid*, but OSU policy requires use of paid leaves while on FMLA/OFLA (i.e., *sick*, *vacation*, *personal*, etc.)
# Protected Leaves – Leave Usage

**Intermittent Leave** – *on leave for blocks of time or working a reduced schedule if medically necessary*

<table>
<thead>
<tr>
<th>Reason for Leave</th>
<th>Intermittent Leave Option</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parental Leave</td>
<td>Employee must take leave in one continuous block, unless the supervisor chooses to permit intermittent leave or a reduced work schedule</td>
</tr>
<tr>
<td>Pregnancy Disability or Prenatal Care</td>
<td>Permitted as necessary</td>
</tr>
<tr>
<td>Serious Health Condition of Employee or Family Member</td>
<td>Permitted when medically necessary</td>
</tr>
</tbody>
</table>
Protected Leaves – *Exception to Use of Paid Leave*

*Short-term Disability Exception...*

If an employee has an approved STD claim **and** is on approved **FMLA** leave:

- The employee can elect to go into unpaid status through the University while receiving disability benefits, **or**

- The employee can elect to supplement their STD with other accrued leave *(vacation, comp, etc.)*
Protected Leaves – *Exception to Use of Paid Leave*

**Short-term Disability Exception...**

- If an employee has an approved STD claim and is NOT on approved FMLA/OFLA leave:
  - The employee must follow all applicable OSU leave policies/procedures and union contract provisions (*i.e. would use all available sick leave first*)
Protected Leaves - FMLA/OFLA

Returning to Work & Restrictions
Returning to Work...

Under the leave laws, employees are expected to perform the essential functions of their position while at work / upon returning from FMLA/OFLA leave.

Restrictions to duties are not protected under the leave laws.
Returning to Work...

- We do not require a work release from the employee prior to returning from continuous leave.
- Work with your health care provider to determine an appropriate date of return.
- Employees are expected to perform the essential functions of their position upon returning from leave.
- Work with the Office of Equal Opportunity and Access if you have ongoing restrictions to determine if any protection can be afforded through their office.
Protected Leaves

Employee & Supervisor Responsibilities
& Administration Process
Inform Supervisor of need to take leave – this should be basic, non-medically specific information (30 days advance notice when leave is foreseeable)

Notification can include statements such as:
- “I need time to care for my family member who is very ill”
- “My doctor says I need a procedure which will prevent me from working for two weeks”
- “I was admitted to the hospital last night”
- “I am pregnant”
- “I am adopting a child and need time off”
- “My family member has been called to active duty and I need some time off”

Follow normal call-in procedures while out on leave
Protected Leaves – Employee Responsibilities

- Accurately record time taken for protected leave on timesheet
- Communicate any changes in leave or medical status to the FMLA desk
- Work with healthcare provider to determine appropriate return to work date
- Work with Office of Equal Opportunity & Access if anticipated restrictions may impact your ability to do your job
Don’t: Share specific information about the condition with others.  
Only the FMLA desk is responsible for collecting medical information and making a determination of whether or not the employee qualifies. This is kept in a separate, confidential file.

Don’t: Bypass the FMLA/OFLA process. Altering an FTE is not the way to handle leave for a potentially qualified reason.
Protected Leaves – *Supervisor Responsibilities*

**Supervisor Responsibilities…**

- Ask basic, non-medical information about an employee’s absence to determine if it may be FMLA/OFLA qualifying
- Report possible protected leave qualifying absences to OHR-FMLA as soon as possible
- Contact the OHR-FMLA if you are notified of any changes
  - Employee goes out on leave prior to the approved begin date
  - Employee does not return the day after their approved end date
  - Employee indicates there has been a change in his/her status
Protected Leaves – Supervisor Responsibilities

Supervisor Responsibilities...

- Verify employee’s reporting of protected leave on timesheet

- While employee is on intermittent leave
  - Clarify if absence is related to the protected leave or for another reason
  - Ensure employees follow normal call-in requirements

- Work with EOA to provide safety accommodations for victims of crimes

- Work with BC to ensure employee is accurately paid while on leave
Supervisor “DOs”

- Ask basic, non-medical information about an employee’s absence to determine if it may be FMLA/OFLA qualifying

- Example: “I need to determine if I need to request that FMLA/OFLA information be sent to you”
  - Can you come to work?
  - Have you been hospitalized?
  - Have you seen a doctor or have an appointment to see one?
  - Do you know how long you will be out?
Protected Leaves – *Supervisor Responsibilities*

**Supervisor “DON Ts”**

- Do not ask specific questions about the employee’s medical condition
- Do not share private information about the employee’s leave with others
- Do not count absences against employees in performance reviews, promotions or compensation decisions
- Do not say negative comments about FMLA/OFLA or an employee using leave
Protected Leaves – *Timesheet Reporting*

**Request Leave in Advance** *(paid and unpaid)*
- Absences for FMLA/OFLA Leave – to establish case
- Absences for Vacation, Sick and Other

I need to request time off for...

- **Absences for FMLA, OFLA, and Military Leave**
  - FMLA = Family and Medical Leave Act
  - OFLA = Oregon Family Leave Act
  - Must also complete “Absences for Vacation, Sick, and Other” section to indicate leave usage while absent

Examples include leave for:
- Serious Health Condition (Employee or Family Member)
- Parental (Newborn, Adoption, or Foster Care Placement)
- Military

- **Absences for Vacation, Sick, and Other**
  - If requesting time off for a serious health condition, family, or military leave, must also complete the “Absences for FMLA, OFLA, and Military Leave” section to the left

Record leave taken on timesheet if not requested in advance
Timesheet with Protected Leave

Continuous Protected Leave

- Timesheet is prepopulated with “Leave of Absence” for dates of continuous leave
- Pay Code and Hours must also be entered on timesheet

Timesheet with Continuous Protected Leave without Pay Code:

*Must also have a Pay Code and hours
*Do NOT associate leave case with Pay Code
Timesheet with Protected Leave

Example of Continuous Protected Leave on Timesheet:

<table>
<thead>
<tr>
<th>Date</th>
<th>Pay Code</th>
<th>Hours</th>
<th>Leave C...</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sun 05/05</td>
<td>Select Pay Code</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mon 05/06</td>
<td>Sick</td>
<td>8.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Leave of Absence</td>
<td>8.00</td>
<td>122</td>
<td></td>
</tr>
<tr>
<td>Tue 05/07</td>
<td>Sick</td>
<td>8.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Leave of Absence</td>
<td>8.00</td>
<td>122</td>
<td></td>
</tr>
<tr>
<td>Wed 05/08</td>
<td>Sick</td>
<td>8.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Leave of Absence</td>
<td>8.00</td>
<td>122</td>
<td></td>
</tr>
<tr>
<td>Thu 05/09</td>
<td>Sick</td>
<td>8.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Leave of Absence</td>
<td>8.00</td>
<td>122</td>
<td></td>
</tr>
<tr>
<td>Fri 05/10</td>
<td>Sick</td>
<td>8.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Leave of Absence</td>
<td>8.00</td>
<td>122</td>
<td></td>
</tr>
<tr>
<td>Sat 05/11</td>
<td>Select Pay Code</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

40.00
Timesheet with Protected Leave

Intermittent Protected Leave

- Timesheet is NOT prepopulated with “Leave of Absence”
- Leave Case is associated directly with Pay Code and Hours
Protected Leaves – Administration Process

OHR Responsibilities...

- Determine employee eligibility, review medical certification and approve or deny
- Communicate leave eligibility and status of leave to employee, supervisor and BC
- Track Protected leave usage
- Work with Benefits Consultant to ensure benefits are continued while employee is on FMLA leave
Protected Leaves – *Administration Process*

*Change in FMLA/OFLA process... making the process easier for employees.*

If an employee’s leave is anticipated to be 2 weeks or less...

FMLA/OFLA *(if eligible)* will be invoked based on the employee’s answers to leave questions without requiring a medical certification.
Employee Benefits Assistance

Benefits Staff:

Christina Schaaf
Protected Leaves (FMLA/OFLA)

Natalie Schell
Graduate Leaves (FMLA/OFLA) & Filing of Standard Insurance Disability Claims

Jillian Therrien
BEBC, AABC, HSBC

Jessica Dalziel
UABC, FOBC

Linda Nye
ASBC, AMBC
FMLA/OFLA Resources

OSU- OHR FMLA/OFLA Webpage
http://hr.oregonstate.edu/benefits/leaves/family-and-medical-leave-act-fmla

EmpCenter website
http://mytime.oregonstate.edu/

PEBB website
http://www.oregon.gov/DAS/pebb

Current STD Certificate