

# Family & Medical Leave Handbook

---

Employee and Employer Rights and Responsibilities under the  
Family and Medical Leave Act (FMLA) & Oregon Family Leave Act (OFLA)



***This document provides general information regarding the University's administration of the Family Medical Leave Act (FMLA) and Oregon Family Leave Act (OFLA) and is not intended to be the sole source of information regarding FMLA and OFLA. In all cases applicable state and federal laws, rules, policies, and collective bargaining agreements govern the employee's and the University's rights and responsibilities 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 asked about, requested or used Family Medical Leave.***

***Due to the complexities of FMLA and OFLA and their inter-relationship with the University's other leave policies, individuals are encouraged to consult with the Office of Human Resources (OHR) regarding employee and employer rights and responsibilities pertaining to FMLA and OFLA.***

Is OSU a Covered Employer?.....	4
How does OSU define the Leave Year? .....	4
What can the FMLA and OFLA do for me?.....	5
What absences qualify under FMLA and OFLA? .....	5
Who can use FMLA and OFLA leave? .....	6
What if I don't want to use FMLA and/or OFLA leave? .....	7
Am I eligible for OFLA leave? .....	7
Am I eligible for FMLA leave?.....	8
When can I use FMLA and OFLA leave? .....	8
Who is an Eligible Family Member under FMLA and OFLA?.....	9
What is a Serious Health Condition?.....	9
What is NOT a Serious Health Condition? .....	10
How much FMLA and OFLA leave do I get? .....	11
When can I take Intermittent Leave or work a Reduced Work Schedule? .....	12
Will I get paid during my FMLA and OFLA leave? .....	13
What if I am off work due to a Workers' Compensation Claim? .....	14
Will my insurance continue while I am on FMLA or OFLA leave?.....	14
Does my return date from FMLA or OFLA leave impact my insurance benefits? .....	15
How do I request FMLA or OFLA leave?.....	16
Do I need to provide advance notice of my need for FMLA or OFLA leave? .....	16
What are the Leave Request and Call-in Procedures I must follow?.....	16
What happens after I request FMLA or OFLA leave?.....	17
How do I report my leave on my timesheet? .....	18
What are the expectations when I return from FMLA/OFLA leave? .....	18
What happens to my job when I take FMLA and OFLA leave? .....	19
Restricted Access to Medical Information .....	20
Outside or Supplemental Employment.....	20
For questions and/or additional information .....	20
Resources.....	21
 APPENDIX A: How to Request Protected Leave in EmpCenter.....	22
APPENDIX B: How Protected Leave looks on your time sheet.....	24
APPENDIX C: Protected Leave & Short-term Disability.....	25
APPENDIX D: Maternity Leave .....	26
APPENDIX E: Family Medical Leave Posters.....	28

## Introduction

The Family and Medical Leave Act (FMLA) and Oregon Family Leave Act (OFLA) were enacted to assist employees and employers in balancing the demands of the workplace with the needs of employees and their families when leave is needed for serious health conditions.

Whether you need to take time off work because of your own serious health condition or because you need to care for an eligible family member with a serious health condition you may be eligible for unpaid, job-protected leave during the leave year. Leave may be taken all at once or intermittently as the medical condition requires. The leave laws define who is eligible, what absences qualify, and how much leave time you may take.

- The **Family and Medical Leave Act** (FMLA) was enacted by Congress in 1993 and requires covered employers to provide eligible employees job protection, job restoration, and continuation of medical and dental benefits under certain conditions. FMLA is regulated by the U.S. Department of Labor, Wage and Hour Division.
- The **Oregon Family Leave Act** (OFLA) was enacted by the State Legislature in 1995 and requires covered employers to provide eligible employees job protection and job restoration for qualifying conditions. OFLA does not require an employer to continue an employee's medical and dental benefits while they are on leave. OFLA is regulated by the State of Oregon, Bureau of Labor and Industries (BOLI).

## Is OSU a Covered Employer?

Oregon State University (OSU) qualifies as a covered employer under both FMLA and OFLA. As such, OSU must comply with and consistently provide the protections afforded under the law(s) to all eligible employees.

## How does OSU define the Leave Year?

Under both FMLA and OFLA, an employer must designate its 12-month "leave year" by choosing one of four methods provided by the laws.

*Oregon State University has designated the "rolling backward" method to determine the leave year for University employees.*

This means that OSU will look backward on the calendar for one year from the first day of your requested leave to determine if you are eligible under FMLA or OFLA and how much leave you have available to use.

You are entitled to use any balance (or number of hours) of the 12 workweek FMLA/OFLA leave period that has not been used during the preceding 12 months.

## What can the FMLA and OFLA do for me?

FMLA and OFLA provide you with up to 12 weeks of job-protected time off for a qualifying reason. The time off you take under FMLA/OFLA may not be held against you in employment actions such as hiring, promotions, or discipline. Your health insurance will also be continued while you are on FMLA leave as long as you continue to pay the same portion of the premiums you currently pay.

You may take time off as either a single block of time (**continuous**) or in multiple, smaller blocks of time (**intermittently**) if medically necessary. You can also take leave on a part-time basis (**reduced work schedule**) if medically necessary. If you need multiple periods of leave for planned medical treatments such as physical therapy appointments, you must try to schedule the treatment at a time that minimizes the disruption to OSU.

As a general rule, if you return from FMLA or OFLA leave before your leave is exhausted, you are entitled to be returned to the same (or equivalent) position you held when your leave started, as long as that position still exists.

## What absences qualify under FMLA and OFLA?

Serious Health Condition – FMLA and OFLA provide up to 12 weeks of unpaid protected leave when an eligible employee is unable to work because of their own serious health condition or to care for a covered family member who has a qualifying serious health condition. A qualifying serious health condition may include an illness, injury, impairment, physical or mental condition.

Parental Leave – FMLA and OFLA provide an eligible employee to take leave for the birth of a child and to bond with the newborn child, or for the placement of a child for adoption or foster care, and to bond with that child. Men and women have the same right to take leave to bond with their child but it must be taken within one year of the child's birth or placement and must be taken as a continuous block of leave unless the employer agrees to allow intermittent leave or a reduced work schedule.

Sick Child Leave, Non-serious Health Condition – OFLA provides up to 12 weeks of protected unpaid leave to care for a child of the eligible employee who is suffering from an illness, injury, or condition that is not a serious health condition.

Oregon Bereavement Leave Entitlement – Effective January 2014, bereavement is a qualifying reason under OFLA. OFLA provides up to 2 weeks of leave to an eligible employee to deal with the death of a covered family member, including grieving the death of the family member, attending the funeral or alternative service, and making arrangements necessitated by the death of the family member. Bereavement leave is per covered family member and must be completed within 60 days of the date the eligible employee receives notice of the death of the covered family member.

**Military Family Leave Entitlement** – FMLA provides a special leave entitlement that permits eligible employees (spouse, son, daughter, parent, or next of kin) to take up to 26 workweeks of unpaid leave to care for a covered servicemember or veteran with a serious injury or illness. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy, which may cause him or her to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A covered veteran is a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves who was discharged or released under conditions other than dishonorable and was discharged within the five-year period before the eligible employee first requests FMLA military caregiver leave.

**Qualifying Exigency Leave** – FMLA provides unpaid protected time off for qualifying exigencies when a covered employee's spouse, son, daughter, or parent is a member of the Armed Forces, National Guard, or Reserves and is deployed to a foreign country. A qualifying exigency includes: short notice deployment, military events and related activities, care of the military member's parent, financial and legal arrangements, counseling, rest and recuperation (limited to 15 days), post-retirement activities (within 90 days), and any other event that the employee and employer agrees is a qualifying exigency.

**Oregon Military Family Leave Entitlement** – OFLA provides a special leave entitlement of up to 14 days of unpaid leave per deployment under OMFLA (Oregon Military Family Leave Act). OMFLA allows eligible employees to spend time with a spouse or registered same-sex domestic partner who is in the military (Armed Forces of the United States, the National Guard, or the military reserve forces of the United States) and has been notified of an impending call or order to active duty or who has been deployed during a period of military conflict.

## Who can use FMLA and OFLA leave?

To be eligible to take FMLA and/or OFLA leave, an employee must meet the following criteria:

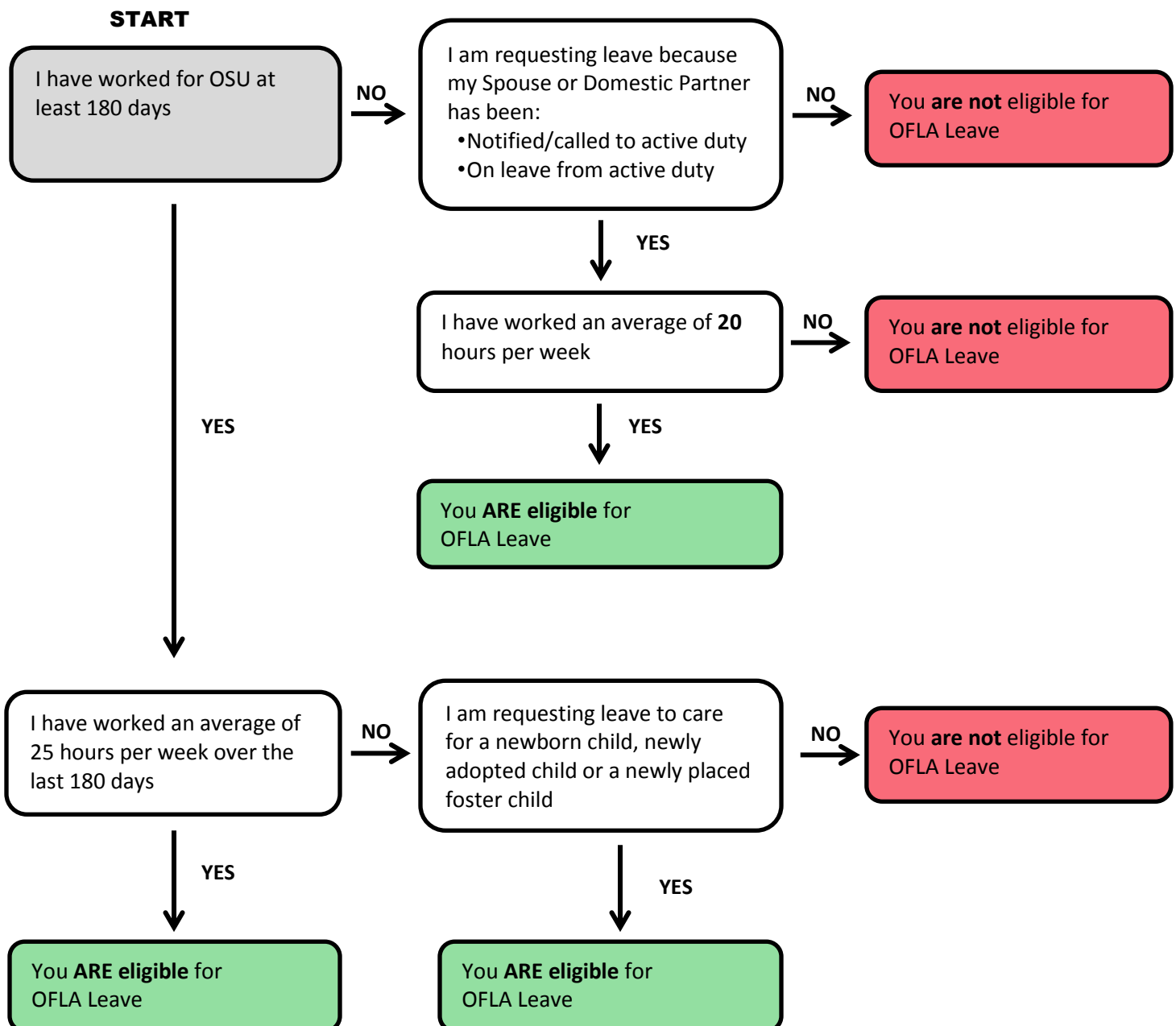
	FMLA	OFLA
<b>Employed by the State of Oregon</b>	One year	180 days <i>Exception:</i> Oregon Military Leave has no employment requirement
<b>Hours Worked</b>	1250 hours in past 12 months	Average of 25 hours per week <i>Exceptions:</i> <ul style="list-style-type: none"> <li>• <b>Parental Leave</b> has no hours requirement</li> <li>• <b>Oregon Military Leave</b> average hours requirement is 20 hours per week</li> </ul>

When counting the number of hours worked, OSU counts all hours the employee actually worked, including hours worked during temporary employment and qualifying absences for military leave. Paid (e.g., vacation, sick leave, etc.) or unpaid leave time **does not** count as hours worked for eligibility purposes.

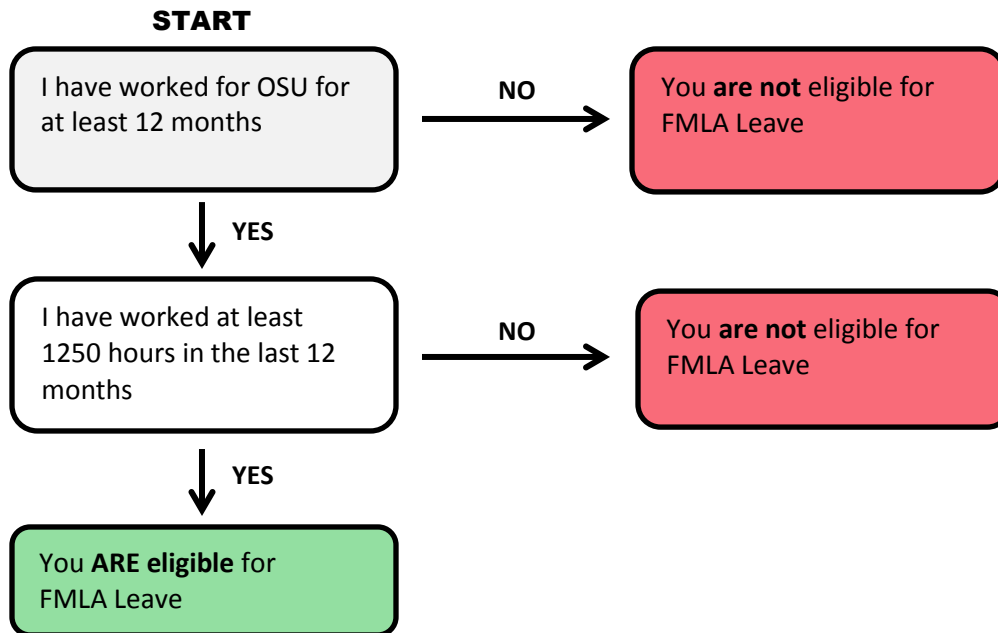
## What if I don't want to use FMLA and/or OFLA leave?

If you are an eligible employee who is absent from work for a reason that qualifies under FMLA or OFLA leave, OSU has no choice but to designate the absence as FMLA, OFLA, or both. The amount of paid leave you have accrued (e.g., sick leave, vacation leave) or your desire to “save FMLA and OFLA until later” are not a factor. FMLA and OFLA leave are not benefits; they are an entitlement that must be applied as the need occurs.

## Am I eligible for OFLA leave?



## Am I eligible for FMLA leave?



## When can I use FMLA and OFLA leave?

You may take FMLA and/or OFLA leave for a variety of reasons. Refer to the chart below to determine if the reason for the leave qualifies under FMLA, OFLA or both.

FMLA Eligible	OFLA Eligible
Employee's own serious health condition. Includes disability related to pregnancy or childbirth	Employee's own serious health condition. Includes disability related to pregnancy or childbirth*  <i>*May be entitled to additional leave if for pregnancy related reasons (OFLA Pregnancy Disability)</i>
Care of an eligible family member with a serious health condition	Care of an eligible family member with a serious health condition
Parental Leave to care for / bond with a newborn, newly placed adopted or foster child under the age of 18 (or incapable of self-care)	Parental Leave to care for / bond with a newborn, newly placed adopted or foster child under the age of 18 (or incapable of self-care)
	Sick Child Leave for a non-serious health condition
	Bereavement Leave ( <i>up to 2 weeks of leave</i> )
Military Caregiver Leave	
Qualified Exigency for a covered military member's call to active duty	
	Military leave related to the deployment of an employee's spouse or registered same-sex domestic partner



## Who is an Eligible Family Member under FMLA and OFLA?

Eligible family members vary between FMLA and OFLA. Refer to the chart below.

FMLA	OFLA
Spouse	Spouse Domestic Partner, Registered ( <i>same gender</i> )
Son or Daughter <ul style="list-style-type: none"> <li>Under age 18</li> <li>If 18 or older and incapable of self-care due to mental or physical disability</li> </ul>	Child <ul style="list-style-type: none"> <li>No age distinction</li> </ul> Child of Domestic Partner ( <i>same gender</i> ) <ul style="list-style-type: none"> <li>No age distinction</li> </ul>
Parent <ul style="list-style-type: none"> <li>Can be individual who stood <i>in loco parentis</i></li> </ul>	Parent <ul style="list-style-type: none"> <li>Can be an individual who stood <i>in loco parentis</i></li> </ul> Parent of Domestic Partner ( <i>same gender</i> ) Parent in-law
	Grandparent Grandchild

## What is a Serious Health Condition?

A serious health condition is an illness, injury, impairment, physical or mental condition that incapacitates you or a family member for 3 consecutive days or longer, and involves at least one 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 consequent to such 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:
  - Two or more treatments by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
  - One treatment by a health care provider which results in a regimen of continuing treatment under the supervision of the health care provider.
- **Pregnancy** - Any period of incapacity due to pregnancy related disabilities, or for prenatal care.

- **Chronic Conditions Requiring Treatments** - A chronic condition exists when the condition:
  - Requires periodic visits for treatment 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); and
  - May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy).
- **Permanent/Long-term Conditions Requiring Supervision** - A permanent or long-term condition(s) requiring supervision is defined as a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
- **Multiple Treatments (Non-Chronic Conditions)** - Any period of absence to receive multiple treatments (including any period of recovery time) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

Important definitions for understanding what qualifies as a Serious Health Condition:

- **Incapacity** is 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/or evaluations of the condition. It does not include routine physical, eye or dental examinations.

## What is NOT a Serious Health Condition?

Examples of what would generally not be considered a serious health condition may include:

Common cold	Treatment for acne
Flu	Headache (other than migraines)
Earaches	Routine medical or dental visits
Sore throat	Plastic surgery for cosmetic purposes

Any of the above may become a serious health condition if medical treatment is sought and you or your family member are incapacitated for 3 or more calendar days.

## How much FMLA and OFLA leave do I get?

An eligible employee has up to 12 weeks of unpaid leave available during the 12-month “rolling backward” leave year. Some reasons for leave qualify under both FMLA and OFLA and some reasons qualify only under one of the leave laws. Leaves qualifying under both FMLA and OFLA are designated at the same time and run concurrently.

**Leave entitlement for part-time employees.** If you are a part-time employee your leave entitlement will be 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.

**More than one qualifying condition.** You may need FMLA or OFLA leave for more than one qualifying condition at the same time or during the same leave year. Having more than one qualifying condition does not extend or increase your leave entitlement.

**Additional leave entitlements under OFLA.** You may be entitled to additional leave under the following circumstances:

- You are a woman and use pregnancy disability leave; you may take an additional 12 weeks of OFLA leave during the leave year for any OFLA qualifying purpose.
- You used a full 12 weeks of Parental leave under OFLA. You may take up to 12 additional weeks of OFLA leave in the same year for Sick Child leave (non-serious health condition).

**Limitations to FMLA leave when both spouses work at OSU.** If you and your spouse work for OSU, you must share the 12 weeks of FMLA entitlement when the leave is taken for:

- Parental leave (birth, adoption, or foster child placement); or
- To care for a parent with a serious health condition.

**Limitations to OFLA leave when two family members work at OSU.** If you and a family member both work for OSU, you may not take OFLA leave at the same time unless:

- One employee needs to care for the other employee who is suffering from a serious health condition;
- One employee needs to care for a child who has a serious health condition while the other employee is also suffering from a serious health condition;
- Both family members are suffering from a serious health condition; or
- Family members each want to use bereavement leave.

## When can I take Intermittent Leave or work a Reduced Work Schedule?

Reason for Leave	Intermittent Leave or Reduced Work Schedule
<b>Parental Leave</b>	<b>FMLA &amp; OFLA:</b> Employee must take leave in one continuous block unless the supervisor chooses to permit the use of intermittent leave or a reduced work scheduled
<b>Pregnancy Disability or Prenatal Care</b>	<b>FMLA &amp; OFLA:</b> Permitted when medically necessary
<b>Serious Health Condition</b> of Employee or a Covered Family Member	<b>FMLA &amp; OFLA:</b> Permitted when medically necessary
<b>Sick Child Leave</b> (non-serious health condition)	<b>OFLA:</b> The nature of sick child leave allows usage of leave as needed intermittently rather than in a continuous block of time.
<b>Qualifying Exigencies Leave</b> for an Employee whose spouse, child, or parent is on active duty or is called to active duty status.	<b>FMLA:</b> permitted as needed
<b>Military Caregiver Leave</b>	<b>FMLA:</b> Permitted as medically necessary

### Requirements for Intermittent Leave or a Reduced Work Schedule

If you take time intermittently or work a reduced work schedule, you must be able to perform the essential functions of your job while you are at work. If you are unable to perform your job responsibilities while at work, you may be required to take continuous leave.

The use of intermittent leave or working a reduced work schedule requires you and your supervisor to work together to balance work and family. Conversations and exploring alternatives are the best way to resolve conflicts that might occur. If a situation arises that is not easily resolved between you and your supervisor, contact OHR before any action is taken.

If modifications to the job duties are requested, you or the supervisor must contact OHR before any action is taken.

## Will I get paid during my FMLA and OFLA leave?

FMLA and OFLA are unpaid leaves. However, OSU policy generally requires you to use your accrued paid leave while on FMLA and OFLA leave before going into leave without pay (LWOP).

### Disability Benefit Exception

If you are on FMLA leave and are receiving disability benefits from your PEBB short-term or long-term disability plan, you are not required to use your paid leave while receiving disability benefits (unless required under the plan).

- You may elect to supplement your disability benefit with the use of your accrued leave (e.g., vacation) at either 40% or 100% of your daily hours.
- Use of your sick leave will reduce your disability benefit dollar for dollar.
- The election to supplement your disability benefit with accrued leave must be made prior to going out on FMLA leave.
- Once your disability benefits end, you must resume using your accrued leave.

### Unclassified Employees

- **Sick Leave** – must be used first, unless receiving disability benefits while on FMLA leave
- **Vacation Leave** – may elect to use vacation leave after exhausting sick leave. If vacation leave is not used, vacation leave will not be available until after returning from the FMLA/OFLA leave (FMLA/OFLA leave case is closed).
- **Compensatory Time** – may elect to use, but not required

### Classified Employees

All accrued leave must be used prior to going into LWOP, unless noted below:

- **Sick Leave** – must be used first, unless receiving disability benefits while on FMLA leave
- **Vacation Leave** – may elect to retain up to 40 hours of accrued vacation leave before being placed on LWOP (*OUS/SEIU Collective Bargaining Agreement, Article 47-Vacation Leave, Section 14, regarding an employee's option to retain up to 40 hours of accrued vacation leave*)
- **Personal Leave Day**
- **Exchange Time** – may elect to use, but not required
- **Compensatory Time** – may elect to use compensatory time, but not required
- **Donated Hardship Leave** – must request Hardship Leave prior to going into leave without pay status.

The University may change a classified employee's pay period to mid-month reporting (16<sup>th</sup> – 15<sup>th</sup>) for the following reasons:

- The employee is working an intermittent or otherwise modified schedule due to medical necessity; *or*
- The employee exhausts all forms of paid leave and is anticipated to have intermittent leave without pay; *or*
- The employee requests a change in his/her work schedule resulting in fluctuating work hours from one month to the next.

## What if I am off work due to a Workers' Compensation Claim?

When you are absent from work due to a disabling compensable injury or you have a pending determination of a workers' compensation claim, FMLA leave will run concurrently if you meet eligibility requirements. OFLA leave will begin if your workers' compensation claim is denied or you refuse an offer of transitional work if you meet eligibility requirements.

If you are receiving time loss payments from SAIF, the time loss is to be recorded as LWOP on your timesheet. You can choose to supplement your worker's compensation payments by using your accrued leave.

## Will my insurance continue while I am on FMLA or OFLA leave?

### FMLA or FMLA/OFLA Leave –

- Your health insurance (medical, vision, dental, basic life) is continued if you use any amount of FMLA leave during the month.
- OSU will continue to pay the same employer contribution toward your coverage even if you go into leave without pay status.
- You must continue to pay your portion of the premiums to avoid cancellation of your coverage. *Refer to Self-paying your premiums below.*
- Your optional benefits (life, disability, FSAs) will continue as long as you work or use sufficient paid leave to continue your coverage; by self-paying your premiums; or by arranging to have the premiums taken out of your pre-tax compensation.

### OFLA ONLY leave –

- Work or paid leave hours required to maintain benefits: Classified = 80 hours; Unclassified = ½ of the available work hours in the month (ranges from 80 to 92 hours).
- Your health insurance is continued (medical, vision, dental, basic life) if you work or use sufficient accrued paid leave.
- Your insurance will terminate if you do not have sufficient hours (work or paid leave) to maintain benefits. Coverage may be continued through COBRA. You will be notified by PEBB's third party administrator regarding your COBRA rights and how to apply. Your premium payments are made directly to the third party administrator.
- Your optional benefits (life, disability, FSAs) will continue as long as you work or use sufficient paid leave to continue your coverage; by self-paying your premiums; or by arranging to have the premiums taken out of your pre-tax compensation.

### Self-paying Your Premiums.

If you do not have sufficient hours (work or paid leave) to continue benefits, you can self-pay your portion of your health and optional benefits by:

- Contacting Employee Benefits and arranging to have your portion of the premiums deducted from your pay before you go into leave without pay status; or
- You will be invoiced for your portion of the health and optional premiums. Submit your monthly payment for your share of the health insurance premium and any optional benefits you elect to continue to the University Payroll Office.

## **Does my return date from FMLA or OFLA leave impact my insurance benefits?**

When and/or if you return to work from your approved FMLA and/or OFLA leave determines when and how your health insurance benefits are continued or reinstated.

**Direct Return** – is when you return to work the first day immediately following the end of your approved FMLA and OFLA leave.

- Example: Your FMLA/OFLA leave ends on Thursday, March 21<sup>st</sup>, and you return to work on Friday, March 22<sup>nd</sup>; you will be considered a direct return.
- You are not required to meet the hours requirement in the month you return to receive the employer insurance contribution for the following month.
  - If you are returning from FMLA leave or paid OFLA leave, your benefits will continue with no break in coverage.
  - If returning from OFLA leave and you were in unpaid status, your benefits will be reinstated retroactively back to the first of the month in which you returned to work.
- Optional benefits, except for Flexible Spending Account(s) and long-term care, will be reinstated retroactively back the first of the month in which you returned to work. You must re-enroll in your Flexible Spending Account(s) and Long Term Care if you did not self-pay the premiums during your leave.

**Non-Direct Return** – is when you return to work on the second workday or thereafter following the end of your approved FMLA and OFLA leave.

- Example: Your FMLA/OFLA leave ends on Thursday, March 21<sup>st</sup>, and you return to work on Monday, March 25<sup>th</sup>; you will be considered a non-direct return.
- You must work or have sufficient paid leave in the month you return to receive the employer insurance contribution toward your health insurance for the following month (Classified employees = 80 hours; Unclassified employees = ½ of the available work hours in the month, hours range between 80-92 hours depending on the month).
- Benefits will be reinstated (except Flexible Spending Accounts and Long-term Care) effective the first of the following month once you meet the minimum hours. You must re-enroll in your Flexible Spending Account(s) and Long Term Care if you did not self-pay the premiums during your leave.

**Do NOT Return to Work** – if you do not return to work following family and medical leave, you may be required to reimburse the University for the full premium cost of health care coverage paid on your behalf during the entire leave period.

- If you had sufficient paid leave to earn the employer insurance contribution during your leave, you will not be required to reimburse the University.
- If you have a recurrence, continuation or onset of a serious health condition or you cannot return for a reason that is beyond your control, you will not be required to reimburse the University.
- You will be considered as returning to work if you return to work for at least 30 calendar days.

## **How do I request FMLA or OFLA leave?**

Your initial notification can be provided by calling your supervisor or applying for protected leave (FMLA/OFLA) in EmpCenter under My Time Off, Establishment of a Protected Leave Case. Refer to Appendix A: How to Request Protected Leave in EmpCenter

You are not required to specifically ask for FMLA or OFLA leave for your first leave request, but you do need to provide enough information so the University is aware your absence(s) may qualify under the family medical leave laws. For example: you do not have to tell your supervisor or the University your diagnosis, but you do need to provide information such as, I've been to the doctor and have been given antibiotics and told to stay home for 4 days.

Once a condition has been approved for FMLA or OFLA leave and you need additional leave for that condition, your request must mention that condition or your need for FMLA or OFLA leave.

## **Do I need to provide advance notice of my need for FMLA or OFLA leave?**

You must provide the University with appropriate notice for your need for leave.

- You must generally give 30 calendar days advance notice for planned absences (paid or unpaid).
- If you learn of your need for leave less than 30 days in advance, you must give your notice as soon as you can. Generally, within two working days after you learn of the need for leave.
- If you need FMLA and/or OFLA leave unexpectedly (an emergency), you must inform the University as soon as possible.

Because FMLA and OFLA are not optional, given sufficient information, the University can designate leave as FMLA and OFLA without your agreement. The University will give you notice when FMLA and OFLA leave is invoked, specifying the reasons for such actions.

## **What are the leave request and call-in procedures I must follow?**

You must follow the University's usual notice and call-in procedures unless you are unable to do so (i.e., you are receiving emergency medical care).

If you are unable to submit your request due to the nature of your condition/emergency, contact Office of Human Resources (OHR) at [fmla@oregonstate.edu](mailto:fmla@oregonstate.edu) or (541) 737-5946.

You may also designate a personal representative to act on your behalf, if necessary, by submitting the designation in writing to the Office of Human Resources (OHR).



## What happens after I request FMLA or OFLA leave?

**Notice of Eligibility.** After you make a request for FMLA or OFLA leave, OHR will generally let you know within 5 business days if you are eligible for the leave entitlement and if additional information is needed such as the medical certification.

**Medical Certification.** You may be required to submit the Medical Certification form for your own or your family member's serious health condition. The form is taken to your medical provider and provides the University with information to determine if your reason for the leave qualifies under FMLA and OFLA. At times, the University may have enough information to designate FMLA or OFLA leave without requesting medical certification.

The medical certification form must be returned within 15 days or your leave can be denied. If your leave is denied it means that you do not have job protection under FMLA and OFLA.

If the length of your request for family medical leave is for:

- 14 calendar days or less – the University generally will not require you to submit the medical certification form. If your leave extends beyond the originally anticipated 14 calendar days, you will need to submit a medical certification form at that time.
- More than 14 calendar days – the University requires the medical certification form to be submitted.

**Final Determination.** Once the University has enough information, you will be informed whether your absences qualify as FMLA and/or OFLA. You will also receive information on how much FMLA and/or OFLA leave time you have available, requirements to use your paid leave, information about your insurance, your reinstatement rights, and if you will be required to provide a Fitness for Duty Certification or status report before returning to work if you are absent for your own serious health condition.

**Medical Re-certification.** For pregnancy-related leave or chronic or long-term health conditions, recertification may be requested by the University no more often than every 30 days unless:

- An employee requests an extension of leave;
- The duration or nature of the condition has changed significantly; or
- The University receives information casting doubt on the employee's reason for the absences.

Under OFLA, the University may not request certification for sick child leave on the first three occasions during the leave year, but may do so beginning with the fourth incident, day, or occurrence and every subsequent occasion thereafter during the leave year. A doctor's note serves as medical certification.

## How do I report my leave on my timesheet?

You are to accurately report your absences on your timesheet in EmpCenter (online time and attendance system) and account for all hours in your regular workday with either paid and/or unpaid leave as appropriate. This applies to both salaried and hourly employees.

When you request FMLA/OFLA leave, you will be assigned a case number. This case number is to be associated with all leave (paid or unpaid) reported on your timesheet that is for your FMLA/OFLA absences. All requested and approved FMLA/OFLA leave will be counted toward your FMLA/OFLA leave entitlement regardless of your pay status (paid or unpaid).

If you are on **Continuous leave**, your timesheet in EmpCenter:

- Will prepopulate with “Leave of Absence” and the associated case number; and
- You MUST report the type of paid or unpaid leave you will be using for those absences by submitting a pre-approved leave request or by entering the leave type (sick, vacation, etc.) directly on your timesheet.

If you are using **intermittent leave**, record your absences on your timesheet in EmpCenter by:

- Submitting a pre-approved request for leave and associate the case number with the request when you have advance notice of the need for leave; or
- Enter the type of leave (paid or unpaid) and the FMLA/OFLA case number directly on your timesheet for your FMLA/OFLA absences.

For additional information on how to record FMLA/OFLA leave on your monthly timesheet, refer to Appendix B, How Protected Leave looks on your timesheet.

## What are the expectations when I return from FMLA/OFLA leave?

Under the leave laws, you are expected to complete the essential functions of your position when not on FMLA and OFLA leave.

You need to work with your health care provider to determine the appropriate date of your return if your leave was for your own serious health condition. The University may request, but generally does not require, you to provide a work release or status report prior to returning from FMLA and OFLA leave.

Restrictions to work duties are not protected under the leave laws. If you anticipate ongoing restrictions that may impact your job, you should work with the Office of Equity and Inclusion to determine if any protections can be afforded through their office.

**Fitness for Duty Certification** – you may be required to provide a statement from your medical provider verifying you are able to return to work and if you have any limitations if you were absent because of your own serious health condition.

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

Your reinstatement rights vary slightly depending on whether you are returning from FMLA or OFLA qualifying leave.

- **FMLA-only leave:** You have the right to be restored to the position you held prior to your leave or to an equivalent position. An equivalent position is one that is nearly identical to your former position in terms of pay, benefits, and working conditions and involves the same or substantially similar duties and responsibilities.
- **OFLA-only or FMLA/OFLA leave:** You have the right to be restored to the same position you held when your leave began.

Once the employee has been reinstated, the University may not be required to continue the employee's employment if the employee would have otherwise been laid off or terminated. The reinstated employee may be held to the same standards for performance, termination or layoff as other employees.

### Exceptions to reinstatement rights upon return from FMLA and OFLA leave.

The University's obligation to restore you to the same or an equivalent position ceases:

- If and when the employment relationship would have terminated either through a termination or layoff action if you had not taken leave (e.g., contract ends);
- You inform the University of your intent not to return to work at the expiration of the leave;
- You fail to return to work at the expiration of the leave;
- You are unable to perform an essential function of your position and reasonable accommodations are not appropriate; or
- You continue on leave after exhausting your leave entitlement in the 12-month period. If you exhaust your FMLA/OFLA leave and remain off work, your right to reinstatement will be governed by the non-FMLA/OFLA leave policy, or other applicable laws, such as those relating to worker's compensation for workplace injuries.

## How do I add or remove a dependent from my health insurance?

If you lose and/or gain a dependent while on FMLA/OFLA leave, you will need to complete the Midyear Change form to either remove or add that dependent to your health insurance coverage. Please contact Employee Benefits at [employee.benefits@oregonstate.edu](mailto:employee.benefits@oregonstate.edu) or by phone at (541) 737-2805 for assistance.

Additional information on Midyear Changes is located at:

<http://hr.oregonstate.edu/benefits/insurance/how-enroll-how-make-changes-during-year/midyear-changes-health-optional-benefits>

Midyear Change form can be downloaded at:

<http://www.oregon.gov/DAS/PEBB/pages/forms.aspx>

## **Restricted Access to Medical Information**

Medical information relating to FMLA and OFLA leaves, whether verbal or written, will be kept confidential to the extent possible. Information will be shared on a need-to-know basis only. All medical documents including, but not limited to, medical certifications will be maintained in restricted access files separate from personnel files within the OHR.

The employee's supervisor is not to have any contact with the employee's health care provider regarding the employee's leave or medical condition while the employee is on FMLA/OFLA authorized leave.

Should OHR question the adequacy or the completeness of a medical certification provided by an employee's health care provider, a health care provider representing the University may contact the employee's health care provider for purposes of clarification and authenticity with the employee's permission. If the employee declines to give OHR permission to inquire, through the University's health care provider, the employee's absence may not qualify as FMLA/OFLA leave.

## **Outside or Supplemental Employment**

Oregon State University prohibits unauthorized work for another employer while you are on FMLA or OFLA leave from Oregon State University. If you violate this policy, Oregon State University may not reinstate you to the position you held or an equivalent position following leave covered by FMLA or OFLA.

## **For questions and/or additional information**

Office of Human Resources, Employee Benefits  
Location: 204 Kerr Administration Building  
Mailing: 122 Kerr Administration Building, Corvallis OR 97331-2132  
Phone: (541) 737-5946  
Fax: (541) 737-0553  
[FMLA@oregonstate.edu](mailto:FMLA@oregonstate.edu)

## Resources

### **OSU Office of Human Resources: Family and Medical Leave**

<http://hr.oregonstate.edu/benefits/leaves/family-and-medical-leave-act-fmla>

### **U.S. Department of Labor: Family and Medical Leave Act (FMLA)**

<http://www.dol.gov/whd/fmla/index.htm>

### **Oregon Bureau of Labor and Industries**

- Leave Laws – Family Leave FAQs  
[http://www.oregon.gov/boli/TA/pages/t\\_faq\\_leave\\_laws\\_01-2011.aspx](http://www.oregon.gov/boli/TA/pages/t_faq_leave_laws_01-2011.aspx)
- Oregon Family Leave Act (OFLA) - FAQs  
[http://www.oregon.gov/BOLI/TA/Pages/T\\_FAQ\\_Oregon\\_Family\\_Leave\\_Act\\_01-2011.aspx](http://www.oregon.gov/BOLI/TA/Pages/T_FAQ_Oregon_Family_Leave_Act_01-2011.aspx)

### **OSU MyTime (EmpCenter) – Time & Leave Reporting**

- Protected Leave Guide  
<http://mytime.oregonstate.edu/sites/default/files/empcenter-protected-leave-guide.pdf>
- EmpCenter Training Center  
<http://mytime.oregonstate.edu/empcenter-training>

### **Short Term Disability**

- General Information - <http://www.oregon.gov/DAS/PEBB/pages/opben/std.aspx>
- PEBB Plan Document:  
<http://www.oregon.gov/DAS/PEBB/docs/spd/subsections/shorttermdisability.pdf>
- Policy/Certificate - <http://www.oregon.gov/DAS/PEBB/docs/pdf/2010/442210c.c.pdf>

### **Employee Benefits – PEBB Midyear Changes**

<http://hr.oregonstate.edu/benefits/insurance/how-enroll-how-make-changes-during-year/midyear-changes-health-optional-benefits>

### **Worker's Compensation Resources**

<http://hr.oregonstate.edu/benefits/workers-compensation-resources>

### **OUS/SEIU Collective Bargaining Agreement**

<http://www.ous.edu/dept/finadmin/labor>

### **Authorized Use of Sick Leave Plan for Academic Personnel OAR 580-021-0040**

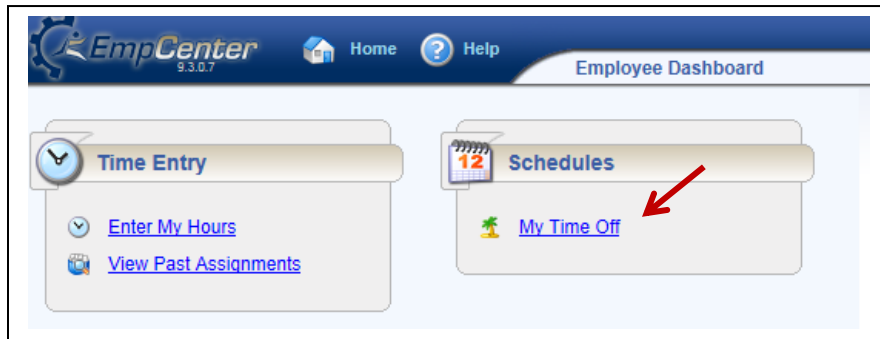
[http://arcweb.sos.state.or.us/pages/rules/oars\\_500/oar\\_580/580\\_021.html](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_580/580_021.html)

## APPENDIX A: How to Request Protected Leave in EmpCenter.

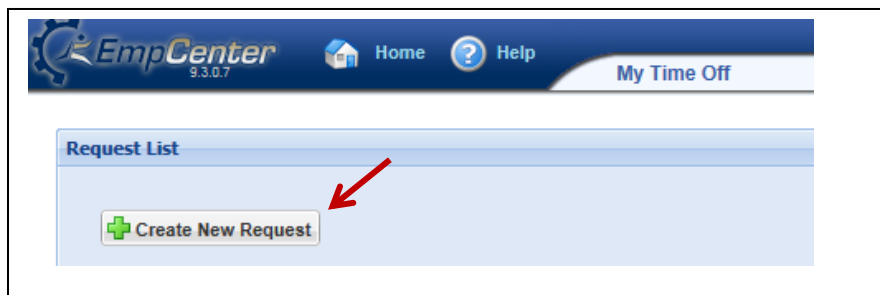
Protected Leave Guide –

<http://mytime.oregonstate.edu/sites/default/files/empcenter-protected-leave-guide.pdf>

- Go to OSU MyTime website: <http://mytime.oregonstate.edu/>
- Login
- Establish a Protected Leave Case:
  - Select My Time Off



- Select Create New Request



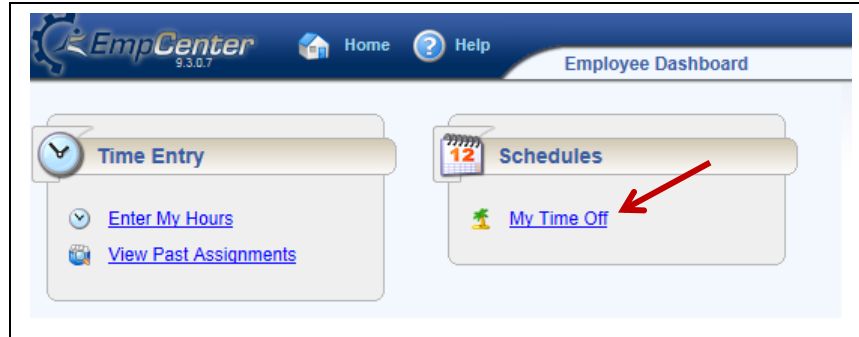
- Establish a Protected Leave Case

The screenshot shows the EmpCenter form for establishing a Protected Leave Case. The title is 'I need to request time off for...'. There are two columns of options. The left column is titled 'Absences for FMLA, OFLA, and Military Leave' and lists examples of leave: 'Serious Health Condition (Employee or Family Member)', 'Parental (Newborn, Adoption, or Foster Care Placement)', and 'Military'. The right column is titled 'Absences for Vacation, Sick, and Other' and includes a note about requesting time off for a serious health condition, family, or military leave. Both columns have a 'Continue' button at the bottom. A red arrow points to the 'Continue' button in the left column.

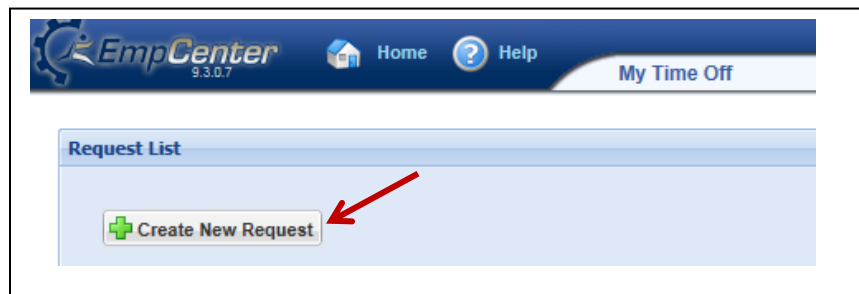
- Answer questions (who, what, when, etc.)
- Submit Request

- Advance Request of Paid and/or Unpaid Leave (Pre-approved leave) for your Protected Leave Case. Leave requested can be on a continuous or intermittent basis.

- Select My Time Off



- Select Create New Request



- Select Absences for Vacation, Sick, and Other



- Enter the dates and leave types for the time period you will be absent
- **For continuous Protected Leave cases:** Do NOT associate your protected leave case number to your advance paid/unpaid leave request. The case number will be prefilled on your timesheet for the days you will be absent.
- **For intermittent Protected Leave cases:** When you know in advance that you need to be absent, request your paid/unpaid leave in advance AND associate your protected leave case number to your paid/unpaid leave request.

## APPENDIX B: How Protected Leave looks on your time sheet.

### ➤ 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 using either the Advance request process (Pre-approved) or by entering the paid/unpaid leave pay code directly on your timesheet

#### Timesheet with Continuous Protected Leave without Pay Code:

imesheet

M T W T F S			S M T W T F S			S M T W T F S			S M T W T F S			S M T W T F S			S M T W T F S			S M T W T F S			S M T W T F S			S M T W T F S			S M T W T F S			S M T W T F S		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	M	
Date	Pay Code		Hours		Leave C...		Comments																									
Fri 05/01		Select Pay Code	Leave of Absence		8.00		122																									
hu 05/02		Select Pay Code	Leave of Absence		8.00		122																									
ri 05/03		Select Pay Code	Leave of Absence		8.00		122																									
at 05/04		Select Pay Code																														
0.00																																

\*Must also have a Pay Code and hours

\*Do NOT associate leave case with Pay Code

#### Timesheet with Continuous Protected Leave with Pay Code:

Date	Pay Code	Hours	Leave C...	Comments
Sun 05/05	Select Pay Code			
Mon 05/06	Sick	8.00		
	Leave of Absence	8.00	122	
Tue 05/07	Sick	8.00		
	Leave of Absence	8.00	122	
Wed 05/08	Sick	8.00		
	Leave of Absence	8.00	122	

### ➤ Intermittent Protected Leave

- Timesheet is **NOT** prepopulated with “Leave of Absence”
- Leave Case is associated directly with Pay Code and Hours either by requesting paid/unpaid leave in advance (pre-approved leave request) or by recording the case number directly on the timesheet.

Timesheet																																							
M T W T F S					S M T W T F S					S M T W T F S					S M T W T F S					S M T W T F S					S M T W T F S					S M T W T F S					S M T W T F S				
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Jul 1, 2013 <a href="#">Show All</a>								
Date		Pay Code		Hours		Leave C...		Clock Location		Comments		Total																											
Mon 07/01		Select Pay Code																																					
		Sick - Pre-Approved		8.00		1163						8.00																											
Tue 07/02		Select Pay Code																																					
		Sick - Pre-Approved		8.00		1163						8.00																											
Wed 07/03		Select Pay Code																																					
		Sick - Pre-Approved		8.00		1163						8.00																											
Thu 07/04		Select Pay Code																																					
		Holiday		8.00								8.00																											
Fri 07/05		Select Pay Code																																					
		Sick - Pre-Approved		8.00		1163						8.00																											
Sat 07/06		Select Pay Code																																					



## APPENDIX C: Protected Leave & Short-term Disability

In general, OSU policy requires you to use your accrued paid leave while you are on FMLA and OFLA leave prior to going into leave without pay (LWOP).

An exception to this policy exists if you are on **FMLA** leave. If you are on FMLA leave and you are enrolled in and file a claim with the PEBB Standard Insurance Short-term Disability policy, you may elect to go into leave without pay status while you are receiving disability benefits (unless required under the plan).

You will be required to use your accrued sick leave during the seven (7) day waiting period (if applicable) prior to the start of your disability benefits.

You may elect to supplement your disability benefit with the use of your accrued leave (e.g., vacation, comp time) at either 40% or 100% of your daily hours. If you elect to use sick leave, your disability benefit will be reduced dollar for dollar. You must make the election to supplement your disability benefit prior to going out on FMLA leave.

If your FMLA leave extends beyond your disability benefits, you must resume using your accrued leave.

### Filing a Short-term Disability Claim:

- Call Standard Insurance at (800) 842-1707, provide them with the following information
  - Employer – State of Oregon/OSU
  - Group Policy number – 442210
  - Name and Social Security number
  - Last day of work
  - Nature of claim and physician information
  - FAQs: <http://www.oregon.gov/DAS/PEBB/docs/pdf/2008/stdclaimsfaq.pdf>
- Call Employee Benefits at (541) 737-2916 and request paper application.

## APPENDIX D: Maternity Leave

Maternity Leave is actually a combination of Family Medical Leave for an employee's own personal health condition and parental leave to bond with their newborn. A female employee would take leave for their own serious health condition for conditions related to the pregnancy. This can include absences for morning sickness, prenatal doctor appointments, delivery, and then recovery from the birth.

FMLA provides up to a total of 12 workweeks of leave to cover the employee's serious health condition and bonding with the newborn.

OFLA leave provides additional leave for female employees that have taken any amount of leave for their own personal health condition when that leave is related to her pregnancy. OFLA allows for up to 12 workweeks of parental leave beyond the leave taken for the employee's own serious pregnancy related health condition.

In general, OSU will not require a medical certification when an employee is requesting leave for their own serious health condition (pregnancy related) and leave begins no sooner than one week prior to your due date. Medical certification may be requested if you experience complications during your pregnancy and/or leave is requested to begin more than one week prior to your due date.

OSU will create one leave case for the standard six week recovery period after the birth toward your own serious health condition. Another leave case will then be created for parental leave. A medical certification form will need to be submitted if the recovery period indicated by your physician exceeds the six week period.

Example: Judy Doe has applied for protected leave for her own serious health condition due to her pregnancy. She qualifies for both FMLA and OFLA. Her due date is April 14, 2014 and she is requesting leave to begin April 7, 2014. She has not taken any other leave for morning sickness or prenatal visits prior to April 7<sup>th</sup>. She plans on being absent from work for a total of 13 weeks (one week before the due date, 12 weeks after the due date). She has the baby exactly on her due date.

- Protected Leave Case Number is assigned for the time period of April 14 – May 23, 2014, and is comprised of:
  - FMLA leave
  - OFLA leave for her own serious health condition
- New Protected Leave Case Number is assigned effective May 24, 2014 (after the six week recovery period) through July 4, 2014, and is comprised of:
  - FMLA leave through June 27<sup>th</sup> (end of the 12 weeks)
  - OFLA leave for parental leave through July 4, 2014.

In this example, Judy receives:

- 12 workweeks of FMLA leave,
- 7 workweeks of OFLA leave for her own serious health condition/pregnancy related, and
- 6 workweeks of OFLA parental leave.

During the remainder of the designated leave year, Judy will have up to 5 workweeks (12 weeks - 7 weeks) of OFLA leave available for any other OFLA qualifying event (e.g., her own or a qualifying family member's serious health condition or bereavement leave).



## STANDARD INSURANCE

### Maternity Claim Guidelines for Disability Claims

Maternity members are considered disabled when, as a result of their pregnancy, they are unable to perform with reasonable continuity the material duties of their own occupation. Please refer to the group policy for the exact definition of disability.

For members with **sedentary** occupations whose pregnancy is normal and uncomplicated, the disability period begins on the cease work date recommended by the member's physician (not earlier than two weeks before the expected date of delivery) and ceases six weeks after delivery, both vaginal and caesarian section.


For members with **light to heavy** occupations whose pregnancy is normal and uncomplicated, the disability period begins on the cease work date recommended by the member's physician (not earlier than four weeks before the expected date of delivery) and ceases six weeks after a vaginal delivery or eight weeks after a caesarian section delivery.

Unless the member's physician indicates otherwise, we will usually rely upon these guidelines when determining the length of disability. If the physician indicates that the member's disability will exceed these guidelines, we will request detailed information to support prolonged disability.

Disability benefits are paid only while the member is unable to work at her own occupation. **The actual amount and length of benefits paid is based upon the group policy.** No benefits will be paid for periods of child-parent bonding, breast feeding or child illness.

Family and medical leave laws are designed to protect the member's right for reinstatement after her leave ends and guarantees that she will not lose certain employment rights that accrued prior to the leave. These laws do not impact how and when disability benefits are paid. Disability benefits will be paid in accordance with the terms of the group policy.

If you have any questions, please feel free to contact our Customer Contact Center at (800) 842-1707.




**BUREAU OF LABOR AND INDUSTRIES**

**Oregon**

**FAMILY LEAVE ACT**

Brad Avakian, Commissioner



**NOTICE TO EMPLOYERS AND EMPLOYEES**

The Oregon Family Leave Act (OFLA) requires employers of 25 or more employees to provide eligible workers with protected leave to care for themselves or family members in cases of death, illness, injury, childbirth and adoption.

ORS 659A.150 to 659A.186

<b>When can an Employee take Family Leave?</b>	<p>Employees can take family leave for the following reasons:</p> <ul style="list-style-type: none"> <li>⇒ <b>Parental Leave</b> during the year following the birth of a child or adoption or foster placement of a child under 18, or a child 18 or older if incapable of self-care because of a mental or physical disability. Parental leave includes leave to effectuate the legal process required for foster placement or adoption.</li> <li>⇒ <b>Serious health condition leave</b> for the employee's own serious health condition, or to care for a spouse, parent, child, parent-in-law, grandparent, grandchild or same gender domestic partner with a serious health condition. NOTE: Does not include an employee unable to work due to a compensable Workers Compensation injury.</li> <li>⇒ <b>Pregnancy disability leave</b> (a form of serious health condition leave) taken by a female employee for an incapacity related to pregnancy or childbirth, occurring before or after the birth of the child, or for prenatal care.</li> <li>⇒ <b>Sick child leave</b> taken to care for an employee's child with an illness or injury that requires home care but is not a serious health condition.</li> <li>⇒ <b>Bereavement leave</b> to deal with the death of a family member.</li> <li>⇒ <b>Oregon Military Family Leave</b> is taken by the spouse or same gender domestic partner of a service member who has been called to active duty or notified of an impending call to active duty or is on leave from active duty during a period of military conflict.</li> </ul>
<b>Who is Eligible?</b>	<p>To be eligible for leave, workers must be employed for the 180 day calendar period immediately preceding the leave and have worked at least an average of 25 hours per week during the 180-day period.</p> <p><b>Exception 1:</b> For parental leave, workers are eligible after being employed for 180 calendar days, without regard to the number of hours worked.</p> <p><b>Exception 2:</b> For Oregon Military Family Leave, workers are eligible if they have worked at least an average of 20 hours per week, without regard to the duration of employment.</p>
<b>How much Leave can an Employee take?</b>	<ul style="list-style-type: none"> <li>⇒ Employees are generally entitled to a maximum of 12 weeks of family leave within the employer's 12-month leave year.</li> <li>⇒ A woman using pregnancy disability leave is entitled to 12 additional weeks of leave in the same leave year for any qualifying OFLA purpose.</li> <li>⇒ A man or woman using a full 12 weeks of parental leave is entitled to take up to 12 additional weeks for the purpose of sick child leave.</li> <li>⇒ Employees are entitled to 2 weeks of bereavement leave to be taken within 60 days of the death of a covered family member.</li> <li>⇒ A spouse or same gender domestic partner of a service member is entitled to a total of 14 days of leave per deployment after the military spouse has been notified of an impending call or order to active duty and before deployment and when the military spouse is on leave from deployment.</li> </ul>
<b>What Notice is Required?</b>	<p>Employees are required to give 30 days notice in advance of leave, unless the leave is taken for an emergency. Employers may require that notice is given in writing. In an emergency, employees must give verbal notice within 24 hours of starting a leave.</p>
<b>Is Family Leave Paid or Unpaid?</b>	<p>Although Family Leave is unpaid, employees are entitled to use any accrued paid vacation, sick or other paid leave.</p>
<b>How is an Employee's job Protected?</b>	<p>Employers must return employees to their former jobs or to equivalent jobs if the former position no longer exists. However, employees on OFLA leave are still subject to nondiscriminatory employment actions such as layoff or discipline that would have been taken without regard to the employee's leave.</p>

**FOR ADDITIONAL INFORMATION:**

Employer Assistance . . . 971-673-0824  
 Portland . . . . . 971-673-0761  
 Eugene . . . . . 541-686-7623  
 Salem . . . . . 503-378-3292

[www.oregon.gov/BOLI](http://www.oregon.gov/BOLI)

BOLI  
 Civil Rights Division  
 800 NE Oregon, #1045  
 Portland, OR 97232

[bolita@boli.state.or.us](mailto:bolita@boli.state.or.us)

This is a summary of laws relating to Oregon Family Leave Act.  
 It is not a complete text of the law.

December 2013

**Employees who have been denied available leave, disciplined or retaliated against for requesting or taking leave, or have been denied reinstatement to the same or equivalent position when they returned from leave, may file a complaint with BOLI's Civil Rights Division.**

**THIS INFORMATION MUST BE POSTED IN A CONSPICUOUS LOCATION**



# EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

## Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- for incapacity due to pregnancy, prenatal medical care or child birth;
- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son, daughter or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

## Military Family Leave Entitlements

Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness\*; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.\*

**\*The FMLA definitions of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".**

## Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

## Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months\*, and if at least 50 employees are employed by the employer within 75 miles.

**\*Special hours of service eligibility requirements apply to airline flight crew employees.**

## Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and

a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

## Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

## Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

## Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

## Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

## Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

## Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

**FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulation 29 C.F.R. § 825.300(a) may require additional disclosures.**



For additional information:  
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627  
[WWW.WAGEHOUR.DOL.GOV](http://WWW.WAGEHOUR.DOL.GOV)

U.S. Department of Labor | Wage and Hour Division



WHD Publication 1420 - Revised February 2013

