



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?

Protected Leaves



*Military Leave under...
FMLA, OMFLA, Other*

Military Leave – *Family Medical Leave Act (FMLA)*

Qualifying Exigency Leave

Eligible family member is deployed to a foreign country or pending deployment.

Exigency allows up to total of 12 workweeks to address:

- Arrangements for childcare and related activities (*not for routine childcare*)
- To make or update financial/legal arrangements
- Attend military events and related activities
- To spend up to fifteen calendar days with a military member on Rest & Recuperation leave during covered active duty (*only used during the military member's R & R leave*)

Military Caregiver Leave

Caring for an injured or seriously ill covered service member or veteran.

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.

Who can take Military Caregiver Leave?

- Parent
- Son or daughter
- In Loco Parentis
- Next of Kin

**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.

Protected Leaves

State of Oregon Leaves for Victims of ... Domestic Violence, Sexual Assault, Stalking or Harassment

ORS 659A.290

- 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

- 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 take 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** request unless undue hardship on employer

Protected Leaves

Family Medical Leave Act (FMLA) & Oregon Family Leave Act (OFLA)



Protected Leaves - FMLA/OFLA

FMLA and OFLA are...

*Federal and State mandated leaves which provide up to 12 weeks of **unpaid** job protected leave per leave year* for **eligible** employees to care for their own serious health condition or a **family member's** serious health condition.*

*OSU uses the “Rolling Back” method



Protected Leaves - FMLA/OFLA



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.

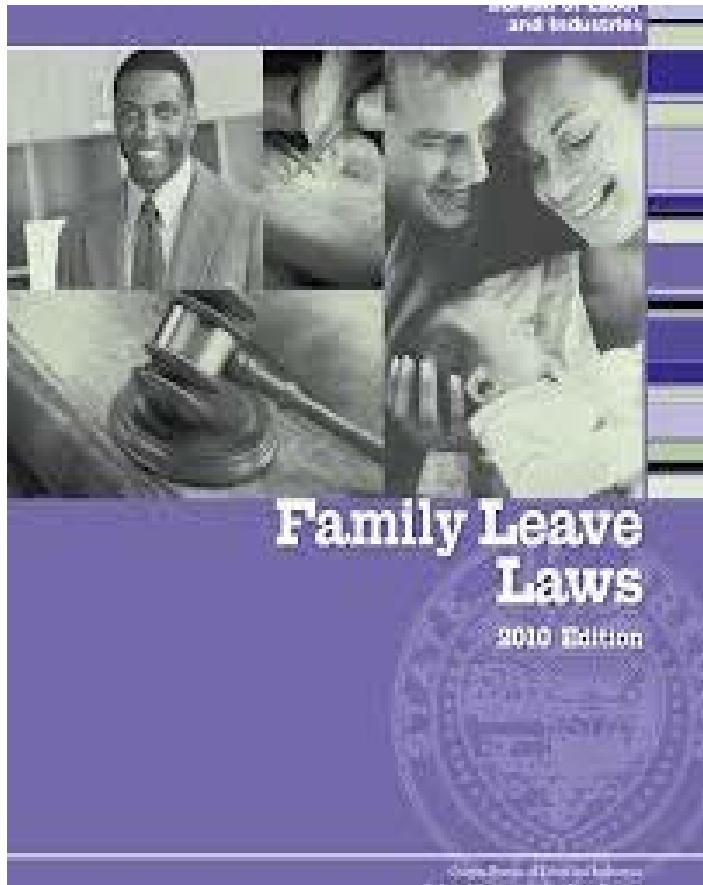
Protected Leaves - FMLA/OFLA



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 (*FMLA & OFLA*)
- Benefit Protection (*FMLA only*)
 - Employee required to continue to pay the employee contribution
- Absences under FMLA/OFLA cannot be held against the employee in employment actions (*hiring, promotions or discipline*)

Protected Leaves - FMLA/OFLA

Health Benefits...

➤ FMLA

- 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

➤ OFLA

- **Health insurance coverage will terminate** if employee is not in paid status for the required number of hours to maintain benefits
 - Employee has option to enroll in COBRA coverage for health insurance
 - Employee may arrange to self pay *optional* benefits by working with the Employee Benefits staff

Protected Leaves - FMLA/OFLA

Eligibility & Qualifying Conditions



FMLA/OFLA – *Eligibility Requirements*

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

FMLA/OFLA – *Qualifying Family Members*

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

FMLA/OFLA – *Qualified Reasons*

FMLA

- Employee's own serious health condition. Includes disability related to pregnancy or childbirth
- Care of a family member with a serious health condition*
- Care for / Bonding with a newborn
- Bonding with a newly placed adopted or foster child under the age of 18 (or incapable of self-care)
- Qualified Exigency from a covered military member's call to active duty

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

OFLA

- Employee's own serious health condition. Includes disability related to pregnancy or childbirth*
- Care of a family member with a serious health condition
- Care for / Bonding with a newborn
- Bonding with a newly placed adopted or foster child under the age of 18 (or incapable of self-care)
- Qualified Exigency from a covered military member's call to active duty

**May be entitled to additional leave if for pregnancy related reasons (OFLA Pregnancy Disability)*

FMLA/OFLA – *Serious Health Condition*

FMLA

Employee unable to perform the functions of their job

OFLA

Employee unable to perform at least one essential function of their position

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*

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

FMLA/OFLA – *Serious Health Condition*



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

- Amends Oregon Family Leave Act (OFLA) – ORS 659A.159.
- 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

Protected Leaves – *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*

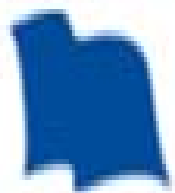
Intermittent Leave – *on leave for blocks of time or working a reduced schedule if medically necessary*

Reason for Leave	Intermittent Leave Option
Parental Leave	Employee must take leave in one continuous block, unless the supervisor chooses to permit intermittent leave or a reduced work schedule
Pregnancy Disability or Prenatal Care	Permitted as necessary
Serious Health Condition of Employee or Family Member	Permitted when medically necessary

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.*)



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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 leave (*OFLA only; does not qualify; FMLA is exhausted*):
 - 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



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.



FMLA/OFLA - *Returning to Work/Restrictions*

Returning to Work...



- We no longer 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 Equity & Inclusion if you have ongoing restrictions to determine if any protection can be afforded through their office.

Employee & Supervisor Responsibilities & Administration Process



Protected Leaves – *Employee Responsibilities*

➤ **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”



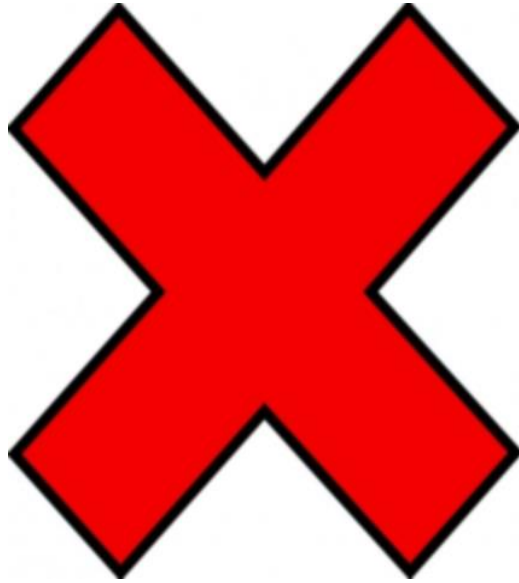
➤ **Follow normal call-in procedures while out on leave**

Protected Leaves – *Employee Responsibilities*



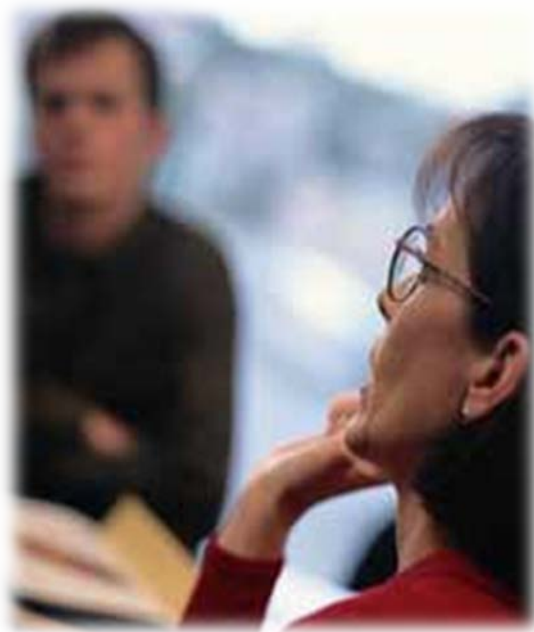
- Accurately record time taken for protected leave on timesheet
- Communicate any changes in leave or medical status to OHR
- Work with healthcare provider to determine appropriate return to work date
- Work with Office of Equity & Inclusion if anticipated restrictions may impact ability to do your job

Employee “DON’Ts”



- **Don’t: Share specific information about the condition with others.** Only OHR 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 OEI to provide safety accommodations for victims of crimes
- Work with BC to ensure employee is accurately paid while on leave



Protected Leaves – *Supervisor Responsibilities*

Supervisor Responsibilities...



- 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 decision
- 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 🟢

Continue

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

Continue

➤ 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:












timesheet

Date	Pay Code	Hours	Leave C...	Comments
Wed 05/01	Select Pay Code			
	Leave of Absence	8.00	122	
Thu 05/02	Select Pay Code			
	Leave of Absence	8.00	122	
Fri 05/03	Select Pay Code			
	Leave of Absence	8.00	122	
Sat 05/04	Select Pay Code			
		0.00		
Sun 05/05	Select Pay Code			
	Select Pay Code			
Mon 05/06	Leave of Absence	8.00	122	

*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:

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	
Thu 05/09		Sick	8.00		
		Leave of Absence	8.00	122	
Fri 05/10		Sick	8.00		
		Leave of Absence	8.00	122	
Sat 05/11		Select Pay Code			
			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

Timesheet

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Jul 1, 2013

☒ Show All Week

Date		Pay Code	Hours	Leave C...	Clock Location	Comments	Total
Mon 07/01	<div><div>+</div><div>▼</div></div>	Select Pay Code ▼					
	<div><div>+</div><div>▼</div></div>	Sick - Pre-Approved	8.00	1163 ▼			8.00
Tue 07/02	<div><div>+</div><div>▼</div></div>	Select Pay Code ▼					
	<div><div>+</div><div>▼</div></div>	Sick - Pre-Approved	8.00	1163 ▼			8.00
Wed 07/03	<div><div>+</div><div>▼</div></div>	Select Pay Code ▼					
	<div><div>+</div><div>▼</div></div>	Sick - Pre-Approved	8.00	1163 ▼			8.00
Thu 07/04	<div><div>+</div><div>▼</div></div>	Select Pay Code ▼					
	<div><div>+</div><div>▼</div></div>	Holiday	8.00	▼			8.00
Fri 07/05	<div><div>+</div><div>▼</div></div>	Select Pay Code ▼					
	<div><div>+</div><div>▼</div></div>	Sick - Pre-Approved	8.00	1163 ▼			8.00
Sat 07/06	<div><div>+</div><div>▼</div></div>	Select Pay Code ▼					
							40.00

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:

Roshni Sabedra

Protected Leaves (FMLA/OFLA)

Heidi Melton

Workers' Compensation & Filing of
Standard Insurance Disability Claims

Christina Bacchi

BEBC, AABC, HSBC

Jessica Dalziel

UABC, FOBC

Whitney Barstad

ASBC, AMBC



FMLA/OFLA Resources

OSU- OHR FMLA/OFLA Webpage

<http://oregonstate.edu/admin/hr/fmla.html>

EmpCenter website

<http://mytime.oregonstate.edu/>

PEBB website

<http://www.oregon.gov/DAS/pebb>

Current STD Certificate

<http://www.oregon.gov/DAS/PEBB/docs/PDF/2010/442210c.c.pdf>

