

FMLA Q&A

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1. Introduction

Passed by the federal government in 1993, the Family Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA), enacted by the Oregon Legislature in 1995, provide employees with leave from work for their own or their families' medical needs, including time off to care for a new child, adoption or foster care placement of a child. Because Oregon State University has had "family friendly" leave policies for many years, the FMLA and OFLA do not provide university faculty and staff with additional time off. They do, however, strengthen employee rights to take such leave without jeopardizing their jobs and guarantee that the university's contribution to health benefits is continued during paid and unpaid leaves.

Here are the most common questions-and-answers followed by scenarios depicting common FMLA and OFLA situations. Because your individual circumstances undoubtedly will differ, we urge you to contact the Office of Human Resources for consultation on your specific situation.

The FMLA and OFLA are only part of the university services, benefits, and policies available to you when you or a family member face a health problem. As you consider your individual situation and needs, be sure to consult the collective bargaining agreement and applicable policies on paid leave such as sick leave and vacation, long- and short-term disability coverage, leave without pay, and so forth.

What is it?

1. What is the Family and Medical Leave Act?

The Family and Medical Leave Act (FMLA) is a federal law designed to help you preserve your job and benefits when you need time off from work to take care of a new child or deal with serious health situations involving your family or yourself. FMLA can help you be confident of your decisions as you balance family needs with your work schedule. You can take time off to attend to such critical life events without losing your employment and health insurance coverage.

2. Does Oregon have a family and medical leave law?

Yes. The state has the Oregon Family Leave Act (OFLA). However, in most cases, OFLA leave also qualifies as FMLA leave. As long as leave qualifies under both the FMLA and OFLA, its use is counted against both entitlements so employees are usually not eligible for more time off under OFLA. In some cases, OFLA does provide more time off than FMLA and the additional time is then charged only against the employee's OFLA leave balance. Refer to question 14. OFLA provides job protection for time off, but does not provide employer paid health insurance while on leave without pay.

3. Who should I contact if I need time off for myself or a family member?

The Office of Human Resources (OHR) encourages employees to call if they have questions about the basis for leaves and the procedures for requesting leave. OHR staff are available for one-on-one appointments to discuss the specifics of your situation and how the law, in conjunction with other benefits, can help you.

OHR provides information about FMLA and any other laws, collective bargaining agreements, or policies that provide employees time off. You can also access this information on the OHR web site at <http://oregonstate.edu/admin/hr/fmla%20handbook.pdf>

Am I Eligible?

4. How do I know if I am eligible for family and medical leave?

To qualify for FMLA, you must have 12 months of service with the State of Oregon (does not have to be consecutive) and you must have worked at least 1,250 hours during the 12 months preceding the date your leave begins. If you do not qualify for FMLA, you might be eligible for OFLA. You must have been employed for at least 180 calendar days and have worked an average of 25 hours a week (except for parental leave which does not require the weekly average) to qualify for OFLA. In most cases, employees qualify for both FMLA and OFLA at the same time.

5. What family and medical leave reasons qualify?

Leave taken for the following reasons is designated as FMLA and OFLA:

1. Your serious health condition
2. A family member's serious health condition
3. Care for your child after birth, adoption or foster care placement

OFLA also allows you to take time off to care for a child at home with a cold or some other non-serious condition requiring home care, but FMLA does not.

6. How do I know if I have a serious health condition or a family member has a serious health condition?

The definition of a serious health condition includes:

1. Hospital care

2. Absence of four days or more plus treatment two or more times (also includes one treatment and continuing supervision)
3. Pregnancy complications, postpartum healing
4. Chronic conditions requiring treatments
5. Permanent long-term conditions requiring supervision
6. Multiple treatments (non-chronic conditions)

The OFLA definition of a serious health condition closely tracks the FMLA serious health condition definition.

7. What is the definition of a family member?

Under FMLA, a family member includes a son, daughter, spouse or parent. The OFLA definition is the same, but also includes a parent-in-law and same-gender domestic partner. FMLA protections do not extend to same or opposite-gender domestic partners although OSU sick leave policies do in some instances.

8. What is the definition of a son/daughter?

A son/daughter is defined as any child under 18, or over 18 if incapable of self-care, and who is a biological, adopted, or foster child, a stepchild or a legal ward, or a child for whom you are financially responsible and supervise on a day-to-day basis. The OFLA definition is the same, but also includes an adult child, over 18 and not substantially disabled, who needs care for a serious health condition.

9. How does the law define a parent?

A parent is defined as any individual who had day to day and financial responsibility for you when you were a child. A grandparent, aunt, uncle, etc. could be considered to be your parent.

10. If I have an injury that qualifies under Workers' Compensation, does it qualify for FMLA and OFLA?

It depends. If the injury meets the definition of a serious health condition and you qualify for family and medical leave, the employer must designate your time off as FMLA and OFLA and you will be eligible for the protections the laws offer.

How Much Time Can I Take?

11. How much time am I eligible to take for a family and medical leave reason?

You are eligible for up to 12 weeks of leave designated as FMLA and OFLA during any 12-month period. The University uses the "rolling backward" method to calculate the 12-month period. This is the 12-month period measured back in time from the date you request any family and medical leave. You are eligible for a combined total of 12 weeks for the reasons listed above. In some cases, OFLA may provide more time off. See question 14.

12. If my spouse also works at OSU, can we both take 12 weeks to care for a new child?

Under FMLA, you and your spouse will have to share the 12 weeks to care for a new child. It is up to you how you split the 12 weeks. However, OFLA is more generous and each parent has an individual 12 week entitlement, even if both employees work for the same employer. The shared 12 weeks would be counted as FMLA leave and the additional time would be counted as OFLA leave.

13. Since leave that qualifies as both FMLA and OFLA runs concurrently, does OFLA ever allow me to take more time off than FMLA does or to take time off for reasons that do not qualify under FMLA?

Yes. In some cases, OFLA is more generous than FMLA and allows you to take more than the 12 weeks available under FMLA or allows you to take time off before you qualify for FMLA. Time off that qualifies only under OFLA, is designated only as OFLA leave. Time off that qualifies under both FMLA and OFLA leave is counted against the 12 weeks available under both laws. Remember, employer paid health insurance is not available if you are on leave without pay that qualifies only as OFLA, not FMLA.

14. What are some examples of time off that qualify under OFLA, but not FMLA?

1. Both mothers and fathers are entitled to leave for birth, adoption or placement of foster children. Each parent has an individual 12-week entitlement under OFLA, even if both employees work for the same employer. Under FMLA, parents must share the 12 weeks of leave if they work for the same employer
2. OFLA includes a parent-in-law and same-gender domestic partner in the definition of an eligible family member, but FMLA does not. Under OFLA, an employee may take 12 weeks off to care for a parent-in-law or same-gender domestic partner, but that time off may not be charged against the FMLA entitlement. Assuming no other family leave was used in the leave year, an employee would have 12 full weeks available under FMLA if an eligible family member developed a serious health condition
3. Under OFLA, an employee must be allowed to take family leave for any illness or injury of a child that requires home care, although there is no serious health condition. This time cannot be charged against the FMLA leave
4. OFLA allows an employee to take time off to care for an adult child over the age of 18 (does not have to be incapable of self-care) who has a serious health condition
5. Generally, OFLA entitles employees to 12 work weeks of leave in a 12-month period. There are however, two exceptions:
 1. An employee who takes family leave because of a pregnancy-related medical condition is also entitled to an additional 12 weeks of OFLA leave for any other family leave purpose.
 2. An employee using the full 12 weeks of OFLA leave to care for a newborn or newly-adopted or placed foster child is entitled to an additional 12 weeks of sick child leave. If the employee takes less than 12 weeks of parental leave, the employee can use the balance of the 12 weeks for any other OFLA family leave purpose.

15. Can I take intermittent or reduced hour leave for a serious health condition?

Yes. If your health care provider states you need to work an intermittent or reduced -hour schedule for a serious health condition, you can reduce your hours or use leave intermittently. Your health care provider must indicate a schedule of time off for visits or treatments or the likely duration and frequency of episodes of incapacity.

16. Can I take intermittent or reduced hour leave to care for a new child?

Yes, employees may request intermittent or reduced hour leave to care for a new child with your supervisor's approval. The regulations say an employee may request to work an intermittent or reduced schedule within a set time frame. Check with your supervisor. Your leave must be taken within 12 months after the birth or placement for adoption or foster care.

What Happens to my Pay and Benefits?

17. Will I receive pay while I am on FMLA and OFLA leave?

Family and medical leave laws provide job protection for time off, but not pay. You will receive pay only if you have accrued paid leave (sick, vacation, personal) available to use. Both parents are permitted to use any accrued sick leave during a parental leave.

Classified employees:

- are required to use any available accrued leave (sick, vacation and personal), with one exception, before going on leave without pay. The one exception is classified employees can request in writing that up to 40 hours of vacation leave be retained for use after the leave ends. This request must be included in the written request for leave without pay submitted to the department. For more information on paid leave see: <http://oregonstate.edu/admin/hr/fmla%20handbook.pdf>
- are not required to use compensatory time before going on leave without pay. However, they can elect to use compensatory time and, if they do, they are not required to designate the days as FMLA leave.
- receiving Workers' Compensation are not required to use accrued paid leave before going on leave without pay.

Unclassified employees:

- can elect to use unpaid leave instead of accrued paid leave (sick and vacation).
- can request an unearned sick leave advance (if eligible) for their own medical condition.
 - An unearned sick leave advance can be used by the mother (if eligible) for the period of disability (birth and post-partum healing), but cannot be used for parental leave beyond the period of disability. Only accrued paid leave can be used for parental leave.
- See http://oregonstate.edu/admin/hr/leave_admin_pol.pdf for more information about the sick leave advance.
- You will find additional information on Benefits for Unclassified Employees at <http://oregonstate.edu/admin/hr/benefits/>

Please use your normal reporting process to let your department know what type of leave you are using. In addition, you will be required to complete an FMLA and/or OFLA attendance record each month to verify your family and medical leave.

18. Can I use all of my accrued paid leave before my time off is designated as family and medical leave?

No. It runs concurrently. Family and medical leave does not start after paid leave is used up. The designation is based on the reason you are taking the leave, not whether you are on paid or unpaid leave. Family medical leave actually protects your job, unlike sick leave, because you cannot be disciplined for missing time for a qualifying reason. If you have questions about sick leave, refer to your Collective Bargaining Agreement (classified employees) or the Oregon Administrative Rules (unclassified employees). You can access this information on the OHR web site at: <http://oregonstate.edu/admin/hr/>

19. What happens to my benefits while I am on unpaid family and medical leave?

If you qualify for FMLA, the university's contribution for your medical and dental benefits continues during your leave even if you are on leave without pay. We will let you know in writing when your regular benefits end and when you become eligible for benefits under FMLA. When you are on unpaid leave, you will be required to pay the portion of the medical and dental premium that is normally deducted from your paycheck. You are also eligible to pay for any additional plans you wish to continue during your unpaid leave.

If you return during the 12 weeks allowed under family and medical leave, or the day immediately after the 12 weeks ends, your coverage will be reinstated effective the first of the next month. If you do not return immediately after the 12-week period ends, you must meet the 80 hour rule for classified employees, or the .50 FTE rule for unclassified employees before coverage becomes effective. This means you must work at least 80 hours or .50 FTE in the month you return to be eligible for coverage the following month.

20. Do I accrue seniority while I am on family and medical leave?

You accrue seniority while you are on paid leave. You do not accrue any seniority while on unpaid family and medical leave.

What Kinds of Notices and Medical Certification are Required?

21. How do I request family and medical leave?

If the need for your leave is foreseeable, you must provide advance written notice to your supervisor using the Request for Leave form available on the OHR website at <https://oscar.oregonstate.edu/>, in downloadable forms, Leave Request (employee). Simply fill out the form and send it to OHR. Also contact OHR immediately at 541 737-5946. Because medical information is confidential, the Request for Leave form lists only "serious health condition" as a reason if you or your family member has a medical problem. The form does not ask you to describe your health condition.

If the need for your leave is not foreseeable, contact your supervisor as soon as possible. Your supervisor will contact OHR.

22. Do I have to specifically request family and medical leave to receive job protection for my time off?

No. However, you must provide enough information about the reason for your absence so your supervisor realizes that your time off may qualify as FMLA and/or OFLA leave. The Request for Leave form includes both FMLA and OFLA qualifying reasons and definitions.

23. Who is responsible for designating the leave as family and medical leave qualifying?

The Family and Medical Leave Act states that, in all circumstances, it is the employer's responsibility. OHR is responsible for designating your leave as FMLA and/or OFLA qualifying based on the reason for your leave and counting your leave toward your 12-week entitlement.

24. Do I have to provide a medical certification for my or my family member's serious health condition?

Yes. You have 15 days from the date OHR is notified of the leave to provide the medical certification. Certification is required for pregnancy complications, but is not required for the birth or to care for a newborn. To qualify for FMLA and OFLA, your doctor must certify that you have a serious health condition and must also state that you are unable to work because of it.

25. Is the information included in my medical certification confidential?

Yes. A return envelope marked "confidential" is included with the form for you or your doctor to use to return your medical certification to OHR. Medical certifications are kept in a separate, locked cabinet, apart from your personnel file.

Your supervisor does not receive a copy of the medical certificate. OHR shares only information that is consistent with business necessity (i.e., the date your leave begins, the date your leave ends, and whether you will be off intermittently or will work reduced hours) with your supervisor.

Will I be Reinstated to My Previous Job?**26. Can I return to my job when my leave ends?**

When you return from both FMLA and OFLA leave or only OFLA leave, you are entitled to your same position if it still exists or to another if your position was eliminated. Your benefits will also be reinstated. Remember, in order to receive this protection, you must qualify under the family and medical leave acts and your physician must confirm that you can perform all the essential functions of your job when the 12-week period ends. If you return at a later date, you may be returned to your same or similar position in accordance with applicable leaves and policies.

27. What if I am hired only for a specific project or a limited duration and that project or job ends while I am on family and medical leave? Am I eligible for reinstatement when my leave ends?

No. Neither FMLA or OFLA give you any protections you would not have had if you had not taken family and medical leave.

28. If I have a condition that qualifies under family and medical leave and Workers' Compensation (WC), how does this affect my reinstatement rights?

If you are partially released to return to work under the WC law, the university must offer you a suitable, available position. You must accept the offer or risk losing reinstatement rights under WC. You are not obligated to return to work under family and medical leave until you can perform all the essential functions of your job. Therefore, while you may lose reinstatement rights under WC, you would not lose them under FMLA and OFLA provided you were able to return to your former job by the time your 12 weeks ends.

Scenarios

These scenarios illustrate typical situations which faculty and staff members may face and how the family and medical leave and university policies apply. They assume that the hypothetical employees meet the eligibility criteria and that the reason for leave qualifies them for family and medical leave. The scenarios are intended to help you better understand your rights, but cannot be conclusive for all cases. More complete information may be found in the questions and answers document on the preceding pages.

For your convenience, the most relevant questions and answers have been noted in each of the following scenarios. Employees needing leave for family or personal illness or birth or adoption of a child should contact the Office of Human Resources to discuss the specifics of their situation. Medical certification or other documentation may be required to determine eligibility.

These six scenarios may prompt as many questions as they've answered. Contact the Office of Human Resources at (541) 737-5946 for more information.

Scenario #1

Alison has just learned that she is pregnant with her first child. She's excited about starting a family, but knows she needs to continue working after the baby is born. She doesn't know what's available to her and what she needs to do. Now what?

Pregnancy is covered under the family and medical leave, so Alison is eligible for 12 weeks of leave and entitled to return to her job. (*See questions 4 and 26.*) She should contact OHR to get information about family and medical leave and her insurance coverage.

At the point when Alison is ready to share the news in her department, she should notify her supervisor (using the Request for Leave form) indicating that she needs time off for childbirth and to care for her new baby. She will receive information from OHR regarding medical certification and designation of FMLA and OFLA. (*See questions 21 to 25.*)

Over the time of her pregnancy, Alison should plan how she might like to use her family and medical leave. She may chose to take her 12 full weeks of parental leave consecutively or, with her supervisor's approval, she can return to work part-time or work intermittently after the birth of her baby. (*See question 16.*) She may need to stop working before the delivery date, and therefore, may be eligible for more than 12 weeks of leave since OFLA leave is more generous. If she has a husband or partner who also works for OSU, both may be eligible for family and medical leave and they can coordinate time off accordingly. (*See question 12 & 14*)

Alison may use accrued sick and vacation leave during her time off. If Alison is a classified employee and, if she wants to use leave without pay, Alison must first exhaust her sick and vacation balances. She can request in writing that up to 40 hours of vacation leave be retained for use after her leave ends. If she is a faculty member, exhausting paid leave is not a requirement. (See question 17). If she holds a tenure track position, she may want to contact the Vice Provost of Academic Affairs to explore the university policy which delays the tenure clock for pregnancy and child birth.

If Alison is an unclassified employee, she may request an unearned sick leave advance (if eligible) for her period of disability (birth and post partum healing), but not for her parental leave to bond with her child.

After the birth, she should contact the Benefits Section in OHR to enroll her newborn in insurance coverage.

Scenario #2

John is preparing to adopt a child in two months. He wonders if he will be entitled to family and medical leave.

Caring for a child after adoption or foster care placement qualifies for FMLA and OFLA, so John will be eligible for up to 12 weeks of family and medical leave to spend time with his new child. (See question 5.)

He will need to notify his supervisor (using the Request for Leave form) requesting time off to care for the new child. He will be asked to specify how much time off he wishes to take and if he plans any part-time work combined with FMLA and OFLA. (See question 16 and 21.) If he has a wife or partner who also works for OSU, both may be eligible for FMLA and OFLA, and they can coordinate time off accordingly. (See question 12 & 14.) He should also contact OHR to discuss family and medical leave and enrolling the new family member in health and dental insurance.

Scenario #3

Sara just learned that her mother had a stroke. She needs to travel to the Midwest to take care of her mother and make long-term care arrangements if necessary.

Sara is eligible for up to 12 weeks of family and medical leave to care for her mother. (See questions 5 and 6.) Using the appropriate form, she needs to request the leave from her supervisor and to contact OHR immediately. If she needs to leave before she can do this, she should contact her supervisor as soon as possible and her supervisor will contact OHR. (See question 21.) She will need to provide medical certification for her mother's health condition within 15 days. (See question 24.) Because Sara is a faculty member, she may elect to use sick leave, vacation, or unpaid leave during this time, but it all counts toward her 12 weeks of family and medical leave. (See questions 17 and 18.)

If Sara has to take time to move her mother to a care facility, which will also be covered by the FMLA and OFLA. Should her mother pass away during the 12 weeks, Sara will no longer be eligible for family and medical leave, but may use sick leave to attend to her mother's funeral and be with family members during this difficult time.

Scenario #4

Eric is out for a full week with strep throat. He went to the doctor and got a prescription for an antibiotic. Is he covered by family and medical leave?

Yes. He was treated by the doctor only once but was under continuing supervision because he was asked to let his doctor know if his condition improved after taking the antibiotics. (*See question 6.*) If his doctor hadn't prescribed antibiotics, Eric's time off would not be protected by FMLA and OFLA, but he would be eligible to use sick leave.

Scenario #5

Molly's daughter has food allergies which are sometimes so serious she has to stay home with her and which require frequent doctor's office visits.

After requesting the time off using the Request for Leave form and providing the medical certification required, Molly learns from OHR that her daughter's allergies qualify as a serious health condition and she is entitled to use FMLA and OFLA. (*See questions 6, 15, and 21 - 25.*) Molly will need to inform her supervisor when she is taking leave intermittently for this reason and complete the FMLA and/or OFLA time sheets accurately to track the authorized leave. This time off may qualify for sick and vacation leave.

Scenario #6

Michael was recently diagnosed with cancer and faces major surgery that will keep him off work for roughly six weeks. The surgery will be followed by chemotherapy, which may mean he is unable to work full-time. How will both the surgery and chemotherapy be covered?

Michael's illness fits the definition of a serious health condition under the FMLA and OFLA because it involves hospital care, lengthy absence, and treatment for a chronic condition. (*See question 6.*) He would use FMLA and OFLA for the six-week period he is off having major surgery. For the chemotherapy, he may use the remaining six weeks intermittently or by working part-time. (*See question 15.*)

Let's assume Michael has 4 weeks of sick leave and 3 weeks of vacation. Because Michael is a classified employee, he must use all his paid leave before taking leave without pay. (*See question 17.*) He would use the six weeks of accrued leave for his surgery and use the remaining week for his intermittent leave or reduced hours. In addition, he will also accrue sick and vacation leave during this time.

Michael might also be eligible for hardship leave as described in Article 41, Section 8 of the SEIU collective bargaining agreement. It provides a mechanism for classified employees to donate vacation to other classified employees who face a significant health problem.

Conclusion

Because your individual circumstances undoubtedly will differ, we urge you to contact the Office of Human Resources at (541) 737-5946 for consultation on your specific situation.

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