Protected Leave Training for Supervisors

FMLA | OFLA | COVID-19 related expansions
FMLA & OFLA are...

- Federal & State entitlements which provide up to 12 weeks of **unpaid** protected leave per leave year for eligible employees
- Intended to lessen the stress that an employee may feel if forced to choose between work and family during the time of a serious medical situation
FMLA/OFLA Provide...

Job Protection

Absences cannot be held against the employee in employment actions (hiring, promotions, or discipline)

Benefit Protection
What is a qualifying event?

- 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
### Who are qualifying family members?

<table>
<thead>
<tr>
<th>Type</th>
<th>FMLA</th>
<th>OFLA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spouse</td>
<td></td>
<td>Spouse</td>
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<tr>
<td>Son or Daughter (under age 18)</td>
<td>• If 18 or older and incapable of self-care due to mental or physical disability</td>
<td>Domestic Partner <em>(same gender)</em></td>
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<tr>
<td>Parent</td>
<td>• Can be individual who stood in <em>loco parentis</em></td>
<td>Child</td>
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<td></td>
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<td>Child of Domestic Partner <em>(same gender)</em></td>
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<td></td>
<td></td>
<td>• No age distinction</td>
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<tr>
<td></td>
<td></td>
<td>Parent</td>
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<td></td>
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<td></td>
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<td>Parent of Domestic Partner <em>(same gender)</em></td>
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<td>Parent in-law</td>
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<td>Grandparent</td>
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<td>Grandchild</td>
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</table>
Do’s & Don’ts as a Supervisor

**DO**

- Ask basic, **non-medical** information about an employee’s absence to determine if it will require a referral to the protected leave office.
- Example: “I need to determine if I need to refer you to the Protected Leave office.”
  - Are you able to come to work?
  - Have you been hospitalized?
  - Have you seen a doctor or do you have an appointment to see one?
  - Do you know how long you will be out?

**DON’T**

- Do not ask specific questions about the employee’s medical condition.
- Do not share private information about the employee’s leave with others.
- Do not count absences against employees in performance reviews, promotions or compensation decisions.
- Do not say negative comments about FMLA/OFLA or an employee using leave.
FMLA/OFLA PROTECTED LEAVE USAGE

- May be taken continuously, intermittently, or by working a reduced schedule
- Generally, FMLA & OFLA run concurrently
- Is unpaid, but OSU policy requires the use of paid leaves during protected leave (a couple exceptions apply)
  - If an employee has an approved STD claim and is on approved FMLA/OFLA protected leave:
    - The employee will be in unpaid status through the University while receiving disability benefits unless the employee elects to supplement their STD with other accrued leave (vacation, comp, etc.)
Supervisor Responsibilities | Before Leave Begins

Step 1:
Ask basic, non medical questions to determine if you should refer the employee to the OSU Protected Leaves office

Step 2:
Refer employee to contact the Protected Leave office as soon as possible if you suspect there is a need for protected leave

Step 3:
Contact the Protected Leave office if you are notified of any changes:
- Employee goes out on leave early
- Employee does not return the day after their approved leave end date
- Employee indicates that there has been a change in their status of leave
Supervisor Responsibilities | During Leave

Each month:
Verify employee’s reporting of protected leave on timesheet
Work with HR Service Center to ensure employee is accurately paid while on leave

During intermittent leave:
Ensure employees follow normal call-in requirements
Clarify if absence is related to the protected leave or for another reason, if not clear on timesheet

Restrictions:
If an employee has restrictions or needs an accommodation to return to work, work with EOA to determine reasonable accommodations under the ADA
Returning to Work

- Employee must work with their healthcare provider to determine appropriate date of return.
- Employees are expected to perform essential functions of their position upon returning from leave.
- We generally do not require a work release from the employee prior to returning from FMLA/OFLA leave.
RESTRICTIONS ARE NOT PROTECTED UNDER FMLA/OFLA LEAVE LAWS

The employee must work with the Office of Equal Opportunity and Access if they have restrictions during their leave or upon their return to determine if reasonable accommodations can be made.
Confidentiality Reminder

Confidentiality is of utmost importance when it comes to protected leaves. Do not discuss or disclose any details regarding an employee’s protected leave with anyone other than the OSU Protected Leaves office or HR Service Center Representative who assists with timesheet auditing.
University Paid Family Medical Leave

- Eligible Faculty can receive Paid Family and Medical Leave of 120 hours paid by OSU beginning September 16, 2020.
- This leave is intended for multiple family and medical leave reasons.
  - Example: An employee has a serious health condition and needs to take time off for treatment.
  - Example: An employee’s qualifying family member has a serious health condition and needs care.
  - Example: An employee welcomes a new baby and needs parental leave.
  - An employee is taking protected leave for COVID-19 reasons.
- Consult with fmla@oregonstate.edu with questions about these leave options.
PROTECTED LEAVE AND COVID-19

- The Families First Corona Virus Response Act (FFRCA) implemented two new types of leave:
  - Emergency Paid Sick Leave ("EPSLA") ; and
  - Expanded Family Medical Leave ("EFMLA")
Emergency Paid Sick Leave (EPSLA)

- EPSLA provides two weeks (up to 80 hours) of paid sick leave when an employee meets one of the following:
  1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
  2. has been advised by a health care provider to self-quarantine related to COVID-19;
  3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
  4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
  5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
  6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

- OSU offered all employees 80 hours of Emergency Paid sick leave or COVID-19 leave for any COVID-19 related reason. This leave provided more generous coverage than that required by EPSLA. This leave runs concurrently with leave expansions and is set to expire 12/31/20.
Expanded FMLA Under the FFCRA- EFMLA

- **EFMLA** provides up to an additional 10 weeks, on top of EPSLA leave, where an employee is unable to work because they must care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

- It required a component of employer paid FMLA leave which was new. The FFCRA expansion related to FMLA is set to expire 12/31/20.
Other COVID-19 Leave Expansions

- The Oregon Family Leave Act (OFLA) was expanded by a temporary rule (April) then a permanent rule (September) to allow for leave for employees to care for children due to school or childcare center closures. This leave is in place until the end of the pandemic.

- The State of Oregon created their own type of paid COVID-19 leave starting September 16, 2020 for individuals that exhausted leave or did not receive leave and had to quarantine or are sick with COVID-19. Employees apply to the state directly for this at https://www.oregon.gov/dcbs/covid-pl/Pages/faq.aspx. It is currently available through December 31, 2020 or until the funds are gone.
Referrals

If you think an employee may have a need for protected leave, please refer them to our office.

Email: fmla@oregonstate.edu | Phone: 541-737-5946 or 541-737-0057

Whitney Brown | HR Officer – Protected Leaves
FMLA/OFLA Protected Leaves, Military Leaves, Graduate Leaves, Post-Doc Leaves & Disability Claims

Lori Schmidt | HR Officer – Protected Leaves
FMLA/OFLA Protected Leaves, Military Leaves, Graduate Leaves, Post-Doc Leaves & Disability Claims
Questions?