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)*

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

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

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

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

- **Oregon Revised Statute 408.290 - Benefits for public employees on temporary active duty in Armed Forces.**
  - Provides leave of absence from duties for a period not exceeding 15 days in any one training year, without loss of time, pay or regular leave and without impairment of efficiency rating or other rights or benefits to which the officer or employee is entitled.
  - For initial active duty for training and for all periods of annual active duty for training.
  - Must be a member of the National Guard, National Guard Reserve or of any reserve component of the Armed Forces of the United States or of the United States Public Health Service.

- **Veterans' Reemployment Rights Law - Title 38, USC Chapter 43.**
  - Leaves of absence without pay will be granted to regular classified and unclassified employees who enter the military service of the United States.
Protected Leaves

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

ORS 659A.290
Who is a victim?

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

How does it impact the workplace?

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

- Allows eligible employees to take a reasonable amount of time for purposes such as:
  - Seeking legal or law enforcement assistance or to ensure safety of employee’s minor child or dependent
  - Seeking medical treatment including counseling
  - Obtaining services from a victim services provider
  - Relocating or 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)
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*
Purpose of FMLA and OFLA was...

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

It is important for OSU to administer the protected leave consistently, thus ensuring equal treatment of all employees.
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*)
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
Eligibility & Qualifying Conditions
## FMLA/OFLA - Eligibility Requirements

<table>
<thead>
<tr>
<th>FMLA</th>
<th>OFLA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employed by State of Oregon</td>
<td>Employed by State of Oregon</td>
</tr>
<tr>
<td>• One year</td>
<td>• 180 days</td>
</tr>
<tr>
<td>*Exception: Oregon Military Leave has no employment requirement</td>
<td>*Exception: Oregon Military Leave has no employment requirement</td>
</tr>
<tr>
<td>Hours Worked</td>
<td>Hours Worked</td>
</tr>
<tr>
<td>• 1250 hours in past 12 months</td>
<td>• Average of 25 hours per week</td>
</tr>
<tr>
<td>*Exceptions:</td>
<td>*Exceptions:</td>
</tr>
<tr>
<td>• Parental Leave has no hours requirement</td>
<td>• Parental Leave has no hours requirement</td>
</tr>
<tr>
<td>• Oregon Military Leave has no employment requirement</td>
<td>• Oregon Military Leave has no employment requirement</td>
</tr>
<tr>
<td>FMLA</td>
<td>OFLA</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>Spouse</td>
<td>Spouse</td>
</tr>
<tr>
<td>Spouse</td>
<td>Domestic Partner (<em>same gender</em>)</td>
</tr>
<tr>
<td>Son or Daughter</td>
<td>Child</td>
</tr>
<tr>
<td>*Under age 18</td>
<td>Child</td>
</tr>
<tr>
<td><em>If 18 or older and incapable of self-care</em></td>
<td>Child of Domestic Partner (<em>same gender</em>)</td>
</tr>
<tr>
<td>*due to mental or physical disability</td>
<td><em>No age distinction</em></td>
</tr>
<tr>
<td>Parent</td>
<td>Parent</td>
</tr>
<tr>
<td>*Can be individual who stood <em>in loco</em></td>
<td>Parent</td>
</tr>
<tr>
<td><em>parentis</em></td>
<td>*Can be individual who stood <em>in loco</em></td>
</tr>
<tr>
<td></td>
<td><em>parentis</em></td>
</tr>
<tr>
<td></td>
<td>Parent of Domestic Partner (<em>same gender</em>)</td>
</tr>
<tr>
<td></td>
<td>Parent in-law</td>
</tr>
<tr>
<td></td>
<td>Grandparent</td>
</tr>
<tr>
<td></td>
<td>Grandchild</td>
</tr>
</tbody>
</table>
## FMLA/OFLA – Qualified Reasons

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

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

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

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

### Serious Health Condition

- Inpatient/overnight care
- Terminal stages of a disease
- Conditions requiring “constant” or “continuing” treatment
  - Ex. Condition requires home care by health care professional
- Permanent or long-term incapacity due to a condition for which treatment may not be effective
  - Ex. Alzheimer’s, severe stroke
Absence plus treatment - period of incapacity of more than 3 consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:
• Two or more treatments by a health care provider
• One treatment plus a regimen of continuing treatment

Pregnancy related disability or prenatal care

Chronic conditions

Treatments for conditions that left untreated would likely result in incapacity of more than three days
Conditions that would generally NOT be considered a serious health condition, would include:

- Common Cold
- Flu
- Ear Aches
- Upset Stomach
- Minor Ulcers
- Headaches (other than Migraines)
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*

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

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.)
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)
Returning to Work & Restrictions
Returning to Work...

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

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

- We 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.
Protected Leaves

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

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

Follow normal call-in procedures while
out on leave
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
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...

- **Record leave taken on timesheet if not requested in advance**

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April 25, 2014
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 with Continuous Protected Leave without Pay Code](image)

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

**Example of Continuous Protected Leave on Timesheet:**

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

Total: 40.00
Interruption Protected Leave

- Timesheet is NOT prepopulated with “Leave of Absence”
- Leave Case is associated directly with Pay Code and Hours

Timesheet with Protected Leave
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
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