

State Family Medical Leave

Effective Date

The Oregon Family Leave Act (OFLA) became effective as state law September 9, 1995.

Coverage

State law covers school districts that employ 25 or more part-time or full-time employees for each working day during 20 or more calendar workweeks in the calendar year in which the leave is to be taken or in the calendar year immediately preceding the year in which the leave is to be taken.

Eligibility

An eligible employee is an employee employed in the state of Oregon on the date OFLA leave begins. State law generally applies to employees who work an average of 25 hours or more per week for the district during the 180 days or more immediately prior to the first day of the start of the requested leave. For parental leave purposes, an employee becomes eligible upon completing at least 180 days immediately preceding the date on which the parental leave begins. There is no minimum average number of hours worked per week when determining employee eligibility for parental leave.

In determining that an employee has been employed for the preceding 180 calendar days, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. If an employee continues to be employed by a successor in interest to the original employer, the number of days worked are counted as continuous employment by a single employer.

In determining 25 hours average workweek, the employer must count the actual hours worked using guidelines set out pursuant to the Fair Labor Standards Act.

Definitions

“Child” - For the purpose of taking parental and sick child leave, child means a biological, adopted or foster child, or stepchild of the employee, for whom the employee has parental rights and duties as defined by law or a child with whom the employee is or was in a relationship of “in loco parentis.” A legal or biological relationship is not required. The child must be under 18 years of age or may be 18 years of age or older if incapable of self-care due to mental or physical impairment as defined by ORS 659A.100 (2)(d). For purposes of sick child leave only, child also includes child of employee’s same-sex domestic partner.

“Family Member” - Means the spouse, same-sex domestic partner, custodial parent, noncustodial parent, adoptive parent, foster parent, biological parent, parent-in-law, parents of same-sex domestic partner or a

person with whom the employee is or was in a relationship of “in loco parentis.” It also includes the biological, adopted or foster child, child of same-sex domestic partner or stepchild of an employee. For purposes of a serious health condition, child includes both minor and adult children.

A “serious health condition” means an illness, injury, impairment or physical or mental condition of an employee or family member that:

1. Requires inpatient care in a hospital, hospice or residential medical care facility such as a nursing home. When a family member resides in a long-term residential care facility, leave shall apply only to:
 - a. Transition periods spent moving the family member from one home or facility to another, including time to make arrangements for such transitions;
 - b. Transportation or other assistance required for a family member to obtain care from a physician;
 - c. Serious health conditions as described in this regulation.
2. The treating health-care provider judges to pose an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;
3. Requires constant or continuing care such as home care administered by a health-care professional;
4. Involves a period of incapacity. Incapacity is the inability to perform at least one essential job function, or to attend school or perform regular daily activities for more than three consecutive calendar days and any subsequent required treatment or recovery period relating to the same condition. This incapacity must involve:
 - a. Two or more treatments by a health-care provider;
 - b. One treatment plus a regimen of continuing care; or
 - c. Any period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health-care provider, continues over an extended period of time and may cause episodic rather than a continuing period of incapacity such as asthma, diabetes or epilepsy.
5. Involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer’s disease, a severe stroke or terminal stages of a disease;
6. Involves multiple treatments for restorative surgery or for a condition such as chemotherapy for cancer, physical therapy for arthritis or dialysis for kidney disease that if not treated would likely result in incapacity of more than three days; or
7. Involves any period of disability of a female due to pregnancy or childbirth or period of absence for prenatal care.

Purpose of Leave

State law allows eligible employees to take OFLA leave for the following purposes commonly referred to as parental leave, serious health condition leave, pregnancy disability leave and sick child leave:

1. Birth of the employee's child (eligibility expires 12 months after the birth);
2. Placement of a child for adoption or foster care when the child is under 18 or older than 18 years of age if incapable of self-care (eligibility expires 12 months after placement);
3. Care of a family member with a serious health condition;
4. Employee's own serious health condition;
5. Care of a sick or injured child who requires home care but is not suffering from a serious health condition. An employer is not required to grant leave for routine medical or dental appointments.

Length of Leave

An employee eligible for OFLA leave under state law is entitled to a total of 12 workweeks of leave during any 12-month period for the purposes specified above. Two family members who are eligible and who both work for the district 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 or one employee needs to care for a child suffering from a serious health condition while the other employee is also suffering from a serious health condition or both family members are suffering from a serious health condition or if the concurrent leave in such instances is permitted by the district.

There will be occasions where two employees employed by the same district will not have to share the 12-week allotment of leave. This situation arises where an employee is eligible for OFLA leave and the employee is taking leave for one of the following two reasons:

1. Parental purposes; or
2. To care for a parent with a serious health condition.

In addition to the 12 workweeks of leave authorized above, under state law a female employee may take an additional 12 workweeks of leave within any one-year period for an illness, injury or condition related to pregnancy or childbirth that disables the employee from performing her work duties. An employee who takes 12 workweeks of OFLA leave for parental leave may also take up to an additional 12 workweeks of sick child leave within the same leave year. If the employee uses less than 12 weeks of parental leave, however, no additional sick child leave is available, except for the balance of the initial 12 weeks. The employee may also use this balance for any OFLA leave purpose.

A female employee may take up to 36 weeks of OFLA leave in one leave year, but only under the following circumstances:

1. The female employee takes 12 weeks of pregnancy disability leave; followed by
2. Twelve weeks of parental leave; followed by
3. Twelve weeks of sick child leave.

A male employee may take up to 24 weeks of OFLA leave in one year, but only under the following circumstances:

1. The male employee takes 12 weeks of parental leave; followed by:
2. Twelve weeks of sick child leave.

Parental leave must be taken in one uninterrupted period – unless the employer approves otherwise – and must be completed within 12 months of the birth, adoption or placement of the child. An exception must be made to allow parental leave to effectuate adoption or foster placement of the child. Such leave need not be taken in one, uninterrupted period with any additional parental leave.

The birth, adoption or foster placement of multiple children at one time entitles the employee to take only one 12-week period of parental leave.

Sick child leave need not be provided if another family member, including a noncustodial biological parent, is willing and able to care for the child.

For the purpose of intermittent leave, OFLA leave entitlement is calculated for an employee by multiplying the number of hours the employee normally works per week by 12. (For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours OFLA leave.) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks worked prior to the beginning of the leave period shall be used for calculating the employee's normal workweek. (For example, an employee working an average of 25 hours per week is entitled to 12 times 25 hours, or a total of 300 hours OFLA leave.) If an employee takes intermittent or reduced work schedule OFLA leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of OFLA leave to which the employee is entitled.

An eligible employee, who has previously qualified for and taken some portion of OFLA leave, may request additional OFLA leave within the same leave year. The employee must be employed for 180 days immediately before the date the additional OFLA leave begins and:

1. The employee must have worked an average of 25 hours per week in the 180 days preceding the additional period of OFLA leave; except that

2. An employee taking parental leave, or sick child leave that is available as a result of the employee taking a full 12 weeks of parental leave, need only be employed for the 180 days immediately before the date any additional OFLA leave begins; and
3. The provisions of this section do not apply to intermittent or reduced work schedule leave taken for a serious health condition for an employee or family member.

For situations where OFLA leave is not covered by FMLA leave (the employer has 25 to 49 employees; or the leave taken is for a sick child or for serious health condition of a same-sex domestic partner, parent-in-law or parent of the same-sex domestic partner) the employer:

1. Must allow an exempt employee with accrued paid leave to take OFLA leave in one-hour blocks or less than a full day. For these purposes, an exempt employee is a salaried executive, administrative or professional employee under the federal Fair Labor Standards Act or the state minimum wage and overtime laws;
2. May require an employee without accrued paid leave to take intermittent leave in blocks of at least one day if to do otherwise would result in the loss of exemption under state or federal law.

The requirements of OFLA do not apply to any employer offering eligible employees a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, which provides as one of its options employee leave at least as generous as the leave required by OFLA.

Intermittent Leave and Alternate Duty

An employer may transfer an employee on intermittent OFLA leave or a reduced work schedule into an alternate position with the same or different duties to accommodate the leave, provided the following exist:

1. The employee accepts the transfer position voluntarily and without coercion;
2. The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;
3. The transfer is compliant with applicable collective bargaining agreements, as well as with state and federal law, providing all the employee protections found in FMLA regulations 29 CFR Part 825;
4. Transfer to an alternate position is used only when there is no other reasonable option available that would allow the employee to use intermittent leave or reduced work schedule; and
5. The transfer is not used to discourage the employee from taking intermittent or reduced work schedule leave, or to create a hardship for the employee.

An employee transferred, as provided in 1.-5. above, to an alternate position for the purpose of a reduced work schedule, must be returned to the employee's former position.

OFLA leave time for an employee on intermittent leave or a reduced work schedule is the difference between the number of hours the employee normally works and the number of hours the employee actually works during the intermittent leave or reduced work schedule. Holidays or days in which the employer's business is not in operation are not counted toward intermittent or reduced work schedule OFLA leave.

An employer may transfer an employee recovering from a serious health condition to an alternate position that accommodates the serious health condition provided:

1. The employee accepts the position voluntarily and without coercion;
2. The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;
3. The transfer is compliant with applicable collective bargaining agreements, as well as with state and federal law, providing all the employee protections found in FMLA regulations 29 CFR Part 825; and
4. The transfer is not used to discourage the employee from taking OFLA leave for a serious health condition, or to create a hardship for the employee.

An employee is not on OFLA leave if the employee has been transferred, as provided in section 1.-3. above, to an alternate position for the purpose of alternate work duties that the employee is able to perform within the limitations of the employee's own serious health condition, but not requiring a reduced workweek. An employee working in an alternate position retains the right to return to the employee's original position unless all OFLA leave taken in that leave year plus the period of time worked in the alternate position exceed 12 weeks.

An alternate position accommodating an employee's serious health condition may result in the employee working fewer hours than the employee worked in the original position. The employee's OFLA leave is the difference between the number of hours the employee worked in the original position and the number of hours the employee actually works in the alternate position.

Intermittent leave for school teachers is subject to special rules.

Special Rules for Teachers

Special rules apply if leave is requested to be taken near the end of a semester.

1. If a teacher requests, in advance, OFLA leave for a serious health condition and the teacher will be absent more than 20 percent of the time the employer may require the teacher to elect one of the following options:
 - a. To take OFLA leave for one uninterrupted period of time as necessary to complete medical treatment. (School holidays and school vacation days are not counted as family leave.);
 - b. To transfer temporarily into an available alternative position which better accommodates periodic absences.

2. If a teacher begins OFLA leave more than five weeks before the end of the academic term because of the teacher's own serious health condition, the employer may require the teacher to remain on leave until the end of the term if:
 - a. The OFLA leave is at least three weeks long; and
 - b. The teacher's return to work would occur within three weeks of the end of the term.
3. If a teacher begins OFLA leave within five weeks of the end of the academic term for parental leave or the serious health condition of a family member, the employer may require the teacher to remain on OFLA leave through the end of the term if:
 - a. The leave is at least two weeks long; and
 - b. The teacher's return would occur within the last two weeks of the term.
4. If a teacher begins OFLA leave within three weeks of the end of the academic term for parental leave or to care for a family member with a serious health condition and the leave is greater than five working days, the employer may require the teacher to remain on family leave until the end of the term.
5. If a teacher takes OFLA leave to the end of the school year and continues the leave at the beginning of the next school term, the leave is consecutive rather than intermittent leave.
 - a. The period between the end of the school term and the beginning of the next school term, when a teacher would not have been required to report for duty, is not counted against the teacher's OFLA leave entitlement.
 - b. A teacher on OFLA leave at the end of the school term must be provided with the same benefits during the period between school terms that the teacher would normally receive if no OFLA leave were taken.
6. If a teacher is required by the employer to remain on leave to the end of the academic term, only the period of leave the teacher requested shall be charged against the teacher's OFLA leave entitlement.
7. Nothing in OFLA rules prohibits the employer from allowing the teacher to work as a substitute or in some other paid capacity during the weeks prior to the end of term under 3. or 4. above.
8. Full-time employees covered by OFLA rules, and who have been maintained on the payroll by a school district during 180 consecutive calendar days, are thereafter deemed to have been employed by that school district for an average of at least 25 hours per week during the 180 days immediately preceding the date any OFLA leave begins.

Calculating the 12-Month Period for Leave

The district will use the same method for calculating the 12-month period in which the 12 workweek OFLA leave entitlement occurs for all employees. The district will use a fixed 12-month “leave year” from July through June.

Paid/Unpaid Leave

Family leave under state law is generally unpaid.

The district requires the employee to use any accrued paid leave, including personal and sick leave or accrued vacation leave before taking OFLA leave without pay for the leave period. The employee may select the order in which the paid leave is used.

The district will notify the employee that the requested leave has been designated as OFLA leave and, if required by the district, that accrued paid leave shall be used during the OFLA leave period. Such notification will be given to the employee prior to the commencement of the leave or within two working days of the employee’s notice of an unanticipated or emergency leave.

When the district does not have sufficient information to make a determination of whether the leave qualifies as OFLA leave, the district will provide the required notice promptly when the information is available but no later than two working days after the district has received the information. Oral notices will be confirmed in writing no later than the following payday. If the payday is less than one week after the oral notice is given, written notice will be provided no later than the subsequent payday.

Continuation of Health Insurance Benefits

Under state law, benefits are not required to continue or accrue unless required by Board policy(ies) and/or provisions of collective bargaining agreements related to paid and unpaid leaves.

An employer electing to continue health or other insurance coverage for an employee on OFLA leave may require that the employee pay only the same share of health or other insurance premium during the leave that the employee paid prior to the leave. If an employee cannot or will not pay such costs, the employer may elect to discontinue benefit coverage, unless to do so would render the employer unable to restore the employee to full benefit coverage as required by law. If an employer pays any portion of any employee’s benefit coverage for employees on non-OFLA leave, the employer must pay that portion during OFLA leave.

If an employee gives unequivocal notice of intent not to return to work from OFLA leave, the employee is entitled to complete the approved OFLA leave, providing that the original need for OFLA leave still exists. The employer’s obligations under OFLA – to restore benefits (subject to COBRA requirements) and to restore the employee to his/her position at the end of the leave – cease and the employer is not required to hold a position vacant or available for the employee giving unequivocal notice of intent not to return.

In the event the district is required to pay or elects to pay any part of the costs of providing health, disability, life or other insurance coverage for an employee during the period of OFLA leave that should have been paid by the employee, the district may deduct, on the employee's return to work, such amounts from the employee's pay as have been advanced.

In no event may the total deducted exceed 10 percent of the employee's gross pay each pay period.

Return to Work

After leave, granted under state law, an employee is generally entitled to be returned to the same position the employee held when leave commenced or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment unless otherwise excepted by law.

If the leave was required for the employee's own serious health condition, the district may require the employee to obtain and present certification from the health-care provider that the employee is able to resume work. The employer is responsible for any co-pay or other out-of-pocket costs incurred by the employee in providing certification.

Special rules for teachers will apply if OFLA leave is requested to be taken near the end of a semester.

Application

Under state law, an employee requesting OFLA leave shall provide at least 30 days notice prior to the leave date if the leave is foreseeable. The notice shall be written and include the anticipated start, duration and reasons for the requested leave. The employee must make a reasonable effort to schedule treatment, including intermittent leave and reduced leave, so as not to unduly disrupt the operation of the district.

When an employee is able to give advance notice and requests leave, an employer may request additional information to determine that the leave qualifies for designation as OFLA leave. The employer may designate the employee as provisionally on OFLA leave until sufficient information is received to make a determination. An employee able to give advance notice of the need to take OFLA leave must follow the employer's known, reasonable and customary procedures for requesting any kind of leave.

An employee eligible for OFLA leave is required, under state law, to provide oral or written notice within 24 hours of commencement of the leave in unanticipated or emergency leave situations. The employee may designate a family member or friend to notify the district during that period of time.

In either case, proper documentation must be submitted no later than three working days following the employee's return to work.

Failure of an employee to provide the required notice for OFLA leave under state law may result in the district deducting up to three weeks from the employee's unused OFLA leave in that one-year leave period.

Medical Certification

When an employee gives 30 days notice for OFLA leave, other than for parental leave, the employer may require the employee to provide medical documentation when appropriate to support the request for the OFLA leave need before the leave starts. The district will provide written notification to employees of this requirement within three working days of employee's request for leave. If the employee's need for OFLA leave precludes giving 30 days notice, the employee is required to submit such medical certification no later than 15 calendar days after receipt of the district's notification that medical certification is required.

Under state law, if an employee requests OFLA leave because of a serious health condition, the district may require a second opinion and designate the health-care provider. The provider may not be employed by the district. Should the two opinions conflict, the district may require a third opinion and that the two providers designate the third health-care provider. The third opinion will be final. Second and third opinions and the actual travel expenses for the employee to obtain such opinions will be paid for by the district.

An employer may not delay the taking of an OFLA leave in the event that medical certification is not received prior to the commencement of a leave taken subject to the timelines set forth in this regulation. The employer may designate the leave as provisionally approved subject to medical certification. The employer shall provide the employee with written notice of any requirement to provide medical certification of the need for leave and the consequences for failure to do so. The employee must be allowed a minimum of 15 days to provide medical certification.

If the employee elects or the district requires substitution of accrued sick leave, vacation or other paid leave for unpaid leave pursuant to a collective bargaining agreement or other Board policy, the district will follow the medical documentation requirements of the applicable leave policy or contract provision whenever such requirements are more beneficial to the employee.

If the leave is for the purpose of an employee's own serious health condition, he/she must also provide a fitness for duty medical release from the health-care provider before returning to work.

If an employee has taken sick child leave on all or any part of three separate days during a leave year, the employer may require medical certification on the fourth day or subsequent occurrence of sick child leave within that leave year. The employer must pay the cost of the medical certification not covered by insurance or other benefit plan. The opinion of the health-care provider shall be binding. The employer may not require the employee to obtain a second opinion. The employer is not required to request medical certification for sick child leave exceeding three days and may make such requests at the employer's discretion.

Notification

Any notice required by state laws explaining employee rights and responsibilities will be posted in all staff rooms and the district office. Additional information may be obtained by contacting the superintendent/personnel director.

Record Keeping/Posted Notice

The district will maintain all records as required by state laws including dates leave is taken by employees, identified separately from other leave; hours/days of leave; copies of general and specific notices to employees, including Board policy(ies) and regulations; premium payments of employee health benefits while on leave and records of any disputes with employees regarding granting of leave.

Medical documentation will be maintained separately from personnel files as confidential medical records.

The district will post notice of Oregon Family Leave Act requirements.