

Federal Family and Medical Leave/State Family Medical Leave

Effective Date

The Family and Medical Leave Act (FMLA) generally took effect as federal law August 5, 1993. The Oregon Family Leave Act (OFLA) became effective as state law September 9, 1995.

Coverage

Federal law covers public agencies, including school districts. In order for school employees to be eligible, however, they must be employed at a work site with 50 or more employees within 75 miles of the employee's work site for each working day during each of the 20 or more calendar work weeks in the year in which the leave is taken or in the preceding calendar year. 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 work weeks 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

Federal law applies to employees who have worked for the district for at least 12 months and for at least 1250 hours during the year preceding the start of the leave. 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 work week, 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 under federal and state law, means a biological, adopted, foster child or a 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.

“**Family Member**” means the spouse, same-sex domestic partner, custodial parent, noncustodial parent, adoptive parent, foster parent, biological parent, when considering family definition under OFLA, the grandparent or grand child of the employee, parent-in-law, parent of same-sex domestic partner or a person with whom the employee is or was in a relationship of “in loco parentis.” Eligibility under OFLA and FMLA also includes the biological, adopted or foster child, child of employee’s same-sex domestic partner or stepchild of an employee. For OFLA purpose of a serious health condition, child includes both minor and adult children.

“**Serious Health Condition**”, under federal law means an illness, injury, impairment or physical or mental conditions that involves:

1. Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility;
2. Any period of incapacity requiring absence from work, school or other regular daily activities, of more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or
3. Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or for prenatal care.

An employee is unable to perform the functions of the position when the health care provider finds that the employee is unable to work at all or is unable to perform any of the essential functions of the employee’s position within the meaning of the Americans with Disabilities Act and federal regulations. The district has the option, in requiring medical verification from a health care provider, to provide a statement of the essential functions of the employee’s position for the provider to review.

A “serious health condition” under state law 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

Federal and state laws allow eligible employees to take FMLA or 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.

Additionally, state law also allows employees to take leave for the 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 FMLA leave under federal law is entitled to a total of 12 work weeks of leave during any 12 month period for the purposes specified above. A husband and wife who are eligible and who both work for the district may only take a combined total of 12 work weeks of leave if the leave is taken to care for a parent with a serious health condition or if the leave is for the birth of a child or the placement of a child for adoption or foster care.

An employee eligible for OFLA leave under state law is entitled to a total of 12 work weeks 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 both FMLA and OFLA or just 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 work weeks of leave authorized above, under state law a female employee may take an additional 12 work weeks 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 work weeks of OFLA leave for parental leave may also take up to an additional 12 work weeks 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 work week. (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 work week. 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.

The district recognizes that state law will not always reduce the employee's FMLA 12 work week entitlement (Le., leave to care for a parent-in-law or sick child leave).

Special Rules for Teachers

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

1. Under FMLA and OFLA leave, if a teacher requests, in advance, leave for a serious health condition and the teacher will be absent more than 20 percent of the total number of working days during the period over which the leave would be taken then the employer may require the teacher to elect one of the following options:
 - a. To take family 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 or recurring periods of leave.
2. If a teacher begins FMLA or 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 family 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 FMLA or OFLA leave within five weeks of the end of the academic term because of parental leave or the serious health condition of a family member, the employer may require the teacher to remain on family 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 FMLA or OFLA leave within three weeks of the end of the academic term because of 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 work week FMLA and OFLA leave entitlement occurs for all employees. The district will use the fiscal year (July 1 -June 30).

Paid/Unpaid Leave

Family leave under federal and state law is generally unpaid. The district requires the employee to use any accrued sick leave, vacation or personal leave days (or other paid time established by Board policy(ies) and/or collective bargaining agreement) in the order specified by the district and before taking FMLA and/or OFLA leave without pay for the leave period.

The district will notify the employee that the requested leave has been designated as FMLA and/or OFLA leave and, if required by the district, that accrued paid leave shall be used during the 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 FMLA or 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 federal law, group health insurance benefits and premium payments must be continued on the same basis as coverage would have been provided and premiums paid if the employee had been continuously employed during the leave period. The district will continue to pay the district's contribution toward the employee's premiums. The employee will continue to pay the employee's share of premiums, if any. A 30day grace period will be allowed for receipt of employee contributions. The district's obligation to maintain the employee's benefits will cease if the employee's contribution is more than 30 days late. The district will provide written notice that the premium payment is more than 30 calendar days late. Such notice will be provided within 15 calendar days before coverage is to cease.

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 nonOFLA 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 FMLA or 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 federal and 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-payor other out-of-pocket costs incurred by the employee in providing certification.

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

Application

Under federal and state law, an employee requesting FMLA and/or 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.

If advance notice is not possible, for example due to a change in circumstances or medical emergency, an employee eligible for FMLA leave must provide notice as soon as practicable. "As soon as practicable," under federal law means at least oral notification within one or two business days of when the need for leave becomes known to the employee.

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 FMLA leave may result in the district delaying the employee's leave for up to 30 days after the notice is ultimately given.

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 provides 30 or more days notice when applying for FMLA and/or OFLA leave, other than for parental leave, the employer may require the employee to provide medical documentation when appropriate to support the request for leave. The district will provide written notification to employees of this requirement within three working days of employee's request for leave. If the employee provides less

than 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 federal law, a second medical opinion may be required whenever the district has reason to doubt the validity of the initial medical opinion. The health care provider may be selected by the district. The provider shall not be employed by the district on a regular basis. Should the first and second medical certifications differ, a third opinion may be required. The district and the employee will mutually agree on the selection of the health care provider for a third medical certification. The third opinion will be final. Second and third opinions and the actual travel expenses for an employee to obtain such opinions will be paid for by the district.

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 federal and 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 administrative secretary.

Record Keeping/Posted Notice

The district will maintain all records as required by federal and 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 Federal Family and Medical Leave Act and Oregon Family Leave Act requirements.

Federal vs. State Law

Both federal and state law contain provisions regarding leave for family illness. Federal regulations state an employer must comply with both laws; that the federal law does not supersede any provision of state law that provides greater family leave rights than those established pursuant to federal law and that state and federal leave entitlements run concurrently. State law requires that federal and state leave run concurrently when possible. For example, due to differences in regulations, an employee who takes leave after 180 days of employment but before one year, IS still eligible to take a full 12 work weeks of federal leave after meeting the one-year work requirement. After the first work year, leave will run concurrently. Generally, employees will be deemed to be using leave pursuant to state law except in such cases where federal law provides greater benefits.

YOUR RIGHTS
under the
FAMILY AND MEDICAL LEAVE ACT OF 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to “eligible” employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

REASONS FOR TAKING LEAVE: Unpaid leave must be granted for any of the following reasons:

- To care for the employee’s child after birth, or placement for adoption or foster care;
- To care for the employee’s spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee’s job.

At the employee’s or employer’s option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is “foreseeable.”
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer’s expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION:

- For the duration of FMLA leave, the employer must maintain the employee’s health coverage under any “group health plan”;
- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms;
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee’s leave.

UNLAWFUL ACTS BY EMPLOYERS: FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

ENFORCEMENT:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations;
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION: Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

*Reprinted from the *Federal Register*, June 4, 1993

Request for Family and Medical Leave
Employee Request for Family and Medical Leave (FMLA)
and/or Oregon Family Leave (OFLA)

PLEASE PRINT

Where the need for the leave may be anticipated, written request for family and medical leave must be made, if practical, at least 30 days prior to the date the requested leave is to begin. Failure to request leave in a timely manner could result in either the leave being postponed or the amount of leave available reduced up to three weeks.

Name _____ Effective Date of the Leave _____

Department _____ Title _____

Status: Full Time Part Time Temporary

Hire Date _____ Length of Service _____

I request family or medical leave for one or more of the following reasons:*

_____ 1. Because of the birth of my child and in order to care for him/her.
Expected date of birth _____ Actual date of birth _____
Leave to start _____ Expected return date _____

_____ 2. Because of the placement of a child with me for adoption or foster care. Age of child _____
Date of placement _____
Leave to start _____ Expected return date _____

_____ 3. In order to care for a family member with a serious health condition.
Leave to start _____ Expected return date _____

Please check one: Spouse ___ Same-sex domestic partner (OFLA leave only) _____
Child (including the biological, adopted or foster child or stepchild of an employee or a child with whom the employee is or was in a relationship of "in loco parentis") _____
Parent (biological parent of an employee or an individual who stood "in loco parentis" to an employee when the employee was a child) _____ Parent-in-law, custodial parent, noncustodial parent, adoptive parent, foster parent (OFLA leave only.)

Please state name and address of relation:

Name _____ Address _____

Describe serious health condition _____

_____ 4. For a serious health condition which prevents me from performing my job functions.

Describe _____

Leave to start _____ Expected return date _____

Regarding 3. or 4. above, request intermittent (reduced workday hours) or reduced leave (fewer workdays each work week) schedule or alternate duty (if applicable, subject to employee's approval). Please describe schedule of when you anticipate you will be unavailable to work: _____

_____ 5. In order to care for a child with a condition requiring home care which does not meet the definition of serious health condition and is not life threatening or terminal (OFLA leave only). _____ Yes _____ No

Have you taken a family leave in the past 12 months? _____ Yes _____ No

If yes, how many workdays? _____

I understand that the district requires me to use any accrued sick leave, vacation, personal leave days or other paid time established by Board policy(ies) and/or collective bargaining agreement in the order specified by the district, and before taking leave without pay for the family and medical leave period.

If my request for a leave is approved, it is my understanding that without an authorized extension when the need for an extension could be anticipated, I must report to duty on the first work day following the date my leave is scheduled to end. I understand that failure to do so will constitute unequivocal notice of my intent not to return to work and the district may terminate my employment.

I authorize the district to deduct from my paychecks any employee contributions for health insurance premiums, life insurance or long-term disability insurance which remain unpaid after my leave, consistent with state and/or federal law.

I have been provided a copy of the district's family and medical leave policy with this family and medical leave request form.

Signature of Employee: _____	Date: _____
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* A physician's certification may be required to support a request for family and medical leave. In addition, a fitness for duty certification may be required before reinstatement following the leave.

Sample Letter to Employee - FMLA/OFLA Leave

The following is a sample cover letter to an employee notifying the employee that the employer is treating a request for leave as a request for FMLA and/or OFLA leave (either paid or unpaid) that will reduce the employee's FMLA and/or OFLA leave entitlement. This letter should be mailed to the employee within two working days after the employee's request for the leave along with the FMLA/OFLA notice form.

Dear Employee:

On _____ you advised the district that you were requesting a leave under the Family and Medical Leave Act (FMLA) and/or Oregon Family Leave Act (OFLA). Under our policy, leaves of absence that qualify for family and medical leave under state or federal law run concurrently with other types of leave such as sick leave, vacation leave, short-term disability leave and leave for a workers' compensation injury or illness.

We understand the purpose of your requested leave qualifies as family medical leave under [state] [and/or federal] law. Accordingly, this letter is to notify you that the leave will be counted against your annual family and medical leave entitlement. Also attached is a form entitled *FMLA/OFLA Notice to Employee* which contains other information for you regarding federal and state family medical leave rights.

Sincerely,

Superintendent

Enclosure (FMLA/OFLA Notice to Employees form)

FMLA/OFLA Notice to Employee

Date _____

To: _____
(Employee's name)

From: _____
(Name of appropriate employer representative)

Subject: Request for FMLA and/or OFLA Leave

On _____ you notified us of your need to take family/medical leave due to:

1. _____ The birth of your child, or the placement of a child with you for adoption or foster care;
2. _____ A serious health condition that makes you unable to perform the essential functions of your job;
3. _____ A serious health condition of your spouse, same-sex domestic partner (OFLA leave only), child (including the biological, adopted or foster child or stepchild of an employee or a child with whom the employee is or was in a relationship of "in loco parentis"), parent (biological parent of an employee or an individual who stood "in loco parentis" to an employee when the employee was a child), parent-in-law, custodial parent, noncustodial parent, adoptive parent, foster parent (OFLA leave only) for which you are needed to provide care;
4. _____ An illness or injury to your child which requires home care but is not a serious health condition (OFLA leave only).

You notified us that you need this leave beginning on (Date) and that you expect leave to continue until on or about (Date).

Except as explained below, you have a right under the FMLA and/or OFLA for up to 12 work weeks of unpaid leave in a 12 month period for the reasons listed above. FMLA leave and OFLA leave generally run concurrently.

Also, your health benefits under FMLA must be maintained during any period of unpaid leave under the same conditions as if you continued to work. You must be reinstated to the same or in some cases, under state or federal law, to an equivalent job with the same pay, benefits and terms and conditions of employment on your return from leave. The district is not required to maintain benefits during OFLA unless provided otherwise by Board policy or collective bargaining agreement. However, all such benefits will be restored in full upon your return to the district.

If you do not return to work following FMLA and/or OFLA leave for a reason other than: (1) the continuation, recurrence or onset of a serious health condition which would entitle you to FMLA and/or OFLA leave; or (2) other circumstances beyond your control, you may be required to reimburse the district for health insurance premiums paid on your behalf during your FMLA/OFLA leave.

This is to inform you that (check appropriate boxes, explain where indicated):

1. You are eligible not eligible for leave under the FMLA, OFLA or both.
2. The requested leave will will not be counted against your annual FMLA leave entitlement, OFLA, both.
3. You will will not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by (date) (must be at least 15 days after you are notified of this requirement).
4. You may elect to substitute accrued paid leave for unpaid FMLA leave. We will will not require that you substitute accrued paid leave for unpaid FMLA and/or OFLA leave. If paid leave will be used the following conditions will apply: (Explain)
 - 5a. If you normally pay a portion of the premiums for your health insurance, these payments will continue during the period of FMLA leave. Arrangements for payment have been discussed with you and it is agreed that you will make premium payments as follows: (*Set forth dates, e.g., the 10th of each month, or pay periods, etc. that specifically cover the agreement with the employee.*)
 - 5b. The district is not required to maintain benefits while an employee is on OFLA leave unless otherwise provided for by Board policy and/or collective bargaining agreements; however, all benefits must be restored in full upon the employee's return to work.
 - 5c. If the district pays any part of your share of health or other insurance benefits while on OFLA or FMLA leave the district may deduct up to 10 percent of your gross pay each pay period after your return to work until the amount is repaid (OFLA leave only).
 - 5d. You have a minimum 30 day (or, indicate longer period, if applicable) grace period in which to make premium payments. If payment is not timely made, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave or OFLA leave as provided by Board policy and/or collective bargaining agreement, and recover these payments from you upon your return to work. We will will not pay your share of health insurance premiums while you are on FMLA and/or OFLA leave.

- 5e. We will will not do the same with other benefits (e.g., life insurance, disability insurance, etc.) while you are on FMLA and/or OFLA leave. If we do pay your premiums for other benefits, when you return from leave you will will not be expected to reimburse us for the payments made on your behalf.
- 5f. In the event you do not return to work for the district after your FMLA and/or OFLA leave and the district has paid your share of benefit premiums, you are responsible for reimbursing the district the amount paid on your behalf.
6. You will will not be required to present a fitness-for-duty certificate prior to being restored to employment following leave for your own serious health condition. If such certification is required but not received, your return to work may be delayed until the certification is provided.
- 7a. You are are not a “key employee” as described in §82S.218 of the FMLA regulations. If you are a “key employee,” restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us. (FMLA leave only.)
- 7b. We have have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us. (FMLA leave only.) (Explain (a) and/or (b) below.)
8. While on FMLA and/or OFLA leave, you will will not be required to furnish us with periodic reports every (indicate interval of periodic reports, as appropriate for the particular leave situation) of your status and intent to return to work. If the circumstances of your leave change and you are able to return to work earlier than the date indicated on this form, you will will not be required to notify us at least two work days prior to the date you intend to report for work.
9. You will will not be required to furnish recertification relating to a serious health condition. (FMLA leave only.) (Explain below, if necessary, including the interval between certifications as prescribed in §825.308 of the FMLA regulations.)

Medical Certification Form
(To be completed by health care provider)

Certification of Health Care Provider
(Family and Medical Leave Act of 1993)

1. Employee's Name: _____
2. Patient's Name (if different from employee): _____
3. The attached sheet describes what is meant by a "serious health condition" under the Family and Medical Leave Act. Does the patient's condition¹ qualify under any of the categories described? If so, please check the applicable category

(1) _____ (2) _____ (3) _____ (4) _____ (5) _____ (6) _____ None of the above _____
4. Describe the medical facts which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:
 - 5a. State the approximate date the condition commenced and the probable duration of the condition (and also the probable duration of the patient's present incapacity² if different):
 - 5b. Will it be necessary for the employee to work only intermittently or to work on a less than full schedule as a result of the condition (including treatment described in Item 6 below):

If yes, give the probable duration:
 - 5c. If the condition is a chronic condition (condition #4) or pregnancy, state whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity:
 - 6a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments.

If the patient will be absent from work or other daily activities because of a treatment on an intermittent or part-time basis, also provide an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known and period required for recovery if any:

¹Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

²"Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor or recovery therefrom.

- 6b. If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please state the nature of the treatments.
- 6c. If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):
- 7a. If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind?
- 7b. If able to perform some work, is the employee unable to perform anyone or more of the essential functions of the employee's job (the employee or the employer should supply you with information about the essential job functions)? _____ If yes, please list the essential functions the employee is unable to perform:
- 7c. If neither 7a. nor 7b. applies, is it necessary for the employee to be absent from work for treatment?
- 8a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation?
- 8b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery?
- 8c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:

 (Signature of Health Care Provider)

 (Type of Practice)

 (Address)

 (Telephone Number)

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

 (Employee Signature)

 (Date)

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

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

- a. A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition) that also involves:
 - (1) Treatment³ two or more times by a health care provider, by a nurse or physician’s assistant under direct supervision of a health care provider or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
 - (2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment⁴ under the supervision of the health care provider.

3. Pregnancy

Any period of incapacity due to pregnancy or for prenatal care.

4. Chronic Conditions Requiring Treatments

A chronic condition which:

- a. Requires periodic visits for treatment by a health care provider or by a nurse or physician’s assistant under direct supervision of a health care provider;
- b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

³Treatment includes examinations to determine if a serious health condition exists and evaluation of the condition. Treatment does not include routine physical examinations, eye examinations or dental examinations.

⁴A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines or salves; or bed rest, drinking fluids, exercise or other similar activities that can be initiated without a visit to a health care provider. An exception to this definition of regimen could occur when an employee suffers from a minor illness generally treated with over-the-counter medication, bed rest and intake of fluids as long as the employee is incapacitated for more than three days and is under continuing treatment by a health care provider for the specific ailment.

5. **Permanent/Long-term Conditions Requiring Supervision**

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke or the terminal stages of a disease.

6. **Multiple Treatments (Nonchronic Conditions)**

Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).