Linn Benton Lincoln
Education Service District

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Family and Medical Leave *

Employee Eligibility

FMLA benefits are available to employees who have been employed by the ESD for at least 12 months, have worked at least 1,250 hours during the past 12-month period and work at a worksite that employs 50 ESD employees within 75 miles of the worksite.

An employee who has previously qualified for and has taken some portion of FMLA leave may request additional FMLA leave within the same leave year. In such instances, the employee may not need to requalify as an eligible employee.

Generally, in order for an employee to be eligible for the benefits under OFLA, the employee must work an average of 25 hours or more per week during the 180 calendar days immediately prior to the first day of the start of the requested leave.[1] In determining if an employee has been employed for the preceding 180 calendar days under OFLA, the ESD must consider days, paid or unpaid, an employee is maintained on payroll.

In determining average workweek, the employer must count the actual hours worked using the Fair Labor Standards Act (FLSA) guidelines.

An employee is eligible to take leave for any purposes of OFLA during a period of time covered by a public health emergency except:

1. An employee who has worked for the ESD for fewer than 30 days immediately before the date on which the family leave would commence; or

2. An employee who has worked for the ESD for an average of fewer than 25 hours per week in the 30 days immediately before the date on which the family leave would commence.

An employee of the ESD is eligible to take leave for purposes of OFLA if the employee[2]:

An employee of the ESD who has separated and is reemployed within 180 days, or experiences a temporary cessation of schedule hours may be eligible for OFLA in accordance with ORS 659A.156.

1. Separates from employment with the ESD, irrespective of any reason:

    a. Is eligible to take leave OFLA at the time the employee separates; and
    b. Is reemployed by the ESD within 180 days of separation from employment; or

[1] 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.

[2] Either all elements of 1. (a., b., and c.) or both elements of 2. (a. and b.) are necessary. See ORS 659A.156(3).

2. Is eligible to take OFLA leave:

    a. At the beginning of a temporary cessation of scheduled hours of 180 days or less; and
    b. Returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

Any OFLA leave taken by the employee within any one-year period continues to count against the length of time of OFLA leave the employee is entitled. The amount of time that an employee is deemed to have worked for the ESD prior to a break in service due to a separation from employment or a temporary cessation of scheduled hours shall be restored to the employee when the employee is reemployed by the ESD within 180 days of separation from employment or when the employee returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

When an employee requests OFLA leave, or when the ESD acquires knowledge that an employee's leave may be for a purpose that constitutes OFLA leave, the ESD will notify the employee of the employee's eligibility to take OFLA leave within five business days, absent extenuating circumstances. Whether an employee is an "eligible employee" as defined in OAR 839-009-0210 is determined, a notice must be provided, at the commencement of the first instance of each purpose for leave listed in OAR 839-009-0240 during the OFLA leave year. If an employee is an "eligible employee" as defined in OAR 839-009-0210 for the purpose listed in OAR 839-009-0240, the employee's eligibility for that purpose does not change during the applicable 12-month period. In addition:

3. An employee taking, in any order, some or all of 12 weeks of OFLA pregnancy disability leave and some or all of 12 weeks of OFLA leave for any other purpose, need not requalify each time the employee takes OFLA leave within the same leave year;

4. An employee who has taken 2 weeks of OFLA child placement leave need not requalify for up to an additional 12 weeks of leave within the same leave year when used for the purposes of OFLA sick child leave;

5. An employee unable to work because of a disabling compensable injury[3] need not requalify under OAR 839-009-0210 in order to use OFLA leave following a period the employee is off work due to the compensable injury.

In determining if an employee has been employed for the preceding 180 calendar days under OFLA, the ESD must consider days, paid or unpaid, an employee is maintained on payroll.

Leave under the Oregon Military Family Leave Act (OMFLA) applies to employees who work an average of at least 20 hours per week. There is no minimum number of days worked when determining employee eligibility for OMFLA.

In determining average workweek, under FMLA and OFLA, the employer must count the actual hours worked using the Fair Labor Standards Act (FLSA) guidelines.

Qualifying Reason

Eligible employees may access FMLA leave entitlements for the following reasons:

[3] As defined in ORS 656.005.

6. Serious health condition of the employee or the employee's covered family member. "Serious health condition" means an illness, injury, impairment or physical or mental condition that involves inpatient care[4] or continuing treatment by a health care provider[5].

7. Parental leave[6] (separate from eligible leave as a result of a child's serious health condition):

    a. Bonding with and caring for the employee's newborn child (within 12 months following birth);
    b. Bonding with and caring for a newly adopted child or newly placed child in foster care[7] under the age of 18 (within 12 months of placement);
    c. Caring for a newly adopted child or newly placed child in foster care 18 years of age or older who is incapable of self-care because of a mental or physical disability (within 12 months of placement);
    d. Time to effectuate the legal process required for placement of a child in foster care or the adoption of a child.

8. Military caregiver leave: leave for the care for covered service member if the eligible employee is the spouse, child or next-of-kin of the servicemember with a serious injury or illness;

9. Qualifying exigency leave: leave arising out of deployment to a foreign country of the employee's spouse, child or parent who is a military member on active duty or call to covered active duty status.

Eligible employees may access OFLA leave entitlements for the following reasons:

10. Pregnancy disability leave: leave taken by an employee for their own disability related to pregnancy, including pregnancy termination or childbirth, whether the disability occurs before, during or after the birth of the child or for prenatal care, including fertility or infertility treatment.

11. Sick child leave: leave taken for an employee's child **who is** suffering from an illness, injury, or condition that requires home care~~.~~**;** Under OFLA, sick child leave includes leave to care for an employee's child whose school or child care provider has been closed[8] in conjunction with a statewide public health emergency declared by a public health official.[9]

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[4] Inpatient care means an overnight stay in a hospital, hospice, or residential medical facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care. 29 CFR § 825.114.

[5] Continuing treatment includes incapacity and treatment, pregnancy or prenatal care, chronic conditions, permanent or long-term conditions, conditions requiring multiple treatments, and absences attributable to incapacity. See 29 CFR § 815.115.

[6] Parental leave must be taken in one continuous block of time within 12 months of the triggering event.

[7] ORS 659A.159 uses the term "foster child." ESDs can choose to use either "foster child" or "child in foster care" throughout this AR.

[8] "Closure" (OAR 839-009-0210(5)) for the purpose of sick child leave during a statewide public health emergency declared by a public health official means a closure that is ongoing, intermittent, or recurring and restricts physical access to the child's school or child care provider as defined in OAR 839-009-0210(4).

[9] The ESD may request verification of the need for sick child leave under OFLA due to a closure during a statewide public health emergency. Verification may include:
1. The name of the child being cared for;
2. The name of the school or child care provider that has closed or become unavailable;
3. A statement from the employee that no other family member of the child is willing and able to care for the child; and

12. Bereavement leave: leave taken to deal with the death of a covered family member and includes leave taken to attend the funeral or alternative to a funeral of the family member, to make arrangements necessitated by the death of the family member, or to grieve the death of the family member.[10]

13. Child placement leave: leave taken under OFLA before January 1, 2025, to effectuate the legal process required for placement of a foster child or the adoption of a child.

Eligible employees may also access OMFLA for the purpose of spending time with a spouse or domestic partner who is in the military and has been notified of an impending call or order to active duty, or who has been deployed during a period of military conflict.

Definitions

14. Family member:

    a. For the purposes of FMLA, "family member" means:
        (1) Spouse[11];
        (2) Parent[12]; or
        (3) Child[13].
    b. For the purposes of OFLA, "family member" means an eligible employee's:
        (1) Spouse or domestic partner;
        (2) Child or the child's spouse or domestic partner;
        (3) Parent or the parent's spouse or domestic partner;
        (4) Sibling or stepsibling, or the sibling's or stepsibling's spouse or domestic partner;
        (5) Grandparent or the grandparent's spouse or domestic partner;
        (6) Grandchild or the grandchild's spouse or domestic partner; or
        (7) Any individual related by blood or affinity whose close association with an eligible employee is the equivalent of a family relationship.[14]

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4. With the care of a child older than 14, a statement that special circumstances exist requiring the employee to provide care to the child during daylight hours.

[10] Bereavement leave under OFLA must be completed within 60 days of the date the employee received notice of the death. The notice of the death of a family member may be by any means and from any source.

[11] "Spouse" means individuals in a marriage, including "common law" marriage and same-sex marriage.

[12] "Parent" means a biological, adoptive, step or foster parent, or any other individual who stood "in loco parentis" to the employee when the employee was a child as defined herein. This does not include parents "in law."

[13] "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.

[14] "Affinity" means a relationship for which there is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship. This bond may be demonstrated by, but is not limited to the following factors, with no single factor being determinative:
1. Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills or beneficiary designations;
2. Emergency contact designation of the employee by the other individual in the relationship or the emergency contact designation of the other individual in the relationship by the employee;
3. The expectation to provide care because of the relationship or the prior provision of care;
4. Cohabitation and its duration and purpose;

15. Child:

    a. For the purposes of FMLA, "child" means the eligible employee's biological or adopted child, a child the employee is fostering, a stepchild, a legal ward or a child of a person standing "in loco parentis", who is either under the age of 18, or who is 18 years of age or older and who is incapable of self-care because of a physical or mental disability.
    b. For the purposes of Military Caregiver Leave and Qualifying Exigency Leave under FMLA, "child" means the employee's child on covered active duty regardless of that child's age.
    c. For the purposes of OFLA, "child" means the eligible employees biological or adopted child, a child the employee is fostering, a stepchild, the child of the employee's spouse or domestic partner, or a child with whom the employee is or was in a relationship of "in loco parentis."
    d. For the purposes of child placement leave and sick child leave only under OFLA, the child must be under the age of 18 or an adult dependent child substantially limited by a physical or mental impairment as described in ORS 659A.104.

16. In loco parentis:

    a. For the purposes of FMLA, "in loco parentis" means persons with day-to-day responsibility to care for or financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
    b. For the purposes of OFLA, "in loco parentis" means person in the place of a parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

17. Next of kin:

    For the purposes of FMLA , "next of kin" means the nearest blood relative other than the covered servicemember's spouse, parent or child in the following order of priority (unless otherwise designated in writing by the servicemember):

    a. Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions;
    b. Siblings;
    c. Grandparents;
    d. Siblings of parents and their spouses; and
    e. First cousins.

18. Covered servicemembers:

    For the purposes of FMLA, "covered servicemember" means a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness; or a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

5. Geographic proximity; and
6. Any other factor that demonstrates the existence of a family-like relationship.

19. Covered veteran:

    For the purposes of FMLA, "covered veteran" means an individual who was:

    a. A member of the Armed Forces (including a member of the National Guard or Reserves);
    b. Discharged or released under conditions other than dishonorable; and
    c. Discharged within the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

20. Public health emergency:

    For OFLA a public health emergency means;

    a. A public health emergency declared under ORS 433.441.
    b. An emergency declared under ORS 401.165 if related to a public health emergency as defined in ORS 433.442.

Leave Period

For the purposes of calculating an employee's leave period for FMLA, the ESD use**s** the 12-month period measured forward from the date the employee's leave begins.

For the purposes of calculating an employee's leave period for OFLA, the ESD will use a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences.

The methods for calculating the leave period for FMLA or OFLA leave entitlement shall be used for all employees.

The leave period for the purposes of Military Caregiver Leave under FMLA shall be dependent on the start of any such leave regardless of the ESD's designated leave period described above.

Leave Duration

For the purposes of FMLA, an eligible employee is generally entitled to a total of 12 weeks of qualified leave during the ESD's designated leave period (12-month period)[15]. Spouses who work for the ESD and are eligible for FMLA leave may be limited to a combined total of 12 weeks of FMLA leave during the ESD's designated leave period when the purpose of the leave is for:

21. Birth of a child or to care for a child after birth;

22. Placement of an adopted child or child in foster care, the care for an adopted child or child in foster care after placement; or

[15] An eligible employee taking Military Caregiver Leave under FMLA is entitled to up to 26 weeks of leave in the 12-month period beginning with the first day of such leave and regardless of any FMLA leave taken previously during the ESD's leave period. However, once the 12-month period begins for the purposes of Military Caregiver Leave under FMLA, any subsequent FMLA qualified leave, regardless of reason for such leave, will count toward the employee's 26-week entitlement under Military Caregiver Leave under FMLA.

23. Care for the employee's parent with a serious medical condition.

Except in specific and unique instances, all qualified leave under FMLA counts toward an employee's leave entitlement within the designated leave period.

For the purposes of OFLA, an eligible employee is generally entitled to a total of up to 12 weeks of OFLA leave, for sick child leave and bereavement leave, during the designated leave period. An eligible employee is entitled to a total of two weeks of bereavement leave upon the death of each family member of the employee within a leave year, except that the eligible employee may not take more than four weeks of bereavement leave within a leave year.

An employee may also be entitled to take a total of 12 weeks of OFLA pregnancy disability leave within the same leave year.

Under OFLA, the employee may use all or part of the 12 weeks of sick child or bereavement leave and all or part of the 12 weeks of pregnancy disability leave in any order.

In addition to the 24 weeks of possible OFLA leave identified above, an eligible employee is entitled to a total of two weeks of child placement leave within an OFLA leave year until January 1, 2025. The adoption or foster placement of multiple children at one time entitles the employee to take only one two-week period of child placement leave.

Unlike FMLA, OFLA does not combine the leave entitlement when two or more family members work for the ESD. Under OFLA, family members who work for the ESD may be restricted from taking concurrent OFLA qualified leave.[16]

For the purposes of OMFLA, an eligible employee is entitled to 14 days of leave per call or order to active duty or notification of a leave from deployment. When an employee also meets the eligibility requirements of OFLA, the duration of the OMFLA leave counts toward that employee's leave entitlement during the designated leave period.

Qualified leave under FMLA and OFLA for an eligible employee will run concurrently during the designated leave period if for the same qualifying reason. Qualified leave under FMLA will run concurrently with other qualified leave covered under Paid Family and Medical Leave Insurance (PFMLI) and/or available sick leave under ORS 653.601 - 653.661 for eligible employees. Qualified leave under OFLA may also run concurrently with leave taken under the sick time law in ORS 653.601 - 653.661 if for the same qualifying reason, but not concurrent with PFMLI.

For the purpose of tracking the number of leave hours an eligible employee is entitled and/or has used during each week of the employee's leave, leave entitlement is calculated by multiplying the number of hours the eligible employee normally works per week by 12[17]. If an employee's schedule varies from week-to-week, a weekly average of the hours worked over the 12 months worked prior to the beginning of

[16] Exceptions to the ability to require family members to take OFLA qualified leave at different times are when one employee needs to care for a child for a purpose described in ORS 659A.159 (1)(a) while another employee is taking pregnancy disability leave or, on or more of the employees is taking bereavement leave.

[17] 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 of leave.

the leave period shall be used for calculating the employee's normal workweek[18]. If an employee takes intermittent or reduced work schedule leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of leave to which the employee is entitled.

Holidays which occur within the week taken as FMLA may be counted against FMLA entitlement.[19] However, for leave taken in increments of less than one week, holidays in which employees generally are not expected to report do not count against the employees FMLA leave entitlement.

Under OFLA, days in which the ESD is not in operation, are not counted toward intermittent or reduced work schedule OFLA leave.

Intermittent Leave

Intermittent leave is taken in separate periods of time (i.e., hours, days, weeks, etc.), rather than in one continuous period of time, and/or requiring an altered or reduced work schedule. For OFLA this includes but is not limited to sick child leave taken requiring an altered or reduced work schedule because the intermittent or recurring closure of a child's school or child care provider due to a statewide public health emergency declared by a public health official.

When an exempt employee is eligible for both OFLA and FMLA leave, and the employee takes intermittent leave in blocks of less than one day, if done in accordance with 29 CFR § 825.206, the ESD may reduce the employee's salary for the part-day absence without the loss of the employee's exempt status in accordance with OAR 839-020-0004(32).

When an eligible employee is eligible for OFLA leave but not FMLA leave, and the employee takes intermittent leave in blocks of less than one day, the ESD will jeopardize the employee's exempt status if the ESD reduces the employee's salary for the part-day absence.

An employee's FMLA and/or OFLA intermittent leave time is determined by calculating the difference between the employee's normal work schedule and the number of hours the employee actually works during the leave period. The result of such calculation is credited against the eligible employee's leave entitlement.

Alternate Work Assignment

Under FMLA, the ESD may transfer an employee taking intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment to an alternate position for which the employee is qualified and which better accommodates an employee's recovery from a serious health condition, a serious health condition of a spouse, parent, son, or daughter, or a serious injury of illness of a covered servicemember. However, the ESD may not transfer the employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee.

Under FMLA, when an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position no longer needs to continue on leave and is able to return to full-time work, the employee will be placed in the same or equivalent job as the job they left when the

[18] 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 of leave.

[19] See 29 CFR § 825.200(h).

leave commenced. An employee may not be required to take more leave than necessary to address the circumstance that precipitated the need for leave.

Under OFLA, the ESD may transfer an employee on intermittent OFLA leave or reduced work schedule into an alternate position with the same or different duties to accommodate leave, provided:

24. The employee accepts the position voluntarily and without coercion;

25. The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;

26. The transfer is compliant with any applicable collective bargaining agreement, as well as with state and federal law;

27. The 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

28. The transfer is not used to discourage the employee from taking leave or to create a hardship for the employee.

Under OFLA, An employee transferred to an alternate position for the purpose of a reduced work schedule must be returned to the employee's former position when the employee notifies the employer that the employee is ready to return to the former position at the end of the alternate duty leave.

The ESD may transfer an eligible employee to an alternate position that accommodates OFLA pregnancy disability leave provided:

29. The employee accepts the transfer position voluntarily and without coercion;

30. The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;

31. The transfer is compliant with any applicable collective bargaining agreements, as well as with state and federal law;

32. The transfer is not used to discourage the employee from taking OFLA leave or to create a hardship for the employee.

Under OFLA, if an eligible employee is transferred to an alternative position and as a result the employee works fewer hours than the employee worked in the original position, the employee's OFLA leave time is determined by calculating 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 alternative position.

An employee is not on OFLA leave if the employee has been transferred – as provided for in OAR 839-009-0245 (5) – 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 pregnancy disability, but not requiring a reduced workweek. An employee working in an alternate position retains the right to return to the employee's original position at any time during the employee's OFLA leave. This does not impair the right of an employee to a reasonable accommodation or the application of any other state or federal law.

Special Rules for School Employees

For the purposes of FMLA, "instructional employee" means those whose principal function is to teach and instruct students in a class, a small group or an individual setting. Athletic coaches, driving instructors and special education assistants, such as signers for the hearing impaired, are included in this definition. This definition does not include teacher assistants or aides who do not have as their principal job actual teaching or instructing, auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers or bus drivers.

FMLA leave that is taken for a period that ends with the school year and begins with the next semester is considered consecutive rather than intermittent. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement. In any such situation, the eligible instructional employee will receive any benefits during the break period that employees would normally receive if they had been working at the end of the school year.

33. Foreseeable Intermittent Leave Exceeding 20 Percent of Working Days

    When the qualified leave is foreseeable, will encompass more than 20 percent of the eligible instructional employee's regular work schedule during the leave period, and the purpose of such leave is to care for a family member with a serious medical condition, for a covered servicemember or for the employee's own serious medical condition, the ESD may require the eligible instructional employee to choose either to:

    a. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
    b. Temporarily transfer to an available alternate position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than the employee's regular position.

34. If an instructional employee does not give required notice of foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the ESD may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the ESD may require the employee to delay the taking of leave until the notice provision is met.

35. Limitation on Leave Near the End of the Term[20]

    When an eligible instructional employee requests leave near the end of the term, the ESD may require the following:

    a. When the qualified leave begins more than five weeks before the end of the term, the ESD may require the employee to continue taking leave until the end of the term if:
        (1) The leave will last at least three weeks; and
        (2) The employee would return to work during the three-week period before the end of the term.
    b. When the qualified leave begins during a five-week period before the end of the term and the purpose of such leave is parental leave, for the serious health condition of a family member or

[20] "Academic term" means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of FMLA. 29 CFR § 825.602(b)

to care for a covered servicemember, the eligible instructional employee may be required by the ESD to remain on leave until the end of the term if:

(1) The leave will last more than two weeks; and

(2) The employee would return to work during the two-week period before the end of the term.

c. When the qualified leave begins within three weeks of the end of the term and the purpose of such leave is parental leave, for the serious health condition of a family member or to care for a covered servicemember, the eligible instructional employee may be required to remain on leave until the end of the term if the length of the leave will last more than five working days. If the ESD requires an eligible instructional employee to remain on leave until the end of the term as described above, additional leave required by the ESD until the end of the school term shall not count against the eligible instructional employee's leave entitlement.

For the purposes of OFLA leave, if an employee[21] begins a period of bereavement leave during the three-week period before the end of the term and the duration of the leave is greater than five working days, the ESD may require the employee continue on family leave until the end of the term.

Paid/Unpaid Leave

FMLA and OFLA do not require the ESD to pay an eligible employee who is on a qualified leave. Paid Family and Medical Leave Insurance (PFMLI) leave taken via Paid Leave Oregon or an equivalent plan will run concurrently with FMLA and leave available under ORS 653.601 - 653.661 when taken for the same purpose. An employee may elect to use any available accrued paid leave including personal, sick or vacation leave during the leave period. The total combined amount received by using accrued leave and PFMLI may exceed the employee's full wage replacement during the period of leave. The ESD will notify the eligible employee when the requested leave has been designated as FMLA or OFLA leave and ask the employee about the use of available accrued paid leave.

Eligible employees taking OMFLA leave are entitled to use available accrued paid time off during the OMFLA leave period.

Benefits and Insurance

When an eligible employee returns to work following a FMLA-, OFLA- or OMFLA-qualified leave, the employee must be reinstated to the same position the employee held when the leave commenced, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

During an OFLA qualified leave an eligible employee does not accrue seniority or other benefits that would have accrued while the employee was working, unless the terms of a collective bargaining agreement, other agreement or other ESD policy provide otherwise.[22] The eligible employee is also subject to layoff to the same extent similarly situated employees not taking OFLA leave are subject unless the terms of an applicable collective bargaining agreement, other agreement or the ESD's policies provide otherwise.

For the purposes of FMLA and OFLA, the ESD will continue to pay the employer portion of the eligible employee's group health insurance contribution (if applicable) during the qualified leave period. The

[21] Applies only to an employee who is employed principally in an instructional capacity by the ESD.

[22] See also ORS 342.934(4)(d) in reduction force situations.

eligible employee is required to pay the employee portion of any such group health insurance contribution as a condition of continued coverage.

For the purposes of FMLA qualified leave, the ESD's obligation to maintain the employee's group health insurance coverage will cease if the employee's contribution is remitted more than 30 calendar days late. The ESD 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.

For the purposes of OMFLA, the eligible employee is entitled to a continuation of benefits.

Fitness-for-Duty Verification

For purposes of FMLA, prior to the reinstatement of an employee following a leave which was the result of the employee's own serious health condition, the ESD may require the employee to obtain and present a Fitness-for-Duty Certification. If the ESD is going to require a Fitness-for-Duty Certification upon return to work, the ESD must notify the employee of such requirement when the leave is designated as FMLA leave and that failure to provide the certification may result in a delay or denial of reinstatement. Any costs associated with obtaining the certification shall be borne by the employee.

Application

For purposes of FMLA, an eligible employee requesting FMLA 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 date, duration and reasons for the requested leave. When appropriate, the eligible 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 ESD. An eligible employee able to give advance notice of the need to take FMLA leave must follow the ESD's known, reasonable and customary procedures for requesting any kind of leave.

For purposes of OFLA, an eligible employee shall provide at least 30 days' written notice of the need for foreseeable leave before starting family leave. An employee may commence family leave without prior notice in the event of: an unexpected illness, injury or condition of a child of the employee that requires home care; the death of a family member; the closure of the school or child care provider of the employee's child due to a public health emergency unless the declaration of the emergency was issued by the Governor at least 30 days before commencement of the leave; or an illness, injury or condition related to the employee's own pregnancy or childbirth that disables the employee from performing any available job duties offered by the ESD. If an employee commences leave without prior notice as allowed above, the employee must give oral notice[23] to the employer within 24 hours of the commencement of the leave and must provide the written notice within three days after returning to work. Failure of an employee to provide the required notice for leave may result in the ESD deducting up to three weeks from the employee's unused OFLA leave in that one-year leave period. The employee may be subject to disciplinary action for not following the ESD's notice procedures.

The ESD may request additional information to determine the requested leave qualifies as FMLA or OFLA leave as provided by law. The ESD may designate the employee as provisionally on FMLA or OFLA leave until sufficient information is received to properly make a determination. An eligible

[23] Oral notice may be given by any other person on behalf of the employee taking the leave.

employee able to give advance notice of the need to take leave must follow the ESD's known, reasonable and customary procedures for requesting any kind of leave.

For the purposes of FMLA, if advance notice is not possible, an employee eligible for FMLA leave must provide notice as soon as practicable. "As soon as practicable," for the purpose of FMLA leave, means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. In most situations, as soon as practicable will be within one business day of an employee becoming aware of the need. Failure of an employee to provide the required notice for FMLA leave may result in the ESD delaying the employee's leave up to 30 days after the notice is ultimately given.[24]

For the purposes of OFLA, an eligible employee is taking leave in an unforeseeable situation, an employee must give oral or written notice[25] within 24 hours before or after commencement of the leave.

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

For purposes of OMFLA, an employee must provide the ESD with notice of the intention to take leave within five business days of receiving official notice of an impending call or order to active duty or of a leave from deployment.

Medical Verification

Under FMLA, the ESD may require an eligible employee to provide medical certification, when appropriate[26], to support the stated reason for such leave. In most cases, the ESD will provide written notification to an employee of this requirement within five working days of the employee's request for leave. The employee is required to submit such medical certification no later than 15 calendar days after receipt of the ESD's notification that medical certification is required, unless not practicable. Any additional certifications, including second and third opinions, will be in accordance with applicable law.

Under OFLA, the ESD may require an eligible employee to provide medical verification, when appropriate[27], to support the stated reason for qualifying OFLA leave. The ESD will provide written notification to an employee of this requirement and state the consequences for failure to provide the requested medical verification. If the employee gives advance written notice of foreseeable leave, the ESD may require the employee to provide medical verification for OFLA leave before the leave starts. If the employee begins unforeseeable OFLA leave without prior notice, the employee is required to submit such medical verification within 15 calendar days after receipt of the ESD's request for medical verification. The employee may be subject to disciplinary action for not providing the requested medical verification.

For the purposes of OFLA qualified leave, costs associated with obtaining the medical verification shall be borne by the ESD, or be paid as otherwise allowed by law. The ESD will not delay the use of qualifying

[24] See 29 CFR § 825.304.

[25] Notice may be given by any other person on behalf of the employee taking the leave.

[26] Medical documentation is not allowed in every situation. Review current laws and guidance for more information.

[27] Medical verification is not allowed in every situation. Review current laws and guidance for more information. (OAR 839-009-0260)

OFLA leave when medical verification is not received before the commencement of unforeseeable leave. The ESD may not require an employee to obtain a second opinion.

Under OFLA, the ESD may request verification for the need for leave to care for a child who requires home care due to the closure of the child's school or child care provider as a result of a public health emergency. A request for verification may include a request for:

36. The name of the child requiring home care;

37. The name of the school or child care provider that is subject to the closure;

38. A statement from the employee that no other family member of the child is willing and able to care for the child; and

39. A statement that special circumstances exist that require the employee to provide home care for the child during the day, if the child is older than 14 years of age.

Posted Notice

The ESD will post the Bureau of Labor and Industries Family Leave notice in each building or worksite in an area that is accessible to and regularly frequented by employees.[28] The ESD will also post a notice explaining the provisions of FMLA and providing information concerning the procedures for filing complaints.[29]

Record Keeping

The ESD 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.

Federal vs. State Law

Both federal and state law contain provisions for family and medical leave. Federal regulations state an employer must comply with all leave laws; that the federal law does not supersede any provision of state law that provides greater family or medical leave rights than those established pursuant to federal law; and if leave qualifies for FMLA and OFLA leave, the leave used counts against the employee's entitlement under both laws. State law requires that FMLA and OFLA or other state leave entitlements run concurrently when for the same purpose.

[28] https://www.oregon.gov/boli/employers/Documents/BOLI_Printable_FamilyMedLv.pdf; electronic posting is not sufficient to satisfy this requirement, but may be used to supplement the physical posting.

[29] https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fmlaen.pdf; electronic posting is sufficient as long as it is posted prominently where it can be readily seen by employees and applicants for employees. The poster and the text must be large enough to be easily read and contain fully legible text.