



HRAR-6.05 - Family Medical Leave

Administrative Rules Adopted by Bureaus Pursuant to Rule Making Authority (ARB)

Policy category: [Leaves](#)

Policy number: HRAR-6.05

Search Code, Charter, Policy

Keywords

Search

General

It is the policy of the City of Portland, in accordance with federal and state law, to grant family medical leave to eligible employees. Generally, eligible employees are entitled to up to twelve (12) workweeks of leave per calendar year except as noted below in the "Reasons for Leave". This leave is unpaid except as noted below in the sections on City Paid Parental Leave and Use of Accrued Paid Leaves During FMLA/OFLA Leave.

Employees may not work elsewhere, including self-employment, while on family medical leave.

Eligibility for Family Medical Leave

Federal Law

- **Family Medical Leave Act (FMLA)**

- Employee must have been employed by the City of Portland for at least twelve (12) months, and worked at least 1250 hours during the twelve (12) month period immediately preceding the leave.

State Law

- **Oregon Family Leave Act (OFLA)**

- Employee must have been employed by the City for at least 180 calendar days immediately preceding the leave and have worked for an average of at least twenty-five (25) hours per week during the 180 days immediately preceding the leave. Employees are eligible for parental leave after being employed for 180 calendar days, without regard to the number of hours worked per week.

- **Oregon Military Family Leave Act (OMFLA)**

- Employee must have worked an average of twenty (20) hours per week for the City on the date OMFLA leave begins.

In determining the twelve (12) calendar months and 180 calendar days, the number of days an employee has been on the payroll are counted, including all paid and unpaid time. The 1250 hours, twenty-five (25) hours per week, and twenty (20) hours per week minimums are actual hours worked.

City Paid Parental Leave

City Paid Parental Leave is leave taken to bond and care for a newborn child or newly adopted child. City Paid Parental Leave may also be taken for new Foster Care placement of a child. For the purposes of City Paid Parental Leave, Foster Care means a new, temporary living arrangement in the employee's home for minor children provided through a state-certified Foster Care program. Placement in the employee's home is made by or with the agreement of the State and involves a minor child who is in the legal or physical custody and care of the State. Although Foster Care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

All regular, probationary, limited duration and temporary employees in budgeted positions are eligible for paid parental leave for up to a maximum of one continuous period not to exceed six (6) weeks in a calendar year after 180 consecutive calendar days of employment. Bureau Directors, employees in elected official offices and employees in other classifications designated as "at will" are also eligible for Paid Parental Leave after 180 consecutive calendar days of employment.

Eligible employees may receive up to a maximum of one continuous period of Paid Parental Leave, not to exceed six (6) calendar weeks, per event. An eligible employee may receive paid parental leave for one event per calendar year. The Director of Human Resources may make an exception and allow additional paid parental leave if two qualifying events occur in the same calendar year, or when extenuating circumstances exist. The birth, adoption or foster care placement of multiple children that is part of the same event does not increase the length of paid parental leave granted (e.g., birth of twins or adoption or Foster Care placement of more than one baby or child). Unused Paid Parental Leave from one event may not be carried over to a future event.

The amount of Paid Parental Leave taken for the new Foster Care placement of a child cannot exceed the duration of the placement. If the employee has another new foster care placement of a child in the same calendar year, the employee may request an exception from the Director of Human Resources.

City Paid Parental Leave must be taken continuously following birth, adoption or foster care placement. While on City Paid Parental leave, employees shall not engage in any work activity for compensation, including job-related training, nor shall an employee perform service for the City for compensation in any other capacity. Engaging in a work activity

or employment for compensation while on City Paid Parental Leave will be deemed an interruption of the continuous period of paid parental leave and any remaining City Paid Parental leave approved for that event will be forfeited.

City Paid Parental Leave must be used within twelve months following the birth, adoption or Foster Care placement of a child. Paid Parental Leave can only be used for leave post birth, adoption or Foster Care placement of a child. If an employee qualifies for FMLA, OFLA leaves, and/or parental leave under a collective bargaining agreement, City Paid Parental Leave under this rule must run concurrently with said leaves and must be used during the approved FMLA and/or OFLA parental leave. An employee who exhausts all available FMLA and/or OFLA entitlements for a different reason will still be eligible to take City Paid Parental Leave under this rule.

Reasons for Leave

Leave may be requested for any of the following reasons:

Parental – leave to care for a child born to or placed for adoption or Foster Care with the employee. Parental leave must be taken within twelve (12) months of the birth, adoption, or Foster Care placement of the child. Under OFLA, an employee who uses twelve (12) workweeks of parental leave is entitled to take up to twelve (12) additional workweeks of leave to care for a child due to a non-serious health condition that requires home care (OFLA sick child leave). City paid parental leave is limited to one (1) six (6) week period in a calendar year.

Employee Medical – leave because of the employee's own serious health condition, which prevents the employee from performing their job. This includes pregnancy-related disability and absences from work due to prenatal care. Under OFLA, a woman using pregnancy disability leave is entitled to up to twelve (12) additional workweeks of leave in the same leave year for any qualifying OFLA purpose. See attachment for definition of a serious health condition.

Family Care Medical – leave to care for an employee's family member with a serious health condition. Under the federal law, covered family members include a spouse, child, parent or step-parent. Under state law, covered family members also include same sex domestic partners, parents-in-law, grandparents or grandchildren of the employee. Under City policy, covered family members also include opposite sex domestic partners.

Sick Child (OFLA only) – leave to care for a minor child who is ill but does not have a serious health condition and requires home care, provided another family member is not available to care for the child.

Military Caregiver Leave (FMLA only) – leave to care for an injured service member who is the employee's parent, child, or spouse or for

whom the employee is the next of kin. Such leave may be taken for up to twenty-six (26) workweeks in any single twelve (12) -month period. Leave to care for a military service member, when combined with all other FMLA leave may not exceed twenty-six (26) workweeks in a single twelve (12) -month period.

Qualifying Exigency Leave (FMLA only) – leave for a qualifying exigency arising out of the fact that the employee’s parent, child or spouse is on active military duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.

Oregon/ Washington Military Family Leave Act – Leave for a spouse or domestic partner of a member of the state military if any, the Armed Forces, the National Guard, or military reserve who has been called to active duty or notified of impending call to active duty, or who is on leave from active duty. An eligible employee may take a total of fifteen (15) calendar days’ leave per call or order to active duty or notification of a leave from deployment.

Bereavement Leave (OFLA only) – Leave to deal with the death of a family member by attending the funeral or alternative to a funeral of the family member, making arrangements necessitated by the death of the family member, or grieving the death of the family member. Under OFLA, covered family members include a spouse, child, parent, same sex domestic partners, parent-in-laws, grandparents or grandchildren of the employee. An eligible employee may take up to two weeks of leave upon the death of each family member, up to a maximum of twelve (12) weeks of OFLA leave per calendar year. Leave must be completed within sixty (60) days of the date on which the employee receives notice of the death of a family member. OFLA Bereavement Leave will not run concurrently with funeral bereavement leave provided by the employee’s collective bargaining agreement or with leave granted under [Administrative Rule 6.08 Funeral, Bereavement, and Pregnancy Loss Leave](#).

Family Members employed by the City

If two family members work for the City, they may take family leave (including parental leave) at the same time unless both work for the same Bureau. Family members employed by the same bureau may take City Paid Parental Leave at the same time. Family members employed by the same bureau may not take other FMLA or OFLA covered leave (including parental leave that is in addition to City Paid Parental Leave) at the same time unless:

1. Approved by the Bureau Director; or
2. One employee needs to care for the other employee with a serious health condition; or

3. One employee is needed to care for a child with a serious health condition and the other employee is suffering from a serious health condition; or
 4. Both employees suffer from a serious health condition; or
 5. Both employees are taking OFLA Bereavement Leave.
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Domestic Partners

Employees must file either an [Affidavit of Benefit Eligible Dependent Status](#) or a [Statement of Domestic Partnership for Non-Health Benefits](#) in order to take family medical leave due to a serious health condition for a domestic partner. The City of Portland recognizes both same sex and heterosexual domestic partnerships.

Process for Taking and Receiving Family Leave

Employees who request a leave of absence, or who are absent for a reason that may qualify as family leave must comply with the process for taking and receiving family leave in accordance with this rule and the applicable FMLA and OFLA regulations in order to obtain the protections afforded by the laws. If the City is aware that the reason for the absence may qualify as family leave, the City will begin the eligibility and qualification process, even if the employee does not specifically request family medical leave.

Notification Requirements

Employees are required to give the City thirty (30) days' notice of the need for leave when it is foreseeable (such as in the case of childbirth or planned medical treatment for a serious health condition) by completing a FMLA/OFLA Leave of Absence Application form and providing it to their supervisor or responsible administrator. If the need for the leave is unforeseeable, the employee must give verbal notice to the City as soon as it is possible and practical after the need for leave becomes known to the employee and provide a [FMLA/OFLA Leave of Absence Application](#). Requests for family medical leave must be made to the immediate supervisor or responsible administrator. The request must include enough information to make the supervisor or administrator aware that the employee needs or is seeking family medical leave and the anticipated timing and duration of the leave.

An employee seeking Oregon Military Family Leave must provide notice of the intent to take leave within five (5) business days of receiving official notice of an impending call or order to active duty or of a leave from deployment, or as soon as practicable when official notice is provided less than five days from the commencement of leave.

An employee seeking OFLA Bereavement Leave may commence leave without prior notice but must provide verbal or written notice within twenty-four (24) hours of taking leave and provide a completed FMLA/OFLA Leave of Absence Application to their supervisor or responsible administrator within three days of returning to work.

Upon receipt of an employee's written request for leave or information indicating the employee is requesting family leave, the responsible administrator shall provide the employee with a written notice containing information about eligibility for family medical leave, certification requirements, use of accrued leave, health insurance coverage, and other rights and responsibilities consistent with this rule and federal and state law.

Once enough information is received to determine whether the absence will be designated as FMLA or OFLA leave, the City will inform the employee of the amount of leave counted against the employee's leave entitlement, and any requirements regarding the employee's return to work.

Certification Requirements

An employee's request for family medical leave due to the employee's serious health condition or to care for the employee's qualifying family member with a serious health condition requires written medical certification from a health care provider as soon as possible but no later than fifteen (15) calendar days following a request for certification by the supervisor or administrator. An employee requesting Qualifying Exigency Leave (FMLA) is required to complete a Certification of Qualifying Exigency for Military Leave including written documentation confirming the military member's call to active duty. A copy of the military member's active duty orders is required for an employee requesting Oregon Military Family Leave. [See the City's Certification Forms.](#)

Employees who use sick child leave on all or any part of three separate days during a leave year may be required to provide a doctor's note on the fourth day or subsequent occurrence of sick child leave within the leave year. The certification may be a doctor's note but it must include the name of the child, dates the child was sick, the opinion of the doctor that the child was sick and required home care, and the doctor's signature.

A new medical certification may be required within the leave year under the following conditions:

1. The employee requests extension of leave;
2. Circumstances described by the previous certification have changed significantly; or
3. The City receives information that casts doubt upon the employee's stated reason for the absence.

The cost of any medical verification not covered by insurance or other benefits will be paid for by the City of Portland.

An employee who fails to submit a timely, fully completed certification, after being notified of the requirement for medical certification, may be denied family medical leave coverage for the absence.

Eligible Health Care Providers

Eligible health care providers under FMLA and/or OFLA include:

- Doctors of medicine or osteopathy who are state licensed
 - Podiatrists, dentists, clinical psychologists, optometrists, chiropractors authorized to practice in their respective states
 - Nurse practitioners, direct entry midwife, nurse midwives, and clinical social workers authorized to practice under state law
 - Christian Science Practitioners listed with the First Church of Christ Scientists in Boston, Massachusetts
 - Any health care provider from whom the City's health plan will accept certification of the existence of a serious health condition to substantiate a claim for benefits
 - Naturopaths
 - Midwives
 - Licensed physician's assistants
 - Registered Nurse providing medical services within the scope of their license
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Intermittent/Reduced Schedule Leave

Employees may take intermittent leave or work a reduced schedule when medically necessary for the employee's own serious health condition or to care for a family member with a serious health condition.

An employee must make a reasonable effort to schedule treatment for serious health conditions in a manner that does not unduly disrupt City business.

Parental leave must be taken in one uninterrupted period, unless otherwise approved by the employee's supervisor. City Paid Parental Leave must always be taken in one uninterrupted period.

Parental leave taken for the purpose of arranging the adoption of a child does not have to be taken in one, uninterrupted period, except for the use of City Paid Parental Leave.

Oregon Military Family Leave and Qualifying Exigency Leave may be taken intermittently.

During a period of intermittent leave, an employee may be transferred to an alternate position (with the same pay) provided that the transfer is voluntary on the part of the employee, and the transfer is consistent with all applicable collective bargaining agreements

City Paid Parental Leave Rate of Pay and Accrual

The employee's pay while on City Paid Parental Leave shall be their current rate of pay excluding any premiums or out of class pays. No employee may be absent on City Paid Parental Leave for more than 6 calendar weeks, regardless of work schedule or assignment. No employee may receive more pay while on City Paid Parental Leave than they would have received if working.

Sick and vacation leave shall continue to accrue while an employee is on City Paid Parental Leave. When a holiday falls during City Paid Parental Leave, the holiday will be paid as part of the employee's Paid Parental Leave. The holiday will be coded as City Paid Parental leave and does not increase the allowed maximum of one continuous period of paid parental leave, not to exceed six (6) calendar weeks per event.

Unused City Paid Parental Leave does not carry over to the next calendar year nor will it be paid out in cash if not used. Employees who are leaving City employment for any reason may not elect to use City Paid Parental Leave to extend their employment with the City.

Use of Accrued Paid Leaves During FMLA/OFLA/ WFCA Leave

Employees are required to use accrued paid leave, including personal time, vacation, compensatory time, management leave and, when applicable, sick leave, prior to a period of unpaid leave of absence. Accrued paid leave must be used in the order listed below, based on each reason for leave. Use of accrued paid leaves will run concurrently with family medical leave. Represented employees may reserve accrued leave and compensatory time if provided by their collective bargaining agreement. Non-represented employees may reserve a total of eighty (80) hours of combined compensatory time and vacation leave for future use.

Employee Medical Leave

An employee must exhaust all sick leave, personal time, management leave, deferred holidays, unreserved vacation leave and unreserved compensatory time before taking unpaid leave.

Family Care Medical Leave, Military Caregiver Leave, OFLA Sick Child Leave

Employees may use their choice of earned sick leave or other earned paid time off (e.g., vacation, management leave, personal days) to care for a covered family member with a health condition that requires treatment or supervision or who has a serious health condition or an emergency condition.

Parental Leave

An employee must first exhaust all City Paid Parental Leave. After City Paid Parental Leave is exhausted, an employee may choose the order in which to use their accrued paid leave.

Qualifying Exigency Leave

An employee must exhaust all personal time, management leave, deferred holidays, unreserved vacation leave and unreserved compensatory time before taking unpaid leave.

Oregon Military Family Leave Act

An employee may choose to use paid or unpaid leave. If an employee chooses to use paid leave, they may choose the order in which to use the leave.

OFLA Bereavement Leave

An employee must exhaust all sick leave, personal time, management leave, deferred holidays, unreserved vacation leave and unreserved accrued compensatory time before taking unpaid leave. An employee may choose the order in which to use their accrued paid leave. In no event may an employee use sick leave under this section to extend family leave beyond twelve (12) workweeks per calendar year.

Continuation of Benefits

If an employee is eligible and qualifies under the Federal Family Medical Leave (FMLA) and/or the Oregon Family Leave Act (OFLA), the City will maintain their group health insurance coverage during FMLA and/or OFLA leave as if the employee had continued to work.

Any share of health plan premiums normally paid by the employee prior to leave must continue to be paid by the employee during the leave period. If the employee's failure to make the premium payment leads to a lapse in coverage, the City shall upon the employee's return to work, restore the health coverage equivalent to that which the employee would have had if leave had not been taken and the premium payments had not been missed.

The City may recover premiums paid for an employee's insurance if the employee fails to return after the period of leave to which the employee is

entitled has expired unless there is a continuation, recurrence or onset of a serious health condition.

Employees should check with the Health and Financial Benefits office to resolve any questions regarding the continuation of health care benefits.

Return to Work

When an employee takes leave for his/her own serious health condition, the employee must provide a certification from the employee's health care provider that the employee is able to resume work prior to commencing work. The employee shall be reinstated to their former position if the job still exists. Employees are still subject to nondiscriminatory employment actions such as layoff or discipline that would have been taken without regard to the employee's leave. An employee must return to work on the date specified and mutually agreed upon by the parties.

Timeframe for Leave

For purposes of determining an employee's entitlement to family medical leave, including City Paid parental Leave a calendar year period (January through December) shall be used except the leave entitlement to Military Caregiver Leave (FMLA), which is based on a single twelve (12) - month period beginning the first day of leave and ending twelve (12) months after that date.

Other Leaves

Employees who require additional leave from work beyond the leave provided under FMLA and OFLA may request the use of any remaining accrued paid leave or unpaid leave. Such additional leave is granted solely at the discretion of the bureau director, unless otherwise required by law, and the provisions of state and federal law governing family medical leave do not apply, including, but not limited to, continued City-paid benefits unless the employee continues in a pay status during the extension. Employees may also contact supervisors regarding [Catastrophic Leave](#) or Long-Term Disability or request a [medical layoff](#).

If an employee is otherwise eligible for City Paid Parental Leave but has already exhausted all available FMLA/OFLA leave, they will be entitled to take City Paid Parental Leave under this rule. Such leave shall be considered protected even though it is not FMLA or OFLA for purposes of evaluating the employee's overall attendance record.

Worker's Compensation

A leave of absence which qualifies as an accepted workers' compensation claim or an accepted service related disability claim shall not run concurrently with family medical leave, except as required by federal law.

References

Family Medical Leave Act 29 USC 2601-2654 and Federal Regulations Part 825; Oregon Revised Statute 659.479-659.494; Americans with Disabilities Act 42 USC 2101 et seq; Fair Labor Standards Act 29 USC 216(b); OAR 839-009.

Attachment A

DEFINITION OF SERIOUS HEALTH CONDITION

A "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. **Hospital Care** - Inpatient care (i.e. overnight stay in a hospital, hospice, or residential medical facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
2. **Absence Plus Treatment** - 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:
 - A. Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider of health care services (e.g., physical therapist) under order of, or on referral by, a health care provider, or
 - B. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment 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.)
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 (non-Chronic 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).
7. **An illness, disease or condition that poses an imminent danger of death, is terminal in prognosis, or requires constant care (OFLA).**

[Family and Medical Leave Act \(FMLA\) Poster | U.S. Department of Labor](#)

[Oregon Family Leave Act \(OFLA\) Poster | State of Oregon](#)

History

Adopted by Council March 6, 2002, Ordinance No. 176302

Effective April 5, 2002

Revised October 15, 2002

Revised July 28, 2003

Revised July 1, 2004

Revised March 2, 2005, Ordinance No. 179094

Revised July 9, 2007

Revised May 9, 2008

Revised April 17, 2009

Revised January 1, 2010

Revised October 19, 2010

Revised November 4, 2011

Revised December 4, 2013

Revised January 1, 2014

Revised January 1, 2016, Ordinance No. 187473

Revised April 25, 2016

Revised February 15, 2018

Revised February 13, 2019

Interim rule revision June 6, 2022

Related documents

 [6.05-family-medical-leave.pdf](#) 802.74 KB



City of Portland Core Values:

Anti-racism | Equity | Transparency | Communication | Collaboration | Fiscal Responsibility

6.05 FAMILY MEDICAL LEAVE

General

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Employees may not work elsewhere, including self-employment, while on family medical leave.

**Eligibility for Family
Medical Leave**

Federal Law

Family Medical Leave Act (FMLA)

Employee must have been employed by the City of Portland for at least twelve (12) months, and worked at least 1250 hours during the twelve (12) month period immediately preceding the leave.

State Law

Oregon Family Leave Act (OFLA)

Employee must have been employed by the City for at least 180 calendar days immediately preceding the leave and have worked for an average of at least twenty-five (25) hours per week during the 180 days immediately preceding the leave. Employees are eligible for parental leave after being employed for 180 calendar days, without regard to the number of hours worked per week.

Oregon Military Family Leave Act (OMFLA)

Employee must have worked an average of twenty (20) hours per week for the City on the date OMFLA leave begins.

In determining the twelve (12) calendar months and 180 calendar days, the number of days an employee has been on the payroll are counted, including all paid and unpaid time. The 1250 hours, twenty-five (25) hours per week, and twenty (20) hours per week minimums are actual hours worked.

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City Paid Parental Leave is leave taken to bond and care for a newborn child or newly adopted child. City Paid Parental Leave may also be taken for new Foster Care placement of a child. For the purposes of City Paid Parental Leave, Foster Care means a new, temporary living arrangement in the employee's home for minor children provided through a state-certified Foster Care program. Placement in the employee's home is made by or with the agreement of the State and involves a minor child who is in the legal or physical custody and care of the State. Although Foster Care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

All regular, probationary, limited duration and temporary employees in budgeted positions are eligible for paid parental leave for up to a maximum of one continuous period not to exceed six (6) weeks in a calendar year after 180 consecutive calendar days of employment. Bureau Directors, employees in elected official offices and employees in other classifications designated as "at will" are also eligible for Paid Parental Leave after 180 consecutive calendar days of employment.

Eligible employees may receive up to a maximum of one continuous period of Paid Parental Leave, not to exceed six (6) calendar weeks, per event. An eligible employee may receive paid parental leave for one event per calendar year. The Director of Human Resources may make an exception and allow additional paid parental leave if two qualifying events occur in the same calendar year, or when extenuating circumstances exist. The birth, adoption or foster care placement of multiple children that is part of the same event does not increase the length of paid parental leave granted (e.g., birth of twins or adoption or Foster Care placement of more than one baby or child). Unused Paid Parental Leave from one event may not be carried over to a future event.

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City Paid Parental Leave must be taken continuously following birth, adoption or foster care placement. While on City Paid Parental leave, employees shall not engage in any work activity for compensation, including job-related training, nor shall an employee perform service for the City for compensation in any other capacity. Engaging in a work activity or employment for compensation while on City Paid Parental Leave will be deemed an interruption of the continuous period of paid parental leave and any remaining City Paid Parental leave approved for that event will be forfeited.

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of OFLA leave per calendar year. Leave must be completed within sixty (60) days of the date on which the employee receives notice of the death of a family member. OFLA Bereavement Leave will not run concurrently with funeral bereavement leave provided by the employee's collective bargaining agreement or with leave granted under [Administrative Rule 6.08 Funeral and Bereavement Leave](#).

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 3. One employee is needed to care for a child with a serious health condition and the other employee is suffering from a serious health condition; or
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Domestic Partners

Employees must file either an [Affidavit of Benefit Eligible Dependent Status](#) or a [Statement of Domestic Partnership for Non-Health Benefits](#) in order to take family medical leave due to a serious health condition for a domestic partner. The City of Portland recognizes both same sex and heterosexual domestic partnerships.

Process for Taking and Receiving Family Leave

Employees who request a leave of absence, or who are absent for a reason that may qualify as family leave must comply with the process for taking and receiving family leave in accordance with this rule and the applicable FMLA and OFLA regulations in order to obtain the protections afforded by the laws. If the City is aware that the reason for the absence may qualify as family leave, the City will begin the eligibility and qualification process, even if the employee does not specifically request family medical leave.

Notification Requirements

Employees are required to give the City thirty (30) days' notice of the need for leave when it is foreseeable (such as in the case of childbirth or planned medical treatment for a serious health condition) by completing a FMLA/OFLA Leave of Absence Application form and providing it to their supervisor or responsible administrator. If the need for the leave is unforeseeable, the employee must give verbal notice to the City as soon as it is possible and practical after the need for leave becomes known to the employee and provide a [FMLA/OFLA Leave of Absence Application](#). Requests for family medical leave must be made to the immediate supervisor or responsible administrator. The request must include enough information to make the supervisor

or administrator aware that the employee needs or is seeking family medical leave and the anticipated timing and duration of the leave.

An employee seeking Oregon Military Family Leave must provide notice of the intent to take leave within five (5) business days of receiving official notice of an impending call or order to active duty or of a leave from deployment, or as soon as practicable when official notice is provided less than five days from the commencement of leave.

An employee seeking OFLA Bereavement Leave may commence leave without prior notice but must provide verbal or written notice within twenty-four (24) hours of taking leave and provide a completed FMLA/OFLA Leave of Absence Application to their supervisor or responsible administrator within three days of returning to work.

Upon receipt of an employee's written request for leave or information indicating the employee is requesting family leave, the responsible administrator shall provide the employee with a written notice containing information about eligibility for family medical leave, certification requirements, use of accrued leave, health insurance coverage, and other rights and responsibilities consistent with this rule and federal and state law.

Once enough information is received to determine whether the absence will be designated as FMLA or OFLA leave, the City will inform the employee of the amount of leave counted against the employee's leave entitlement, and any requirements regarding the employee's return to work.

Certification Requirements

An employee's request for family medical leave due to the employee's serious health condition or to care for the employee's qualifying family member with a serious health condition requires written medical certification from a health care provider as soon as possible but no later than fifteen (15) calendar days following a request for certification by the supervisor or administrator. An employee requesting Qualifying Exigency Leave (FMLA) is required to complete a Certification of Qualifying Exigency for Military Leave including written documentation confirming the military member's call to active duty. A copy of the military member's active duty orders is required for an employee requesting Oregon Military Family Leave. See the City's [Certification Forms](#).

Employees who use sick child leave on all or any part of three separate days during a leave year may be required to provide a doctor's note on the fourth day or subsequent occurrence of sick child leave within the leave year. The certification may be a doctor's note but it must include the name of the child, dates the child was sick, the opinion of the doctor that the child was sick and required home care, and the doctor's signature.

A new medical certification may be required within the leave year under the following conditions:

1. The employee requests extension of leave;
 2. Circumstances described by the previous certification have changed significantly; or
 3. The City receives information that casts doubt upon the employee's stated reason for the absence.
-

The cost of any medical verification not covered by insurance or other benefits will be paid for by the City of Portland.

An employee who fails to submit a timely, fully completed certification, after being notified of the requirement for medical certification, may be denied family medical leave coverage for the absence.

Eligible Health Care Providers

Eligible health care providers under FMLA and/or OFLA include:

- Doctors of medicine or osteopathy who are state licensed
 - Podiatrists, dentists, clinical psychologists, optometrists, chiropractors authorized to practice in their respective states
 - Nurse practitioners, direct entry midwife, nurse midwives, and clinical social workers authorized to practice under state law
 - Christian Science Practitioners listed with the First Church of Christ Scientists in Boston, Massachusetts
 - Any health care provider from whom the City's health plan will accept certification of the existence of a serious health condition to substantiate a claim for benefits
 - Naturopaths
 - Midwives
 - Licensed physician's assistants
 - Registered Nurse providing medical services within the scope of their license
-

Intermittent/Reduced Schedule Leave

Employees may take intermittent leave or work a reduced schedule when medically necessary for the employee's own serious health condition or to care for a family member with a serious health condition.

An employee must make a reasonable effort to schedule treatment for serious health conditions in a manner that does not unduly disrupt City business.

Parental leave must be taken in one uninterrupted period, unless otherwise approved by the employee's supervisor. City Paid Parental Leave must always be taken in one uninterrupted period.

Parental leave taken for the purpose of arranging the adoption of a child does not have to be taken in one, uninterrupted period, except for the use of City Paid Parental Leave.

Oregon Military Family Leave and Qualifying Exigency Leave may be taken intermittently.

During a period of intermittent leave, an employee may be transferred to an alternate position (with the same pay) provided that the transfer is voluntary on the part of the employee, and the transfer is consistent with all applicable collective bargaining agreements.

**City Paid Parental Leave
Rate of Pay and Accrual**

The employee's pay while on City Paid Parental Leave shall be their current rate of pay excluding any premiums or out of class pays. No employee may be absent on City Paid Parental Leave for more than 6 calendar weeks, regardless of work schedule or assignment. No employee may receive more pay while on City Paid Parental Leave than they would have received if working.

Sick and vacation leave shall continue to accrue while an employee is on City Paid Parental Leave. When a holiday falls during City Paid Parental Leave, the holiday will be paid as part of the employee's Paid Parental Leave. The holiday will be coded as City Paid Parental leave and does not increase the allowed maximum of one continuous period of paid parental leave, not to exceed six (6) calendar weeks per event.

Unused City Paid Parental Leave does not carry over to the next calendar year nor will it be paid out in cash if not used. Employees who are leaving City employment for any reason may not elect to use City Paid Parental Leave to extend their employment with the City.

**Use of Accrued Paid Leaves
During
FMLA/OFLA/WFCA
Leave**

Employees are required to use accrued paid leave, including personal time, vacation, compensatory time, management leave and, when applicable, sick leave, prior to a period of unpaid leave of absence. Accrued paid leave must be used in the order listed below, based on each reason for leave. Use of accrued paid leaves will run concurrently with family medical leave. Represented employees may reserve accrued leave and compensatory time if provided by their collective bargaining agreement. Non-represented employees may reserve a total of eighty (80) hours of combined compensatory time and vacation leave for future use.

Employee Medical Leave

An employee must exhaust all sick leave, personal time, management leave, deferred holidays, unreserved vacation leave and unreserved compensatory time before taking unpaid leave.

Family Care Medical Leave, Military Caregiver Leave, OFLA Sick Child Leave

Employees may use their choice of earned sick leave or other earned paid time off (e.g., vacation, management leave, personal days) to care for a covered family member with a health condition that requires treatment or supervision or who has a serious health condition or an emergency condition.

Parental Leave

An employee must first exhaust all City Paid Parental Leave. After City Paid Parental Leave is exhausted, an employee may choose the order in which to use their accrued paid leave.

Qualifying Exigency Leave

An employee must exhaust all personal time, management leave, deferred holidays, unreserved vacation leave and unreserved compensatory time before taking unpaid leave.

Oregon Military Family Leave Act

An employee may choose to use paid or unpaid leave. If an employee chooses to use paid leave, they may choose the order in which to use the leave.

OFLA Bereavement Leave

An employee must exhaust all sick leave, personal time, management leave, deferred holidays, unreserved vacation leave and unreserved accrued compensatory time before taking unpaid leave. An employee may choose the order in which to use their accrued paid leave.

In no event may an employee use sick leave under this section to extend family leave beyond twelve (12) workweeks per calendar year.

Continuation of Benefits

If an employee is eligible and qualifies under the Federal Family Medical Leave (FMLA) and/or the Oregon Family Leave Act (OFLA), the City will maintain their group health insurance coverage during FMLA and/or OFLA leave as if the employee had continued to work.

Any share of health plan premiums normally paid by the employee prior to leave must continue to be paid by the employee during the leave period. If the employee's failure to make the premium payment leads to a lapse in coverage, the City shall upon the employee's return to work, restore the health coverage equivalent to that which the employee would have had if leave had not been taken and the premium payments had not been missed.

The City may recover premiums paid for an employee's insurance if the employee fails to return after the period of leave to which the employee is entitled has expired unless there is a continuation, recurrence or onset of a serious health condition.

Employees should check with the Health and Financial Benefits office to resolve any questions regarding the continuation of health care benefits.

Return to Work

When an employee takes leave for his/her own serious health condition, the employee must provide a certification from the employee's health care provider that the employee is able to resume work prior to commencing work. The employee shall be reinstated to their former position if the job still exists. Employees are still subject to nondiscriminatory employment actions such as layoff or discipline that would have been taken without regard to the employee's leave. An employee must return to work on the date specified and mutually agreed upon by the parties.

Timeframe for Leave

For purposes of determining an employee's entitlement to family medical leave, including City Paid parental Leave a calendar year period (January through December) shall be used except the leave entitlement to Military Caregiver Leave (FMLA), which is based on a single twelve (12) - month period beginning the first day of leave and ending twelve (12) months after that date.

Other Leaves

Employees who require additional leave from work beyond the leave provided under FMLA and OFLA may request the use of any remaining accrued paid leave or unpaid leave. Such additional leave is granted solely at the discretion of the bureau director, unless otherwise required by law, and the provisions of state and federal law governing family medical leave do not apply, including, but not limited to, continued City-paid benefits unless the employee continues in a pay status during the extension. Employees may also contact supervisors regarding [Catastrophic Leave](#) or [Long-Term Disability](#) or request a [medical layoff](#).

If an employee is otherwise eligible for City Paid Parental Leave but has already exhausted all available FMLA/OFLA leave, they will be entitled to take City Paid Parental Leave under this rule. Such leave shall be considered protected even though it is not FMLA or OFLA for purposes of evaluating the employee's overall attendance record.

Worker's Compensation

A leave of absence which qualifies as an accepted workers' compensation claim or an accepted service related disability claim shall not run concurrently with family medical leave, except as required by federal law.

References

Family Medical Leave Act 29 USC 2601-2654 and Federal Regulations Part 825; Oregon Revised Statute 659.479-659.494; Americans with Disabilities Act 42 USC 2101 et seq; Fair Labor Standards Act 29 USC 216(b); OAR 839-009.

Administrative Rule History

Adopted by Council March 6, 2002, Ordinance No. 176302
Effective April 5, 2002
Revised October 15, 2002
Revised July 28, 2003
Revised July 1, 2004
Revised March 2, 2005, Ordinance No. 179094
Revised July 9, 2007
Revised May 9, 2008
Revised April 17, 2009
Revised January 1, 2010
Revised October 19, 2010
Revised November 4, 2011
Revised December 4, 2013
Revised January 1, 2014
Revised January 1, 2016, Ordinance No. 187473
Revised April 25, 2016
Revised February 15, 2018
Revised February 13, 2019
Interim rule revision June 6, 2022

Attachment A

DEFINITION OF SERIOUS HEALTH CONDITION

A "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

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

2. Absence Plus Treatment

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) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider of health care services (e.g., physical therapist) under order 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** treatment 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:

- (1) 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;
- (2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- (3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)

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 (non-Chronic 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).

7. An illness, disease or condition that poses an imminent danger of death, is terminal in prognosis, or requires constant care (OFLA).

EMPLOYEE RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

LEAVE ENTITLEMENTS



Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within one year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

ELIGIBILITY REQUIREMENTS

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave;* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

*Special "hours of service" requirements apply to airline flight crew employees.

REQUESTING LEAVE

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

EMPLOYER RESPONSIBILITIES

Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

ENFORCEMENT

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.



For additional information or to file a complaint:

1-866-4-USWAGE

(1-866-437-9243) TTY: 1-877-839-5627

www.dol.gov/whd

U.S. Department of Labor | Wage and Hour Division



WH1420 REV 04/16



Oregon

Val Hoyle, Commissioner

FAMILY LEAVE ACT

NOTICE TO
EMPLOYERS AND EMPLOYEES

The Oregon Family Leave Act (OFLA) requires employers of 25 or more employees to provide eligible workers with protected leave to care for themselves or family members in cases of death, illness, injury, childbirth, adoption and foster placement.
ORS 659A.150 - 659A.186

When can an
employee take
family leave?

Employees can take family leave for the following reasons:

- **Parental Leave** during the year following the birth of a child or adoption or foster placement of a child under 18, or a child 18 or older if incapable of self-care because of a mental or physical disability. Parental leave includes leave to effectuate the legal process required for foster placement or adoption.
- **Serious health condition leave** for the employee's own serious health condition, or to care for a spouse, same-gender domestic partner, custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent, step parent, parent in law, parent of same-gender domestic partner, grandparent, grandchild, a person whom the employee is or was a relationship of in loco parentis, biological, adopted, foster or step child of an employee or the child of an employee's same-gender domestic partner.
- **Pregnancy disability leave** (a form of serious health condition leave) taken by a female employee for an incapacity related to pregnancy or childbirth, occurring before or after the birth of the child, or for prenatal care.
- **Sick child leave** taken to care for an employee's child with an illness or injury that requires home care but is not a serious health condition.
- **Bereavement leave** to deal with the death of a family member.
- **Oregon Military Family Leave** is taken by the spouse or same gender domestic partner of a service member who has been called to active duty or notified of an impending call to active duty or is on leave from active duty during a period of military conflict.

Who is eligible?

To be eligible for leave, workers must be employed for the 180 day calendar period immediately preceding the leave and have worked at least an average of 25 hours per week during the 180-day period.

Exception 1: For parental leave, workers are eligible after being employed for 180 calendar days, without regard to the number of hours worked.

Exception 2: For Oregon Military Family Leave, workers are eligible if they have worked at least an average of 20 hours per week, without regard to the duration of employment.

Exception 3: For compensable Workers Compensation injuries, for certain Workers Compensation injuries involving denied and then accepted claims and for certain accepted claims involving more than one employer.

Exception 4: When an employee is caring for a family member with a serious health condition and the same family member dies, the employee need not requalify with the 25 hour per week average to be eligible for bereavement leave

How much leave
can an employee
take?

- Employees are generally entitled to a maximum of 12 weeks of family leave within the employer's 12-month leave year.
- A woman using pregnancy disability leave is entitled to 12 additional weeks of leave in the same leave year for any qualifying OFLA purpose.
- A man or woman using a full 12 weeks of parental leave is entitled to take up to 12 additional weeks for the purpose of sick child leave.
- Employees are entitled to 2 weeks of bereavement leave to be taken within 60 days of the notice of the death of a covered family member.
- A spouse or same gender domestic partner of a service member is entitled to a total of 14 days of leave per deployment after the military spouse has been notified of an impending call or order to active duty and before deployment and when the military spouse is on leave from deployment.

What notice is
required?

Employees may be required to give 30 days notice in advance of leave, unless the leave is taken for an emergency.

Employers may require that notice is given in writing. In an emergency, employees must give verbal notice within 24 hours of starting a leave.

Is family leave
paid or unpaid?

- Although Family Leave is unpaid, employees are entitled to use any accrued paid vacation, sick or other paid leave.
- Employees are entitled to group health insurance benefits during family leave as if they continued working.

How is an
employee's job
protected?

Employers must return employees to their former jobs or to equivalent jobs if the former position no longer exists. However, employees on OFLA leave are still subject to nondiscriminatory employment actions such as layoff or discipline that would have been taken without regard to the employee's leave.

FOR ADDITIONAL INFORMATION:

Employer Assistance..... 971-873-0824

Portland..... 971-873-0761

Eugene..... 541-886-7623

Salem..... 503-378-3292

www.oregon.gov/BOLI

BOLI

Civil Rights Division

800 NE Oregon, #1045

Portland, OR 97232

January 2019

This is a summary of laws relating to Oregon Family Leave Act. It is not a complete text of the law.

Employees who have been denied available leave, disciplined or retaliated against for requesting or taking leave, or have been denied reinstatement to the same or equivalent position when they returned from leave, may file a complaint with BOLI's Civil Rights Division.

THIS INFORMATION MUST BE POSTED IN A CONSPICUOUS LOCATION