



6.05 FAMILY MEDICAL LEAVE

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 12 workweeks of unpaid leave of absence per calendar year except as noted below in the “Reasons for 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 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 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 20 hours per week for the City on the date OMFLA leave begins.

In determining the 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, 25 hours per week, and 20 hours per week minimums are actual hours worked.

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. Under OFLA, an employee who uses 12 workweeks of parental leave is entitled to take up to 12 additional workweeks of sick child leave.

Employee Medical – leave because of the employee’s own serious health condition, which prevents the employee from performing his or her 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 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 or parent. Under state law, covered family members also include same sex domestic partners, parent-in-laws, 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 servicemember 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 26 workweeks in any single 12-month period. Leave to care for a military service member, when combined with all other FMLA leave may not exceed 26 workweeks in a single 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 Military Family Leave Act – Leave for a spouse or domestic partner of a member of 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 14 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 12 weeks of OFLA leave per calendar year. Leave must be completed within 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 HR Administrative Rule 6.08 Funeral and Bereavement Leave.

Employees may not work elsewhere, including self-employment, while on family medical 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 not take FMLA or OFLA covered leave (including parental leave) at the same time unless:

1. Approved by the Bureau Director; or

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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.
 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. 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 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 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 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
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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
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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.

Parental leave must be taken within 12 months of the birth, adoption, or placement of the child. Parental leave taken for the purpose of arranging the adoption of a child does not have to be taken in one, uninterrupted period.

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.

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

Employees are required to use accrued paid leave, including personal holidays, vacation, compensatory time, management leave and, when applicable, sick leave, prior to a period of unpaid leave of absence. 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 80 hours of combined compensatory time and vacation leave for future use.

Employee Medical Leave

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

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

An employee must exhaust their accrued dependent care sick leave (a maximum of

40 hours per calendar year from their sick leave bank) if it is a covered family member as defined by the applicable collective bargaining agreement or [HR Administrative Rule 6.04 Sick Leave](#). Following exhaustion of dependent care sick leave, employees must exhaust personal holidays, management leave, unreserved vacation leave, and unreserved compensatory time before using any remaining sick leave or taking unpaid leave.

Parental Leave

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

Qualifying Exigency Leave

An employee must exhaust all personal holidays, management leave, 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, he or she may choose the order in which to use the leave.

OFLA Bereavement Leave

An employee must exhaust all sick leave, personal holiday, management leave, unreserved vacation leave and unreserved accrued compensatory time before taking unpaid 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 for Federal Family Medical Leave (FMLA), the City will maintain his or her group health insurance coverage during FMLA 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, without any waiting period or preexisting condition limitations.

If the leave qualifies only for Oregon Family Medical Leave (OFLA) or the Oregon Military Family Leave Act (OMFLA) continued health care benefits may not be paid for by the City. Employees should check with the Benefits Office to resolve any questions regarding the continuation of health care benefits.

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.

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 his or her 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 family medical leave entitlement, 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 12-month period beginning the first day of leave and ending 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](#).

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

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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).