

OREGON FAMILY LEAVE MAY NOT BE USED FOR A COMPENSABLE ON-THE-JOB INJURY

1) My mattress business has 30 employees in Oregon. Jason is a full-time driver who was involved in a truck accident while making a delivery. Jason was seriously injured and was hospitalized for a week. His doctor said he will need four to six weeks to recover. Our insurance company determined Jason has a compensable disabling injury, and his workers compensation claim was accepted. Since Jason has worked for us over two years and is eligible for Oregon Family Leave (OFLA leave), may I designate Jason's leave related to this injury as Oregon Family Leave?

Answer: No, you may not designate Jason's leave under OFLA, even though Jason has an injury that would probably qualify as a serious health condition under OFLA. A legislative amendment to OFLA that became effective January 1, 2008, provides that OFLA leave may not be used during an absence from work caused by an injury that is compensable under workers' compensation. If a business has enough employees to be covered under the federal Family Medical Leave Act (FMLA), you may designate Jason's leave under FMLA, if he is eligible.

2) During Jason's recovery his doctor released him to sedentary work before he becomes medically stationary. I offered Jason a part-time position helping the office manager to sort and file the invoices. Jason refused this light duty work, which under Oregon law means he loses his right to reinstatement or reemployment with my company. May I terminate Jason's employment at that point?

Answer: No, you may not. Under the amendment to OFLA, a worker with a compensable injury under workers' compensation, who refuses a bona fide offer of suitable light duty work, automatically commences a period of OFLA leave. The worker must be otherwise eligible for OFLA leave.

3) Does Jason have to follow my company's policy in requesting an OFLA leave upon refusing the offer of light duty work?

Answer: No, Jason does not need to give you notice that he is commencing a period of OFLA leave upon his refusing the offer of light duty work.

If you have further questions about OFLA and the changes effective January 1, 2008, please attend one of the Leave Laws Seminars conducted by BOLI's Technical Assistance for Employers Program. Seminars on this topic are scheduled for February 12 in Ontario; February 26 in Lincoln City; and February 26 and March 20 in Portland. For registration and more information, please visit www.oregon.gov/BOLI.