

Pregnancy Disability Leave and Medical Certification under the Oregon Family Leave Act

- 1) My company has enough employees to be a covered employer under the Oregon Family Leave Act (OFLA) and Family Medical Leave Act (FMLA). We use the calendar leave year method. Jenny, an employee who is eligible for OFLA and FMLA, came to work after her doctor's appointment, floating on air, and breathlessly announced that she is expecting twins. She had not said anything about taking family leave when she requested the time off for the medical appointment. Can my Human Resources Department nevertheless designate the two hours off for the doctor's appointment as family leave?**

Yes, it is the employer's responsibility to designate leave as FMLA/OFLA-qualifying and to give notice of the designation to the employee. Please be mindful that the employer's designation decision must be based only on information received from the employee or the employee's spokesperson (e.g., if the employee is incapacitated, the employee's spouse, adult child, parent, doctor, etc., may provide notice to the employer of the need to take family leave). Please do not make any designation decision based on speculations, office rumors or water cooler gossip.

- 2) Jenny comes to the Human Resources Department to fill out a family leave request for her prenatal appointments (in 2-hour blocks) for the next eight months. Can the Human Resources Department give Jenny a medical certification form for her medical provider to complete before granting the leave?**

Yes, in this case, because Jenny gave at least 30 days notice before leave was to start. If Jenny had been unable to give this much notice, the employer would have had to allow at least 15 days for Jenny to produce a doctor's certification

- 3) In September, Jenny presents a doctor's note to the Human Resources Department stating that her due date will be November 15. Jenny plans on taking 12 weeks off to stay home with the newborn babies after giving birth. Can the Human Resources Department ask for a medical certification for the upcoming parental leave?**

No. Under both OFLA and FMLA, a medical certification may not be required for parental leave.

- 4) **Max and Emma arrive on November 15, as expected. They are beautiful babies. Jenny does not call the Human Resources Department requesting pregnancy disability leave after the delivery of the twins. A Human Resources Department employee learns of the happy event because Marc, Jenny's husband, who works for the company as well, is handing out cigars to his colleagues. Can the Human Resources Department request medical certification for additional pregnancy disability leave?**

An employer could request medical certification because it has been more than 30 days since the last one presented by Jenny in September and the circumstances described by the previous certification have changed significantly in that the babies have arrived. In addition, the September doctor's note does not specify if or how long Jenny will be disabled following the delivery. However, when an authorized period of OFLA leave has ended and an employee does not return to work, an employer having reason to believe the continuing absence may qualify as OFLA leave should request additional information and not treat a continuing absence as unauthorized -- unless the requested information is not provided or the circumstances are not covered by OFLA.

If you would like to learn more about the changes in the Oregon Family Leave Act (OFLA) and the amended Family Medical Leave Act (FMLA), Technical Assistance for Employers will be conducting seminars on Leave Laws in various cities: April 16, Salem; May 6, Medford; May 8, Portland; May 14, Oregon City; and May 21, Eugene. Please visit www.oregon.gov/BOLI for registration information.