

GRANDPARENTS WILL SOON BE “OFFICIAL” FAMILY MEMBERS UNDER THE OREGON FAMILY LEAVE ACT

Q. I’ve heard that in 2008, grandparents are going to be considered “family members” for the purpose of the Oregon Family Medical Leave Act (OFLA). Is that true?

A. Yes, it is. In the past, grandparents have not been considered “family members” for the purpose of either the Federal Family and Medical Leave Act (FMLA) or the Oregon Family Leave Act (OFLA). Rather, the definition has been limited to spouses, parents and children (FMLA) and spouses, parents, children, parents-in-law, and same-sex domestic partners (OFLA).

However, OFLA was changed in the recently-adjourned 2007 session of the Oregon State Legislature. As of January 1, 2008, OFLA will require that grandparents be considered “family members” for purposes of OFLA.

At present, grandparents are not entitled to OFLA or FMLA leave for their grandchildren, unless they are in an “in loco parentis” relationship to them. “In loco parentis” is a rather archaic Latin term, but the literal translation is not so mystical. It simply means, “in the place of a parent.”

Thus, an “in loco parentis” relationship is one where an individual other than a parent has stepped into the place of a parent and assumed emotional and financial responsibility for a child. Both FMLA and OFLA specifically allow for “in loco parentis” leave and state that “a legal or biological relationship is not required” for an in loco parentis relationship to exist.

With the upcoming OFLA change, however, grandparents will become family members in their own right. As a result, even if a grandmother had never become an “in loco” parent for her grandchild, the grandmother as an employee would still be able to take OFLA leave to care for the grandchild, assuming that she was otherwise qualified for OFLA leave. Conversely, if the grandchild grows up and becomes employed by an OFLA-covered employer, she will be entitled to take OFLA leave to care for the grandmother if the grandmother has a serious health condition.

Q. So if the grandmother is taking OFLA leave as a “family member,” can the employer also count this leave against the employee’s FMLA entitlement?

A. No, because Congress did not make a similar change to FMLA. Therefore, the employee/grandmother would still have 12 weeks of leave left in her FMLA bank for any qualifying event, such as her own serious health condition.

For more information on this and other important issues affecting Oregon employers, please visit our website at www.oregon.gov/boli/ta. You can also call us at 971-673-0824.