

<b>SUBJECT:</b> Statutorily Required Leaves with and without Pay	<b>NUMBER:</b> 60.000.12
<b>DIVISION:</b> Human Resource Services Division	<b>EFFECTIVE DATE:</b> 04/09/10

**APPROVED:** Signature on file with the Human Resource Services Division

**POLICY STATEMENT:** This policy **describes** leave with and without pay granted **by** state statute.

**AUTHORITY:** ORS 10.061; 10.090; 236.040; 240.145(3); 243.325; 243.330 243.335; 401.485; 401.550; 652.250; 659A.190 to 659A.198; 659A.230; OAR 839-009-0325 thru 839-009-0365

**APPLICABILITY:** All employees subject to ORS 240, State Personnel Relations Law, where not in conflict with a collective bargaining agreement

**ATTACHMENTS:** Certification for Requested Leave to address Domestic Violence, Sexual Assault or Stalking issues

**DEFINITIONS:** See HRSD State Policy 10.000.01, Definitions; and OAR 105-010-0000

**POLICY:**

(1) LEAVES WITH PAY

(a) Court, Legislative Committee or Quasi-Judicial Body Witness Leave with Pay (ORS 659A.230(1) and 659A.236)

(A) An employee **receives leave with pay to appear in court, before a** legislative committee or **in front of a** quasi-judicial body **as a witness for matters other than official assigned duties, if a** subpoena or other proper authority **requires such appearance.** The agency should retain a copy of the summons and court release, if applicable, to support the leave.

(B) Compensation received while performing officially assigned duties **belongs to the** agency. If the appearance **occurs** during off-duty hours, the employee may keep any compensation.

(b) Jury Service Leave (ORS 10.061 & 10.090)

An employee **receives** jury leave upon request. Except where an applicable collective bargaining agreement provides otherwise, the employee **must** waive any jury fees except for expense reimbursement. The agency may request and retain a copy of the jury summons and court release, if applicable, to support the leave.

(c) Red Cross Disaster Relief Services Leave with Pay (ORS 401.378)

An agency may grant leave with pay not to exceed 15 work days to an employee to participate in disaster relief services in Oregon. To qualify for such leave the employee must be a certified disaster services volunteer of the American Red Cross. "Disaster" means **an event** designated at level II and above by the American Red Cross. The employee must present his/her currently valid disaster services American Red Cross volunteer certification at the time of the leave request. The agency should maintain a copy of the certification on file.

- (d) Search and Rescue Operation Leave with Pay (ORS [404.100](#), [404.110](#), [404.130](#) & 652.250)

**An employee receives** leave with pay not to exceed **five** work days for each operation identified by an incident number if requested by a law enforcement agency, the Department of Transportation, the United States Forest Service, or any local civil defense organization.

- (e) World, Pan American, or Olympic Event Training Leave with Pay (ORS 243.325, 243.330 & 243.335)

An agency may grant a leave-with-pay loan to participate in official training camps and competitions for World, Pan American, or Olympic events not to exceed 90 calendar days per calendar year. The conditions under which such a loan may be granted **must conform to** ORS 243.325 - 243.335.

(2) LEAVES WITHOUT PAY

- (a) The **agency has discretion** to grant leave without pay for reasons other than specified in this policy. **The agency may grant such leave** when the **employee's absence** will not seriously **affect the agency**. For the general state policy on leave without pay applicable to ORS 240 covered employees, see HRSD State Policy 60.000.11, Leave without Pay, or applicable collective bargaining agreement.

(A) Crime Victim Leave (659A.190 to 659A.198)

(i) Definitions:

- (I) Covered **employer**: an employer who employs six or more persons in Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave to attend a criminal proceeding or in the year immediately preceding the year in which an eligible employee takes leave to attend a criminal proceeding. Each agency, board and commission is a separate covered employer for the purpose of this definition.
- (II) Crime victim: a person or a member of the immediate family of the person who has suffered financial, social, psychological or physical harm as a result of a person-to-person felony, as defined in the rules of the Oregon Criminal Justice Commission, [OAR 213-003-0001\(14\)](#).
- (III) Immediate family: spouse, domestic partner, father, mother, sibling, child, stepchild, grandchild and grandparent.
- (IV) Criminal proceeding: any proceeding **that** constitutes a part of a criminal action or occurs in court in connection with a prospective, pending or completed criminal action. **This definition includes** a juvenile proceeding under ORS Chapter 419C or any other proceeding at which a crime victim has a right to be present.
- (V) Undue hardship: a significant difficulty and expense to a business including consideration of the agency's critical need for the employee.

- (B) The agency may not deny leave, but may limit the amount of leave an eligible employee takes to attend a criminal proceeding if the employee's leave creates an undue hardship to the agency. If leave is limited, the agency **must** document the occurrence and the reason for limiting leave and inform the employee in writing.
- (C) **Agencies must allow an eligible employee to use accrued vacation, personal business leave and compensatory time, and - as a last resort - leave without pay, to attend a criminal proceeding.** The agency may determine the order in which **the employee uses** accrued leave when more than one type of accrued leave is available. An employee must exhaust all accrued vacation and personal business leave and, when appropriate, compensatory time, **before** requesting leave without pay. **An eligible employee**

**will be granted** leave without pay **if he or she does not have** accrued vacation, personal business leave and compensatory time (**when appropriate**), unless the leave creates an undue hardship to the agency.

(i) An employee is eligible to take Crime Victim Leave if:

- (I) he **or** she worked for the state an average of more than 25 hours per week for at least 180 days immediately before the date the employee takes leave to attend a criminal proceeding; and
- (II) he **or** she or a member of the immediate family is a crime victim.

(ii) An eligible employee **must** give the agency:

- (I) reasonable notice of the employee's intention to take leave to attend a criminal proceeding; and
- (II) copies of any notices of scheduled criminal proceedings that the employee receives from a law enforcement agency under ORS 147.417.

(iii) All records kept by an agency regarding an eligible employee's leave, or notices received are subject to the laws **that relate** to confidentiality. **The agency must retain such records** in a separate confidential file for three years.

(iv) **An agency must** not deny leave to an eligible employee or discharge, threaten to discharge, intimidate or coerce an employee because the employee takes leave to attend a criminal proceeding.

(v) An employee **who claim** to be aggrieved by an unlawful employment practice as specified above may file a civil action under ORS 659A.885.

(D) Court Appearance (ORS 659A.230)

(i) An employee may request and **receive** leave without pay to **appear** as a plaintiff or defendant in a civil or criminal court proceeding not connected with the defendant's officially assigned duties. The agency **must** maintain documentation of the summons and court release in the employee's personnel file. For court appearance leave with pay applicable to ORS 240 covered employees see HRSD State Policy, 60.000.10, Special Leaves with Pay, or applicable collective bargaining agreement.

(ii) **An employee is granted leave without pay for a court appearance only after exhausting** accrued vacation leave and personal business leave.

(iii) For court appearances associated with Crime Victim Leave, see section (1)(a)(A) above.

(E) Leave to address Domestic Violence, Sexual Assault or Stalking issues (ORS 180)

(i) Definitions

- (I) **Covered employer:** an employer who employs six or more **persons** in Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave to address domestic violence, sexual assault or stalking, or in the year immediately preceding the year in which an eligible employee takes leave to address domestic violence, sexual assault or stalking. Each agency, board and commission is a separate covered employer for the purpose of this definition.
- (II) **Dependent:** an adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.100(2)(d) or any adult of whom **om** the employee has guardianship.

- (III) Eligible Employee: an employee **is eligible if he or she works for** a state agency on the date of the leave requested, **and if he or she has worked an average of 25 hours a week or more for a covered employer during the 180 days immediately before the first day of leave; a person is eligible if he or she is a victim of domestic violence, sexual assault or stalking; a person is eligible if he or she is the parent or guardian of a minor child or dependent who is a victim of domestic violence, sexual assault or stalking.**
  - (IV) Minor Child: biological **child**, adopted **child**, foster **child** or step child; a child with whom the employee is or was in relationship of in loco parentis. **This definition** includes the biological **child**, adopted **child**, foster **child** or stepchild of an employee's same-sex domestic partner. **A** minor child **is** under age 18.
  - (V) Protective order: an order authorized by ORS 30.866, 107.095 (1)(c), 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750 or any other order that restrains an **person** from contact with an eligible employee or the employee's minor child or dependent.
  - (VI) Undue hardship: a significant difficulty and expense to a covered employer. **This definition** includes consideration of the size of the agency and the agency's critical need for the eligible employee.
  - (VII) Victim of domestic violence: an **person** who has been a victim of abuse as defined in ORS 107.705; or any other **person** designated as a victim of domestic violence by rule adopted under ORS 659A.805. In no event will the alleged perpetrator of domestic violence be considered a victim for the purposes of this policy.
  - (VIII) Victim of sexual assault: a **person who** against whom a sexual offense has been committed as described in ORS 163.305 to 163.467 or 163.525; or any other **person** designated as a victim of sexual assault by rule adopted under ORS 659A.805. In no event will the alleged perpetrator of sexual assault be considered a victim for the purposes of this policy.
  - (IX) Victim of stalking: a **person** against whom stalking has been committed as described in ORS 163.732; or any other **person** designated as a victim of stalking by rule adopted under ORS 659A.805. In no event will the alleged perpetrator of stalking be considered a victim for the purposes of this policy
  - (X) Victim service provider: a prosecutor-based victim assistance program or a nonprofit program **that offers** safety planning, counseling, support or advocacy related to domestic violence, sexual assault or stalking.
- (ii) Agencies **must** allow an eligible employee to take reasonable leave, paid using accrued leave or unpaid, for any of the following purposes.
    - (I) To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, sexual assault or stalking;
    - (II) To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault or stalking of the eligible employee or the employee's minor child or dependent;
    - (III) To obtain, or to assist a minor child or dependent in obtaining, counseling from a licensed mental health professional related to an experience of domestic violence, sexual assault or stalking;
    - (IV) To obtain services from a victim services provider for the eligible employee or the employee's minor

child or dependent; or

- (V) To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the employee's minor child or dependent. Relocate includes:
- (i) **Time** spent moving the eligible employee or the eligible employee's minor child or dependent from one home or facility to another, including but not limited to time to pack and make **arrangements for** security or other **arrangements** for such transitions related to domestic violence, sexual assault or stalking; or
  - (ii) Transportation or other assistance required for an eligible employee or the eligible employee's minor child or dependent related to the domestic violence, sexual assault or stalking.
  - (iii) The agency **must** not deny leave, but may limit the amount of leave an eligible employee takes to address the issues **stated above**, if the employee's leave creates an undue hardship to the agency. If **the agency limits** leave, **it must** document the occurrence and the reason for limiting leave; **the agency also must** inform the employee in writing.
  - (iv) An agency **must** not discharge, threaten to discharge, demote, suspend, or in any other manner discriminate or retaliate against an employee with regard to **hiring, tenure, promotion, compensation, or the terms, conditions, or privileges of employment** on the basis of that employee having taken, requested, or inquired about leave under this policy.
  - (v) An agency must not refuse to hire an otherwise qualified person because the person is a victim of domestic violence, sexual assault or stalking.**
  - (vi) An agency must not discharge, expel or otherwise discriminate against an employee because the person has filed a complaint, testified or assisted in any proceeding in connection with the Oregon Victim of Certain Crimes Leave Act (OVCCLA).**
  - (vii)** An eligible employee **must** give the agency reasonable advance notice of **his or her** intention to take leave for the purposes identified in (1)(b)(C)(ii), unless giving the advance notice is not feasible.
  - (viii)** An agency may require an eligible employee to provide **written certification** that the leave is for the employee or the employee's minor child or dependent **who** is a victim of domestic violence, sexual assault or stalking; and the leave is taken for one of the purposes identified in (1)(b)(C)(ii). **If the agency requests** certification, the employee **must** provide **it** within a reasonable amount of time of the request.
  - (ix)** All records and information kept by an agency regarding an eligible employee's leave under this section, including the documentation that shows an employee requested or obtained leave under this section, **are** confidential. **The agency** may not release **such records** without the express permission of the employee, **or** unless otherwise required by law. **The agency must retain** this information in a separate confidential file for three years.
- (F) Peace Corps (ORS 236.040)
- (i) **A full-time salaried employee receives** leave without pay for at least two years **if he or she** provides a copy of Peace Corps appointment documents. Upon completion of service in the Peace Corps, the employee **is returned** to the last position **she or she held**, at the same salary step **and** without loss of seniority, leave accrual rate or other rights. Failure of the employee to report within 90 calendar days after completion of the Peace Corps service may result in termination.

(ii) **An employee is granted** Peace Corps leave without pay only after **exhausting** accrued vacation leave and personal business leave.

**Performance Measure:** Percentage of leaves without pay granted that are preceded by the exhaustion of appropriate accrued leave.

**Performance Standard:** 100 **percent**

**Performance Measure:** Percentage of leave without pay which has the documentation showing why leave was requested and why it was granted.

**Performance Standard:** 100 **percent**

**Statewide Policy**

**Statutorily Required Leaves with and without Pay**

**60.000.12**

Attachment

**State of Oregon**  
**Certification for Requested Leave**  
**to address Domestic Violence, Sexual Assault or Stalking issues**  
**This document is used to certify an employees request for leave to address issues of domestic violence, sexual assault or stalking as defined in Oregon Revised Statute (ORS) 107.705; 16.305 to 163.467; 163.732 or any other designation listed as a victim by rule adopted under ORS 659A.805.**

1. EMPLOYEE NAME	2. AGENCY NAME
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3. NAME OF MINOR CHILD OR DEPENDENT VICTIM:	4. DATES OF LEAVE: TO: _____ FROM: _____
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<p>5. REASON EMPLOYEE TAKING LEAVE:</p> <p>_____ I certify that I am a victim of domestic violence, sexual assault or stalking. I am requesting leave for the following reasons: (check all that apply)</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> To seek legal or law enforcement assistance or remedies to ensure my own health and safety, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, sexual assault or stalking;</li> <li><input type="checkbox"/> To seek medical treatment for or to recover from injuries caused by my own domestic violence or sexual assault to or stalking;</li> <li><input type="checkbox"/> To obtain counseling from a licensed mental health professional related to my own domestic violence, sexual assault or stalking;</li> <li><input type="checkbox"/> To obtain services from a victim services provider; or</li> <li><input type="checkbox"/> To relocate or take steps to secure a home to ensure the health and safety of the employee or the employee's minor child or dependent.</li> </ul>	<p>_____ I certify that my minor child or dependent is a victim of domestic violence, sexual assault, or stalking. I am requesting leave for the following reasons: (check all that apply)</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> To seek legal or law enforcement assistance or remedies to ensure the health and safety of my minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, sexual assault or stalking;</li> <li><input type="checkbox"/> To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to or stalking of my minor child or dependent;</li> <li><input type="checkbox"/> To obtain or to assist my a minor child or dependent in obtaining, counseling from a licensed mental health professional related to an experience of domestic violence, sexual assault or stalking;</li> <li><input type="checkbox"/> To obtain services from a victim services provider for my minor child or dependent; or</li> <li><input type="checkbox"/> To relocate or take steps to secure a home to ensure the health and safety of my minor child or dependent.</li> </ul>
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6. Certification of the above is required. I am providing one of the following as certification that I am, or my minor child or dependent is, a victim of domestic violence, sexual assault, or stalking:

1. A copy of a police report indicating that I or my minor child or dependent was a victim of domestic violence, sexual assault or stalking.
2. A copy of a protective order or other evidence from a court or attorney that I or my minor child or dependent appeared in or was preparing for a civil or criminal proceeding related to domestic violence, sexual assault or stalking.
3. Documentation from an attorney, law enforcement, health care professional, licensed mental health professional or counselor, member of the clergy or a victim services provider that I or my minor child or dependent was undergoing treatment or counseling, obtaining services, or relocating as a result of domestic violence, sexual assault or stalking.

I certify that the information provided above is true and accurate.

EMPLOYEES SIGNATURE	DATE
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**FOR HUMAN RESOURCES OFFICE USE ONLY:**

Date Received: \_\_\_\_\_  Approved  Not Approved by \_\_\_\_\_ Date: \_\_\_\_\_

Appropriate documentation:  Yes  No Copy to confidential file