

Internal Operations Manual

**SUBJECT:** Family and Medical Leave of Absence - Federal & State      **NUMBER:** 107-04-020  
**DIVISION:** Operations Division - Personnel Office      **EFFECTIVE DATE:** 9/1/06

**APPROVED:**



**POLICY/  
PURPOSE:**

It is the policy of the Department of Administrative Services (DAS) to provide leave of absence -for employees to meet family health and parental obligations, and to tend to their own serious health conditions. The DAS Personnel Office shall administer and track the process by which employees request and receive leaves of absence.

**AUTHORITY:**

Federal Family & Medical Leave Act 29 USC 2601-2654 and Federal Regulations Part 825; Oregon Family Leave Act ORS 659.103, SB 464, 1995; Americans With Disabilities Act 42 USC 12101 et seq.; Fair Labor Standards Act 29 USC 216(b); DAS-Human Resource Services Division (HRSD) State Policies 40.045.01 (e), 60.000.01 (1) (a), 60.000.05 (2); 60.000.15; and SEIU/OPEU Contract.

**APPLICABILITY:**

All Department of Administrative Services Employees. Refer to applicable Collective Bargaining Agreements for other related provisions.

**ATTACHMENTS:**

1. Leave of Absence Request Form.
2. Certification of Health Care Provider.
3. Workers Compensation Leave Choice

**GUIDELINES:**

- I. **APPLICABILITY:** Provisions of the Family Medical Leave Act (FMLA) apply unless state law or applicable collective bargaining agreements provide more generous provisions for the employee. If a leave of absence qualifies under both the FMLA and Oregon Family Leave Acts (OFLA), then Federal and State leave run concurrently. An employee, who qualifies under OFLA, and who takes leave after 180 days of employment but before one year, is still eligible to take a full 12 weeks of Federal leave after meeting the one-year requirement. **A ROLLING 12-MONTH** period measured backward from the date an employee begins a leave of absence under either or both Federal and State Leave Law shall be used to determine the 12-month eligibility period.
- II. **EMPLOYMENT & ELIGIBILITY CRITERIA:**
  - A. **Federal Family Medical Leave Act (FMLA):** Employee must have worked for an employer for at least 12 months, and for at least 1,250 hours during the year preceding leave of absence.
  - B. **Oregon Family Leave Act (OFLA):** Employee must have worked for employer for at least 180 days and an average of 25 hours per week prior to the leave. If leave is for the birth, newly adopted or newly placed foster child, there is no minimum work hour requirement.
  - C. If employee meets time-of-service requirements, the employee's request for leave of absence is reviewed in accordance with the qualifying criteria of both the Federal and State Leave law.

### **III. QUALIFYING CRITERIA**

An employee, who meets the applicable time-of-service requirements and FMLA and OFLA qualifying criteria, is eligible to receive 12 weeks of leave, as allowed by State Policy and Federal and State leave laws.

**A. FMLA** leave is granted for the following reasons:

1. For birth and care of a newborn within the first 12 months of birth.
2. For placement of a child for adoption or foster care. There is no maximum age limit.
3. To care for a family member (spouse, child, or parent) who has a serious health condition. The FMLA requires that the child be under 18 years of age, or if child is 18 years of age or older then child must be incapable of self-care because of a mental or physical disability as defined under the Americans with Disabilities Act.
4. Because of a serious health condition which renders the employee unable to perform essential job duties.

**B. Length of Leave and Other Conditions under FMLA:**

1. Federal FMLA leave is allowed for a maximum of 12 work weeks in any 12 months.
2. Federal FMLA allows an employee to take leave on an intermittent basis or on a reduced leave schedule except for the birth or placement of a child for adoption or foster care.
3. DAS-HRSD State Policy 60.000.15 requires an employee to exhaust all accrued leave while on a leave of absence under the Federal and/or Oregon leave law. The use of accrued leave begins on the first day of the employee's leave of absence. Employee may choose the type of accrued leave (vacation, sick leave, and/or personal business days) to be used during family or medical leave.

Exceptions:

- (a) Employees may choose to use accrued compensatory time while on FMLA or OFLA leave. However, the use of compensatory time may not be counted against the employee's 12-week leave entitlement.
- (b) A non-represented employee, who is receiving short-term disability insurance payments through the public Employees' Benefit Board, may choose to maintain a balance of not more than 40 hours of sick leave.
- (c) An SEIU/OPEU Represented employee can elect to save up to a maximum 40 hours of vacation and/or compensation leave.
4. If the leave is running concurrently with a workers compensation claim, they may elect to use accumulated leave – See attachment 3.
5. The Department will continue to pay its contribution towards the employee's medical and dental insurance. Employee must continue to pay for any existing "out-of-pocket" costs towards their State health insurance coverage.

6. **EMPLOYEE RIGHTS** - Under the Federal FMLA, an employee is entitled to be restored to the same position held prior to the leave **or** to an equivalent position with equal pay, benefits, and other terms and conditions of employment such as work site, work shift, and days off. If, however, the former position was eliminated as a result of a legitimate business necessity, or there is no equivalent position, then the employee is entitled to those rights as provided for under restoration and/or layoff provisions of applicable Collective Bargaining Agreement or State Policy. The employee is not entitled to greater entitlements or protection under the FMLA than what is accounted for under Collective Bargaining Agreements, statute, or State Policy.

C. **OFLA** leave is granted for the following reasons:

1. For the birth and care of a child within the first 12 months of birth.
2. For the adoption or placement of a foster child up to 18 years of age, or older than 18 years if incapable of self-care because of a physical or mental impairment within the first 12 months of placement.
3. To care for spouse, same sex-partner, parent, parent-in-law, biological, adopted, foster or stepchild with a serious medical condition.
4. The employee's own serious medical condition, which includes pregnancy disability.
5. To care for the employee's child who is suffering from an illness or injury which is not a serious medical condition, but requires home care.

D. Length of Leave and Other Conditions under **OFLA**:

1. OFLA leave is allowed for a maximum of 12 workweeks.
2. OFLA allows an employee to take leave on an intermittent basis or on reduced leave schedule except for the birth, adoption, or foster placement of a child.
3. A woman who takes a leave of absence for a Pregnancy-Related Disability is eligible to take an additional 12 weeks for the birth of a child within the first 12 months of birth, and another 12 weeks to provide at-home care for an ill or injured child. The woman is eligible for the sick child leave only if the entire 12 weeks of parental leave is taken.
4. A male employee who takes the entire 12 weeks of leave for the birth of a child, within the first 12 months of birth, may take up to an additional 12 weeks to provide at-home care for the non-serious health condition of a child.
5. DAS-HRSD State Policy 60.000.15 requires an employee to exhaust all accrued leave while on leave of absence under Federal and Oregon Leave laws. Represented employees shall be required to use accrued leave consistent with applicable Collective Bargaining Agreements. The use of accrued leave begins on the first day of the employee's leave of absence. Employee may choose the type of accrued leave (vacation, sick leave, and/or personal business days) to be used during family or medical leave.

Exceptions:

- (a) Employee may choose to use accrued compensatory time while on FMLA or OFLA leave; however, the use of compensatory time may not be counted against the employee's 12-week leave entitlement.

- (b) A non-represented employee, who is receiving short-term disability insurance payments through the public Employees' Benefit Board, may choose to maintain a balance of not more than 40 hours of sick leave.
  - (c) An SEIU/OPEU Represented employee can elect to save up to a maximum 40 hours of vacation and/or compensation leave.
6. If the leave is running concurrently with a workers compensation claim, they may elect to use accumulated leave – See attachment 3.
  7. The Department discontinues contributions towards the employee's medical and dental insurance when the leave of absence qualifies only under OFLA, and there is not sufficient accrued leave to cover all or part of the leave. The Department offers a continuation option for medical and dental insurance through COBRA, which is paid for by the employee. The Department resumes its contributions toward the employee's medical and dental insurance, and coverage becomes effective the first day of the month in which the employee returns to work, if employee returns within the 12-week entitlement period or on the day immediately following the 12-week period.
  8. **EMPLOYEE RIGHTS** - Under OFLA, an employee is entitled to be restored to the same position held prior to the leave, to include same days off, shift, duties, location, and pay. If the job was filled during the employee's absence, the replacement must be moved or laid off. If the position was eliminated as a result of a legitimate business necessity, the employee is entitled to be restored to an equivalent position with pay, benefits, and other terms and conditions of employment such as work site, work shift, and days off. If, however, there is no equivalent position, then the employee is entitled to those rights as provided for under restoration and/or layoff provisions of applicable Collective Bargaining Agreement or State Policy. The employee is not entitled to greater entitlements or protection under OFLA than what is accounted for under Collective Bargaining Agreements, statute, or State Policy.

**PROCEDURE:**

<b><u>Step</u></b>	<b><u>Responsible Party</u></b>	<b><u>Action</u></b>
1.	Employee	<p>Notifies supervisor/manager 15 days or more prior to a planned absence due to:</p> <ol style="list-style-type: none"><li>1. Pregnancy.</li><li>2. Birth of child.</li><li>3. Placement of a child for adoption or foster care.</li><li>4. Family member with a serious health condition: spouse, child, parent, parent-in-law.</li><li>5. Employee's own serious health condition.</li><li>6. Child with an illness or injury requiring at-home care.</li></ol> <p>In the event of a medical emergency or other unforeseeable event, verbal notification is provided to supervisor/manager within 24 hours and written notice is provided within 3 days upon return to work.</p>
2.	Supervisor/Manager	Notifies Personnel Office.
3.	Personnel Office	Contacts employee. Provides employee with Leave Request Form (Attachment 1) and Physician's Certification Form (Attachment 2) if applicable.

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4. Employee                      Completes and signs a Leave Request Form and returns it along with Physician Certification Form to Personnel.
  
5. Personnel Office              Approves or denies employee's request for leave and notifies payroll, supervisor and employee.
  1. Coordinates with Payroll Office to document and process leave and payroll records.
  2. The following documents are placed in the Employee Medical File, separate from the Employee Personnel File, pursuant to the Americans With Disabilities Act:
    - a. Leave of Absence Request Form.
    - b. Written records of notice.
    - c. Dates leave of absence taken.
    - d. Employee medical certification records.
  
6. Employee                      Records leave designated as family medical leave with the appropriate time sheet code after whatever type of leave is taken: a "1" code for an OFLA only event, or a "2" code (used most often) for OFLA/FMLA together (e.g., SL2-sick leave, VA2-vacation leave), or a "5" for the combination of a OFLA/FMLA/SAIF claim. Provides a doctor's release to supervisor upon return to work.
  
7. Supervisor                      Notifies Personnel Office of employee's return. Sends doctor's release and any other medical documentation to Personnel Office.

DEPARTMENT OF ADMINISTRATIVE SERVICES FAMILY AND MEDICAL LEAVE OF ABSENCE REQUEST FORM

Name: \_\_\_\_\_ ( ) Exec/Mgt. Service ( ) Classified Unrep. ( ) Classified Rep.

Supervisor: \_\_\_\_\_ I request leave of absence from \_\_\_\_\_ to \_\_\_\_\_.  
DATE DATE

**REQUEST FOR LEAVE**

- ( ) Your serious health condition - Doctor's statement for verification may be required - Federal Law and Oregon Law - Fitness for duty certification from doctor required upon return.
- ( ) Family member (son/daughter, parent {includes adoptive, foster or step-parent}, spouse) with serious health condition - Doctor's statement for verification may be required - Federal Law
- ( ) Family member (son/daughter, parent {includes adoptive, foster or step-parent}, parent-in-law, spouse, or same sex domestic partner) with serious health condition - Doctor's statement for verification may be required - Oregon Law
- ( ) Pregnancy (includes prenatal care, childbirth, recovery) - Doctor's statement for verification may be required - Federal and Oregon Law
- ( ) Care for a newborn child - Federal and Oregon Law      Estimated date of birth: \_\_\_\_\_  
 Is the child's other parent also requesting time off?      \_\_\_ Yes      \_\_\_ No  
 If yes, indicate other parent's place of employment: \_\_\_\_\_
- ( ) Placement/adoption of child - Federal and Oregon Law      Child's age:      Under 18 years      \_\_\_      Over 18 years      \_\_\_  
 Is the child's other parent also requesting time off?      \_\_\_ Yes      \_\_\_ No  
 If yes, indicate other parent's place of employment: \_\_\_\_\_
- ( ) Care for a sick child suffering from a non-serious illness or injury which requires at-home care - Oregon Law  
 Is the child's other parent, or other family relative, available and able to care for the child?      \_\_\_ Yes      \_\_\_ No
- ( ) Does your reason for Leave of Absence require a modified or reduced work schedule?      \_\_\_ Yes      \_\_\_ No  
 If yes, you must attempt to schedule leave to be the least disruptive to the operating needs of the agency.

You are required to exhaust all accrued leave (except compensatory time) while on leave of absence under the Federal FMLA and/or State OFLA. The use of your accrued leave begins on the first day of your leave of absence.

**EXCEPTION 1:** If you are not represented by a Union, and will be receiving Short Term Disability payments from Standard Insurance Company, you can elect to save up to 40 hours of your sick leave. Please check one:  
 I wish all my sick leave to be used \_\_\_Yes \_\_\_No If no, how many hours, up to 40, would you like saved? \_\_\_\_\_

**EXCEPTION 2:** If you are represented by SEIU/OPEU, you can elect to save up to a maximum 40 hours of your vacation and/or compensation leave. Please check one: I wish all my vacation leave to be used \_\_\_Yes \_\_\_No  
 If no, how many vacation hours (up to 40 VA and/or CT) would you like saved? \_\_\_\_\_

I understand that, if I do not return to work, I may be required to reimburse the Department of Administrative Services for any department paid medical and dental insurance while I am on **Leave Of Absence Without Pay**, which is permissible by Federal and State law, unless failure to return to work is due to a continuation or recurrence of a serious health condition or other circumstances beyond my control. I understand that I may be required to provide certification, medical or otherwise, and that failure to provide adequate certification may delay or disqualify my request for leave of absence under the Federal Family & Medical Leave Act and/or Oregon Family Leave Act.

Employee Signature \_\_\_\_\_ Date \_\_\_\_\_

**PERSONNEL OFFICE USE ONLY: VERIFICATION OF EMPLOYEE ELIGIBILITY FOR FEDERAL/OREGON LEAVE**

( ) Approved (CHECK ONE):      ( ) Federal FMLA      ( ) State OFLA      ( ) Federal FMLA & State OFLA

( ) Not approved Reason: \_\_\_\_\_

Personnel Office \_\_\_\_\_ Date \_\_\_\_\_

**ELIGIBILITY RULES**

If a leave qualifies under both the Federal Family Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA) and/or the Collective Bargaining Agreement, the leave shall be designated as family and medical leave. Federal and State leave shall run concurrently where applicable.

**Federal Family Medical Leave Act**

Maximum Leave: 12 weeks in any 12-month period prior to start date of leave.

## Eligibility Requirements:

- \* You must have worked for the State of Oregon at least 12 months (need not be consecutive); AND
- \* You must have worked at least 1,250 hours during the previous 12 months of employment.

## Benefits:

- \* The Department continues its contribution towards your medical and dental insurance.
- \* You must continue to pay for any existing 'out-of-pocket' costs towards your State health insurance coverage.
- \* Reinstatement to your current position or an equivalent position.

**Oregon Family Leave Act**

Maximum Leave: 12 weeks in any 12-month period prior to start date of leave for serious illness or parental leave;  
12 additional weeks for a woman's pregnancy related disability;

12 additional weeks within the same leave year for a non-serious sick or injured child. You must have used the full 12 weeks of uninterrupted parental leave to qualify for this benefit.

## Eligibility Requirements:

- \* You must have worked for the State of Oregon at least 180 days (6 months) prior to the leave; AND
- \* You must have worked an average of 25 hours or more per week during the 180 days prior to the leave.

*(Exception: No minimum work hour requirement when leave is for the care of a newborn, newly adopted or newly placed foster child.)*

## Benefits:

- \* If you do not have sufficient accrued leave (vacation, sick leave, personal business days) to cover part or all of the time you are on a leave of absence then the Department **DISCONTINUES** contributions towards your medical & dental insurance. Optional insurance is offered through COBRA, which you would need to pay for. The Department's contributions toward your medical & dental insurance resume, and your insurance becomes effective, the first of the month in which you return to work when your return to work is within the 12-week entitlement period, or the day immediately following the last day of the 12-week entitlement period.
- \* You must continue to pay for any existing 'out-of-pocket' costs towards your health insurance coverage.
- \* Reinstatement to your current position, or under certain circumstances, to an equivalent position.

**NOTE:** 1) Leave may be taken intermittently or on a reduced schedule unless leave is for the care of a newborn, newly adopted or foster child; 2) For the birth, adoption or placement of a foster child, length of leave is up to 12 weeks within 12 months of birth or placement under the Federal and State law.

**FMLA & OFLA Definitions of Serious Health Condition** - *An illness, injury, impairment, or a physical or mental condition that either involves:*

1. Inpatient care (hospitalization) - Federal & Oregon Law
2. Absence from work for more than 3 calendar days that involves continuous treatment of a health care provider - Federal Law
3. Continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days - Federal Law
4. Illness, disease or condition is terminal, requires constant care, and poses an imminent danger of death - Oregon Law
5. Disability due to pregnancy, child birth or prenatal care - Federal & Oregon Law

**IMPORTANT NOTE ABOUT YOUR MEDICAL AND DENTAL INSURANCE**

If you do not return to work, you may be required to reimburse the Department of Administrative Services for any medical and dental insurance paid for you by the Department while you were on the **FEDERAL (FMLA)** leave of absence without Pay, unless failure to return to work is due to a continuance or recurrence of a serious health condition or other circumstances beyond your control.

If you return during the 12-week entitlement period **or** the day immediately following the last day of the 12-week entitlement period, there will not be a break in your insurance coverage. Otherwise, if you return later than that, you must either work at least 1/2 the available hours in a month or work at least 80 hours in a month before your insurance becomes effective on the first day of the following month. Number of hours-worked requirement is based on your representation. Check with DAS Payroll to find out which applies to you.

## CERTIFICATION OF HEALTH CARE PROVIDER

### Federal and Oregon Family Medical Leave Acts

**Employee's Name:** \_\_\_\_\_

**Patient's Name:** *(if other than employee)* \_\_\_\_\_

**Diagnosis:** \_\_\_\_\_

**Date condition commenced:** \_\_\_\_\_

**Probable duration of condition:** \_\_\_\_\_

**A.** This patient has an **illness, injury, impairment, or physical or mental condition** which involves (or will involve) the following: (Please check all that apply.)

**Inpatient care** (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with, or consequent to, such inpatient care.

**Duration of stay:** \_\_\_\_\_

**Incapacity 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:**

a. **Treatment two or more times** by a health care provider, by a nurse or physician's assistant under supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) **OR**

b. 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. A "regimen of continuing treatment" includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition.

**Pregnancy: Any period of incapacity due to pregnancy or for prenatal care.**

**Chronic condition which:**

a. 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,

b. Continues over an **extended period of time** (including recurring episodes of a single underlying condition), and

c. May cause **episodic** rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

**Permanent or long-term condition 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 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 disease.

**Multiple treatments for non-chronic condition:**

Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider either for:

a. **Restorative surgery** after an accident or other injury, or

b. 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).

B. This health condition will **prevent the patient from performing the essential duties of his/her position for (mark A or B):**

A.  Full-time for the period of: \_\_\_\_\_ AND/OR:

B.  On an intermittent or part-time basis. **Please indicate** the likely duration and frequency of periods of incapacity. (Example: one day per week for two months; four or five days per month, etc.)  
\_\_\_\_\_

C. **CHANGED WORK SCHEDULE** (if applicable): If a **reduced** work schedule is medically necessary, please indicate what schedule this patient can work.

Work schedule:

Duration of this schedule:

**D. TO BE COMPLETED BY PHYSICIAN - RELATING TO CARE FOR THE EMPLOYEE'S SERIOUSLY ILL FAMILY MEMBER.**

a. Is the employee's presence necessary or beneficial for the care of the patient? \_\_\_\_\_

b. If yes, what type of care does the patient require from the employee?  
\_\_\_\_\_  
\_\_\_\_\_

c. Estimate the period of time necessary for the employee to provide the required care.  
\_\_\_\_\_  
\_\_\_\_\_

**E. TO BE COMPLETED BY THE EMPLOYEE – LEAVE TO CARE FOR A FAMILY MEMBER.**

a. What type of care will you provide for your family member?  
\_\_\_\_\_  
\_\_\_\_\_

b. At what times or on what schedule will this care be provided?  
\_\_\_\_\_  
\_\_\_\_\_

**NAME OF HEALTH CARE PROVIDER: (please print)**

**OFFICE PHONE NUMBER:**

**SIGNATURE OF HEALTH CARE PROVIDER:**

**DATE:**

**EMPLOYEE SIGNATURE:**

**DATE:**

**Return form to:** Department of Administrative Services (DAS) Personnel  
155 Cottage St NE  
Salem OR 97301-3974

**FAX Number:** 503-378-6879

STATE OF OREGON  
DEPARTMENT OF ADMINISTRATIVE SERVICES - PERSONNEL  
155 COTTAGE ST NE U-130  
SALEM, OREGON 97301-3974

**WORKERS' COMPENSATION ASSOCIATED LEAVE CHOICE**

If you are on authorized SAIF time-loss, you may choose one of three options of leave to cover your absence. After you have chosen one option, you may not change that option during the entire time-loss period unless approved to do so by the agency. If your accumulated leave option is exhausted, you will then be placed on approved leave-without-pay while SAIF continues to pay you time-loss checks.

Paid leave during a Workers' Compensation time loss claim is equal to the difference between the SAIF check and your regular salary rate. Time loss is paid at 2/3 of your salary (tax-free). Leave use will equal the other 1/3 not compensated by SAIF (taxed). Prorated charges will be made against accrued sick leave first. Upon exhaustion of sick leave, you then have a choice of using vacation, personal business, and/or compensatory time as indicated by your choice.



\_\_\_\_\_  
(Employee name – Please Print)

\_\_\_\_\_  
(Date of Injury)

\_\_\_\_\_  
(Employee or Social Security Number)

Choice: (Check One)

\_\_\_\_\_ Option #1 – Use accumulated sick leave until exhausted followed by LWOP.

\_\_\_\_\_ Option #2 – Use accumulated sick leave until exhausted. Once sick leave is exhausted, use accumulated leave in the following priority order:

\_\_\_\_\_ (hours) Compensatory time – priority # \_\_\_\_\_

\_\_\_\_\_ (hours) Vacation time – priority # \_\_\_\_\_

\_\_\_\_\_ (hours) Personal Business – priority # \_\_\_\_\_

\_\_\_\_\_ Option #3 – Do not use any accumulated leave time. Place me on approved leave without pay status.

**A FULL TIME RELEASE BACK TO REGULAR OR MODIFIED WORK WILL END THIS LEAVE CHOICE. SHOULD YOU GO BACK OUT ON TIME LOSS, YOU MUST FILL OUT A NEW LEAVE CHOICE FORM.**

I have read the above material and made a choice. I understand that if I do not complete and return this form to DAS Personnel, I will be placed on leave-without-pay.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

C: DAS Payroll  
DAS Safety Officer