



Family and Medical Leave Employee Packet B

FMLA Military Caregiver Leave

Please read this statement before proceeding

This packet is a summary of Family and Medical leave policy and procedures. In all cases applicable state and federal laws, rules, policies and collective bargaining agreements govern the employee's and the agency's rights and obligations; not this document.

FMLA and OFLA are not optional. The law requires the agency to provide these entitlements.

Federal and state law prohibit retaliation against an employee with respect to hiring or any other term or condition of employment because the employee asked about, requested or used Family and Medical Leave.

Family and medical leave follow:

The Federal Family and Medical Leave Act, as amended, 29 USC §§ 2601 [et seq](#); section 585 of the National Defense Authorization Act for FY 2008 and federal regulations 29 CFR Part 825.

<http://www.dol.gov/esa/whd/regs/statutes/fmla.htm>

The Oregon Family Leave Act as amended, Oregon Revised Statutes (ORS) 659A.150 through 659A.186 and ORS 659A.306 <http://www.leg.state.or.us/ors/vol14.html> and Oregon Administrative Rules (OAR) 839-009-0200 through 839-009-035, OAR 166-300-0010 through 166-300-0045, and OAR 101-030-0005 through 101-030-0027 http://arcweb.sos.state.or.us/rules/number_index.html

State HR Policy 60.000.15 Family and Medical Leave <http://oregon.gov/DAS/HR/rules.shtml>

Any applicable Collective Bargaining Agreement <http://oregon.gov/DAS/HR/CBAs.shtml>

For more information contact your FMLA/OFLA Coordinator at 503-584-3581 or your Payroll Officer at 503-584-3880.

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What is Family and Medical Leave?

The Family and Medical Leave Act (FMLA) and the Oregon Family and Medical Leave Act (OFLA) protect an eligible employee's absence from work under certain conditions. Federal and state laws determine if you are eligible and if your absence qualifies as FMLA or OFLA and how much leave time you may take.

Am I Eligible for FMLA and OFLA Leave?

The state uses a "rolling backward year" to determine an employee's FMLA and OFLA leave eligibility. This means the agency looks backward on the calendar for one year from the first day of your requested leave. This method tells the agency if you are eligible for FMLA or OFLA leave.

To be eligible for FMLA or OFLA leave you must meet the following requirements:

Employees Eligible for FMLA	Employees Eligible for OFLA
Employee must have been employed by Oregon state government for a total of at least 12 months (if months are non-consecutive there can be no more than a seven-year break in service); and	Employee must have been employed by Oregon state government for a period of 180 calendar days immediately preceding the date leave begins; and
Employee must have worked for at least 1250 hours during the 12-month period immediately preceding the leave.	Employee must have worked an average of 25 hours per week during the 180-day period, unless the leave is to care for a newborn child or newly placed adopted or foster child (Parental leave).

When counting the number of hours worked to determine qualification, the agency counts all hours the employee was actually at work, employment as a state temporary worker, and qualifying absences for military leave. Paid or unpaid leave time does not count as hours worked.

What are Qualifying Reasons to Take FMLA and OFLA Leave?

This packet specifically addresses FMLA leave for:

- **FMLA Military Caregiver leave, which is leave to care for your spouse, parent, child, or next of kin, who is a Covered Servicemember, with a serious injury or illness incurred in the line of duty on federal active duty. This is FMLA leave only.**

There are other reasons that may qualify for FMLA or OFLA leave, as follows:

Under both FMLA and OFLA, you may take leave for these reasons

1. To recover from or seek treatment for your own serious health condition that renders you incapacitated. This includes pregnancy related disability and absence for prenatal care.
2. To care for your husband or wife, your parent or your biological, adopted, step or foster child with a serious health condition who is 17 years of age or younger or incapable of self-care due to a physical or mental disability. Parent includes someone who stood "in loco parentis" (in place of a parent) when the employee was a child. Child includes someone whom the employee stands "in loco parentis".
3. For Parental leave, which is leave to care for your newborn, newly adopted or newly placed foster child in your home.

Also Under FMLA, you may take leave for this reason

FMLA Qualifying Exigency leave which is leave to tend to exigencies resulting from your spouse, parent, or child being called into federal active duty.

Under OFLA, you may also take leave for these reasons

1. To care for your same-sex domestic partner with a serious health condition.
2. To care for your own or your domestic partner's biological, adopted, step or foster child of any age with a serious health condition.
3. To care for your parent-in-law or your domestic partner's parent with a serious health condition.
4. To care for your grandparent or grandchild with a serious health condition.
5. For Sick Child leave, which is to provide care for your child or your spouse's or domestic partner's child with a non-serious health condition who needs home care. The child must be 17 years of age or younger or be incapable of self-care due to a physical or mental disability.

If you need information about FMLA and OFLA leave for a serious health condition, Parental leave, OFLA Sick Child leave or FMLA Qualifying Exigency leave, ask your supervisor or human resources or go to:

<http://oregon.gov/DAS/HR/fmla.shtml>.

What is FMLA Military Caregiver Leave?

FMLA Military Caregiver leave is only available under federal law. This leave allows eligible employees protected leave to care for the employee's spouse, parent, son, daughter or next of kin who is a covered service member with a serious injury or illness incurred in the line of duty on active duty.

Spouse: The employee's spouse is the husband or wife of the employee as defined by Oregon state law.

Parent: The employee's parent is the biological or adoptive mother or father of the employee, or an individual who stood in loco parentis (in place of a parent) when the employee was a child.

Son or Daughter: The employee's son or daughter is the biological, adopted, foster or stepchild, a legal ward, or a child of an employee standing in loco parentis. There is no age limit to a son or daughter for FMLA Military Caregiver leave.

Next of Kin: The nearest blood relative of a Covered Servicemember (other than the spouse, parent, son or daughter) in the following priority order (29 CFR 825.122(d) provides further detail):

1. A blood relative designated in writing by the servicemember, as his or her nearest blood relative.
2. Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions.
3. Brothers and sisters.
4. Grandparents.
5. Aunts and uncles.
6. First Cousins.

What is a Covered Servicemember?

A Covered Servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list. Outpatient status means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient or a military unit established to provide command and control of members of the Armed Forces receiving medical care as outpatients.

Serious Injury or Illness

A serious injury or illness is one that is incurred by the servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank or rating.

Active Duty

A federal call to duty under a call or order to active duty under a provision of law referred to in Section 101(a)(13)(B) of Title 10, United States Code.

How Much FMLA Military Caregiver Leave Do I Get?

You are entitled to up to 26 weeks of FMLA Military Caregiver leave in a single 12-month period. Your leave entitlement of 26 weeks for FMLA Military Caregiver leave is based on a "rolling forward" leave year and includes all types of FMLA leave used during the 12 month period following the date the Military Caregiver leave began. If you and your spouse both work for Oregon state government and need to take FMLA Military Caregiver leave for the same purpose, you must share your entitlement.

Leave entitlement for part-time employees and employees using FMLA intermittently:

If you are a part-time employee your leave entitlement is pro-rated. For example, if you normally work 30 hours per week, you are entitled to up to 26 weeks of leave at 30 hours per week. Leave taken on an intermittent basis is calculated by the hour. If you are a full-time employee working 40 hours per week, you are entitled to up to 1040 hours of leave. A part-time employee's hourly entitlement is prorated. For example, if you normally work 30 hours per week, your hourly entitlement is 780 hours.

Do I have to take all my FMLA Military Caregiver Leave at Once?

There are three types of FMLA Military Caregiver leave schedules.

1. Continuous leave: Leave taken in a block of time. For example, an employee takes six weeks of leave to care for their spouse who is an injured Covered Servicemember.
2. Intermittent leave: Leave taken sporadically in a minimum of one hour increments. For example, an employee misses two days of work a week to care for her parent who is an ill Covered Servicemember.
3. Reduced schedule leave: Leave taken where the employee is scheduled to work less than the employee's normal work hours in a day or week. For example, an employee normally scheduled to work eight hours a day, instead works six hours and takes the remaining two hours as FMLA Military Caregiver leave to care for his son who is an injured Covered Servicemember.

What if I Don't Want to Use FMLA Military Caregiver Leave?

If you are an eligible employee who is absent from work for a reason that qualifies as FMLA Military Caregiver leave, the agency has no choice but to designate the absence as FMLA Military Caregiver leave. The amount of paid leave an employee has accrued or the employee's desire "save FMLA Military Caregiver leave until later" are not a factor. FMLA Military Caregiver leave is not a benefit. It is an entitlement that must be applied as the need occurs.

How Do I Request FMLA Military Caregiver Leave?

You must generally give 30 calendar days notice for planned absences (paid or unpaid) related to family and medical leave. Follow agency procedures for submitting a request for leave. If you are unable to request leave in advance due to an emergency or unforeseeable event, let the agency know as soon as possible. You are not required to specifically state the leave is for FMLA Military Caregiver leave, but you must provide enough information so the agency can determine if the leave qualifies. The agency may ask for more information if necessary.

Because FMLA Military Caregiver leave is not optional, the agency can designate leave as FMLA Military Caregiver leave without your agreement.

What Happens After I Request FMLA Military Caregiver Leave?

Notice of eligibility

After you make a request for FMLA Military Caregiver leave, the agency will generally let you know within five business days if you are eligible for the leave entitlement and if the agency needs more information such as a FMLA Military Health Care Certification PD 615B.

FMLA Military Health Care Certification PD 615B

If you are required to provide a FMLA Medical Health Care Certification PD 615B, the agency will give you a FMLA Medical Health Care Certification PD 615B for completion. There is a section on the form for you and the Covered Servicemember to complete and a section that must be completed by a Health Care Provider (a United States Department of Defense (DOD) health care provider or a health care provider who is either: (1) a United States Department of Veterans Affairs (VA) health care provider, (2) a DOD TRICARE network authorized private health care provider, or (3) a DOD non-network TRICARE private health care provider)

The agency uses this information to determine if your reason for the leave qualifies under FMLA Military Caregiver leave. The FMLA Military Health Care Certification must be returned within 15 days or your leave can be denied. Denied leave means you do not have job protection under FMLA. The agency will reimburse you for any out-of-pocket costs for obtaining a required FMLA Military Health Care Certification that are not covered by your insurance. Submit those bills following the agency's procedure for requesting reimbursement.

Invitational Travel Orders and Invitational Travel Authorizations

Instead of the FMLA Medical Health Care Certification PD 615B, the agency will accept as sufficient certification "invitational travel orders" ("ITOs") or "invitational travel authorizations" ("ITAs") issued to any family member to join an injured or ill servicemember at his or her bedside. An ITO or ITA is sufficient certification only for the duration of time specified in the ITO or ITA. During that time period, an eligible employee may take leave to care for the Covered Servicemember in a continuous block of time or on an intermittent basis. After the ITO or ITA has expired, the agency may require you to provide a completed FMLA Medical Health Care Certification PD 615B in order to continue FMLA Military Caregiver leave.

Final determination

The agency will inform you once the agency has enough information to determine whether your absence qualifies as FMLA Military Caregiver leave. The agency will tell you how much FMLA Military Caregiver leave time you have available, requirements to use your paid leave, information about insurance and your reinstatement rights.

Am I Eligible for Other Protected Leave?

If the Covered Servicemember's illness or injury also is considered a serious health condition, you may be eligible for OFLA job protection to care for a family member with a serious health condition for up to 12 weeks. Your OFLA leave entitlement will run at the same time as 12 weeks of your 26 week FMLA Military Caregiver leave entitlement. The same applies to leave used for other FMLA purposes during the 12 months after the FMLA Military Caregiver leave begins. In other words, the 12-week FMLA entitlement is not in addition to the 26-week FMLA Military Caregiver leave entitlement.

Am I Paid During FMLA Military Caregiver Leave?

FMLA Military Caregiver leave is an unpaid leave. However, while on FMLA Military Caregiver leave, you must use your all paid leave (except compensatory time) before using leave without pay. You may choose whether to use your compensatory time. All paid and unpaid leave used for FMLA Military Caregiver leave purposes counts against your FMLA Military Caregiver leave entitlement. Exceptions to the requirement to use your paid leave are: (1) If you are represented, your collective bargaining agreement may allow you to reserve a certain amount and type of leave while you are on FMLA Military Caregiver leave; (2) If you are unrepresented or management service you may reserve 40 hours of sick or vacation leave while on Military Caregiver leave.

How Do I Code My Timesheet?

FMLA and OLFA leave needs to be entered correctly using the appropriate timesheet code. If you are unable to enter your own time, your supervisor will do it for you. Stop coding your timesheet as FMLA or OFLA when your FMLA or OFLA entitlement ends. Seek approval from your supervisor to use other leave or leave without pay as necessary. Refer questions about tracking your time or which code to use to your supervisor, Human Resources or agency Payroll.

Timesheet codes for FMLA and OFLA absences

Leave Type	OFLA Only	FMLA and OFLA Combination	FMLA Only	FMLA and Workers' Compensation	FMLA Exigency Leave	FMLA Exigency Leave and OFLA Combo	FMLA Military Caregiver Leave	FMLA Military Caregiver Leave and OFLA Combo
Sick (SL)	SL1	SL2	SLF	SL3	SL6	SL7	SL8	SL9
Vacation (VA)	VA1	VA2	VAF	VA3	VA6	VA7	VA8	VA9
Personal Business (PB)	PB1	PB2	PBF	PB3	PB6	PB7	PB8	PB9
Compensatory Time (PB)	CT1	CT2	CTF	CT3	CT6	CT7	CT8	CT9
Straight Time	ST1	ST2	STF	ST3	ST6	ST7	ST8	ST9
Leave Without Pay (LO)	LO1	LO2	LOF	LO3	LO6	LO7	LO8	LO9
Holiday (HO)	HO1	HO2	HOF	HO3	HO6	HO7	HO8	HO9
Governor's Leave (GL)	GL1	GL2	GLF	GL3	GL6	GL7	GL8	GL9
Bereavement Leave (FL)	FL1	FL2	FLF	FL3	FL6	FL7	FL8	FL9

Will My Insurance Continue?

Under FMLA only, if you use any amount of FMLA leave in a month, the agency pays its share of premiums for your medical, dental and employee-only basic life insurance. Your optional insurances continues as long as you use sufficient hours or use sufficient paid leave. When you are on leave without pay you may continue some of your optional insurances by paying the premiums. If you normally pay a portion of the premiums for your health insurance, you must continue timely payments during the period of leave to avoid cancellation. You may self-pay these premium payments through Payroll.

Your insurance will resume normally if you return from FMLA immediately following your FMLA absence. If you return beyond that timeframe, you must work a minimum 80 hours in the month to receive the employer contribution for the following month.

If you do not return to work following FMLA, you may be required to reimburse the agency for the full premium cost of health care coverage paid on your behalf, unless a recurrence, or continuation or onset occurs of the injured or ill Covered Servicemember, or a serious health condition occurs or the reason for not returning is beyond your control.

What Happens to My Job When I Take FMLA Military Caregiver Leave?

Upon returning from FMLA Military Caregiver leave you have a right to be restored to the position you held prior to your leave or a position with equivalent pay and benefits with the following exceptions:

If your position was eliminated through an agency layoff process, you must be treated as if you were not on FMLA Military Caregiver leave and will be treated the same as similarly situated employees in accordance with an agency policy or an applicable collective bargaining agreement.

If you are a temporary or limited duration employee, the agency will return you to your position to the extent the placement or position still exists.

If you do not return to work after your FMLA entitlement ends, you may be subject to termination under an applicable law, rule, policy or collective bargaining agreement.

What if I Need to Extend My Leave Beyond My FMLA Military Caregiver Leave Entitlement?

Your job protection ends at the exhaustion of your leave entitlement for FMLA Military Caregiver leave. If you are unable to return to work following your FMLA Military Caregiver leave, you may request an extension of your absence. The agency may grant an extension if continuing your leave does not impose undue hardship for the agency and continuing your leave complies with law, policy, or an applicable collective bargaining agreement.