



Family and Medical Leave Employee Packet C

Qualifying Exigency 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 503-584-3851 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 entitlement. 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 and how much of this leave you have available to use.

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 Qualifying Exigency leave which is leave to tend to exigencies resulting from your husband or wife, parent, or child who is called into federal active duty**

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.

Under FMLA, you may also take leave for this reason:

For FMLA Military Caregiver leave which is leave to care for your husband or wife, parent, child, or next of kin, who is a Covered Servicemember, with a serious injury or illness resulting from 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 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 Military Caregiver leave, ask your supervisor or human resources or go to:

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

What is FMLA Qualifying Exigency Leave?

FMLA Qualifying Exigency leave is protected leave to attend to qualifying exigencies when your spouse, parent, son, or daughter is on active duty or called into active duty in support of a contingency operation for the military.

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

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

Son or daughter: The biological, adopted, foster or stepchild, a legal ward, or a child of an employee standing in loco parentis. There is no age limited under the definition of son or daughter for FMLA Qualifying Exigency leave.

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.

What is a FMLA Qualifying Exigency?

The following circumstances are considered qualifying exigencies (additional detail is contained in 29 CFR 825.126):

Short notice deployment: When your covered military member receives notice that he or she will be deployed in seven days or less, you may take a maximum of seven days of FMLA Qualifying Exigency leave to address any issue arising from an impending call to duty (deployment) received by a covered military member. You must begin the leave within seven days of the deployment notice received by the military member.

Military events and activities related to deployment.

Arranging for alternative childcare or schools or providing care on an urgent, immediate need basis because of the deployment. For example: Your spouse is the deployed military member and normally provides the childcare for your children, so you use FMLA Qualifying Exigency leave while arranging for new childcare. Your spouse is the deployed military member and normally transports your child to school, so you use FMLA Qualifying Exigency leave while arranging for alternate transportation for the child. Your parent is the deployed military member and normally stays home with your sick child with a non-serious health condition, so instead you stay home with the sick child using FMLA Qualifying Exigency leave. (Note: the last example potentially qualifies under OFLA Sick Child leave also.)

Attending meetings with the school or daycare staff when the meetings are necessary due to circumstances arising from the deployment. For example: Your spouse is the deployed military member and normally attends parent-required school or daycare-related conferences and meetings, so instead you attend the meetings using FMLA Qualifying Exigency leave.

Financial and legal arrangements related to the military member's deployment.

Counseling for you, or for you to attend with the military member or your child, as the need arises from the deployment.

Up to five days to spend with a military member on rest and recuperation (R and R).

Post-deployment activities sponsored by the military (limited to a period of 90 days following the termination of the military member's active duty status.)

Leave needed to address issues related to the death of the military member.

The agency may agree to permit leave for other deployment-related activities not encompassed in the other categories.

How Much FMLA Qualifying Exigency Leave Do I Get?

You are entitled to up to 12 weeks of leave during a 12-month period if you meet the eligibility and purpose requirements measured using the rolling backward method.

Leave entitlement for part-time employees and employees using FMLA Qualifying Exigency leave 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 12 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 480 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 360 hours.

What if I Don't Want to Use FMLA Qualifying Exigency Leave?

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

How Do I Request FMLA Qualifying Exigency Leave?

You must generally give 30 calendar days notice for planned absences (paid or unpaid) for Qualifying Exigency 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 or OFLA, but you must provide enough information so the agency can determine if the leave qualifies. The agency may ask for more information if necessary.

What Happens After I Request FMLA Qualifying Exigency Leave?

Notice of eligibility

After you make a request for FMLA Qualifying Exigency 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 Qualifying Exigency Certification.

FMLA Qualifying Exigency Certification

If you are required to provide a FMLA Qualifying Exigency Certification, the agency will give you a FMLA Qualifying Exigency Certification PD 615C to complete. The agency uses this information to determine if your reason for the leave qualifies under FMLA Qualifying Exigency leave. The FMLA Qualifying Exigency Certification and any documentation you provide as required by the FMLA Qualifying Exigency Certification must be returned within 15 days or your leave can be denied. Denied leave means you do not have job protection under FMLA.

Final determination

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

Am I Paid During FMLA Qualifying Exigency Leave?

FMLA Qualifying Exigency leave is unpaid. However, while on FMLA Qualifying Exigency 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 Qualifying Exigency leave purposes counts toward your FMLA 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 Qualifying Exigency leave; (2) If you are unrepresented or management service you may reserve 40 hours of sick or vacation leave while on FMLA Qualifying Exigency 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 will continue 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 another qualifying exigency occurs, a recurrence 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 Qualifying Exigency Leave?

Upon returning from FMLA Qualifying Exigency 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 Qualifying Exigency 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 employee or on limited duration 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 Qualifying Exigency Entitlement?

If you are unable to return to work following your FMLA Qualifying Exigency leave or cannot perform all essential functions of your job, 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.