DIVISION 9

EMPLOYEE LEAVE LAWS

Oregon Family Leave Act

839-009-0210
Definitions: OFLA
(1) “Alternate duty" means work assigned to an employee that may consist of:
(a) The employee's same duties worked on a different schedule; or
(b) Different duties worked on the same or different schedule.
(2) "Child," for the purposes of parental and sick child leave only (not for the purposes of serious health condition leave or leave for the death of a family member under ORS 659A.159 (1) (e)), means a biological, adopted, foster or stepchild, the child of an employee's same-gender domestic partner or a child with whom the employee is or was in a relationship of in loco parentis. The child must be:
(a) Under the age of 18; or
(b) An adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.104 (1)(a), (3), and (4).
(3) "Covered employer" means any employer employing 25 or more persons in the state of Oregon for each working day during each of 20 or more calendar work weeks in the year in which the leave is to be taken or in the year immediately preceding the year in which the leave is to be taken.
(4) "Domestic partner" means an individual joined in a domestic partnership.
(5) "Domestic partnership" for the purposes of ORS chapter 659A means two individuals of the same sex who have received a Certificate of Registered Domestic Partnership from the State of Oregon in compliance with ORS 432.173 and rules adopted by the State Registrar of the Center for Health Statistics.
(6) "Eligible employee" means an employee employed in the state of Oregon on the date OFLA leave begins. For eligibility of employees reemployed following a period of uniformed service, see subsections (c) and (d) of this section.
(a) For the purpose of taking parental leave, an employee must be employed by a covered employer for at least 180 calendar days immediately preceding the date on which OFLA leave begins.
(b) For purposes of taking all other types of OFLA leave, including pregnancy disability leave, an employee must have worked for a covered employer for an average of at least 25 hours per week during the 180 calendar days immediately preceding the date OFLA leave begins.
(A) In determining that an employee has been employed for the preceding 180 calendar days, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. If an employee continues to be employed by a successor in interest to the original employer, the number of days worked are counted as continuous employment by a single employer.
(B) In determining 25 hours average per week, the employer must count actual hours worked using guidelines set out pursuant to the federal Fair Labor Standards Act. (See 29 CFR §785).
(c) The federal Uniformed Services Employment and Reemployment Act, 38 USC §43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. U.S. Department of Labor regulation 20 CFR §1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. Under USERRA, a reemployed service member would be eligible for leave under OFLA if the number of days and the number of hours of work for which the service member was employed by the civilian employer, together with the number of days and number of hours of work for which the service member would have been employed by the civilian employer during the period of uniformed service, meet OFLA's eligibility requirements. In the event that a service member is denied OFLA leave for failing to satisfy the OFLA days and hours of work requirement due to absence from

employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under OFLA.
NOTE: USERRA also applies to leave under the federal Family and Medical Leave Act of 1993, 29 USC §2601-2654 (FMLA).
(d) ORS 659A.082–659A.088 provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. If a reemployed service member was eligible for leave under OFLA prior to the date uniformed service began, OFLA's eligibility requirements are considered met.
(e) For the purpose of qualifying as an eligible employee, the employee need not work solely in the state of Oregon.
(7) "Family member" for purposes of serious health condition leave, sick child leave or leave for the death of a family member means the spouse, same-gender domestic partner, custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent, step parent, parent-in-law, parent of same-gender domestic partner, grandparent or grandchild of the employee, or a person with whom the employee is or was in a relationship of in loco parentis. It also includes the biological, adopted, foster or stepchild of an employee or the child of an employee's same-gender domestic partner. For the purposes of OFLA, an employee's child in any of these categories may be either a minor or an adult at the time serious health condition leave, sick child leave, or leave under ORS 659.159(1)(e) is taken.
(8) "FMLA" is the federal Family and Medical Leave Act, 29 USC §2601.
(9) “Foreseeable leave” means leave taken for a purpose set out in ORS 659A.159 that is not “unforeseeable leave” as defined in OAR 839-009-0210(22).
(10) "Foster child" means a child, not adopted, but being reared as a result of legal process, by a person other than the child's biological parent.
(11) "Gender" means an individual's assigned sex at birth, gender identity, or gender expression.
(12) "Gender expression" means the manner in which an individual's gender identity is expressed, including, but not limited to, through dress, appearance, manner, speech, or lifestyle, whether or not that expression is different from that traditionally associated with the individual's assigned sex at birth.
(13) "Gender identity" means an individual's gender-related identity, whether or not that identity is different from that traditionally associated with the individual's assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous.
(14) "Health care provider" means:
(a) A person who is primarily responsible for providing health care to an eligible employee or a family member of an eligible employee, who is performing within the scope of the person’s professional license or certificate and who is:
(A) A physician licensed to practice medicine under ORS 677.110, including a doctor of osteopathy;
(B) A podiatrist licensed under ORS 677.825;
(C) A dentist licensed under ORS 679.090;
(D) A psychologist licensed under ORS 675.030;
(E) An optometrist licensed under ORS 683.070;
(F) A naturopath licensed under ORS 685.080;
(G) A registered nurse licensed under ORS 678.050;
(H) A nurse practitioner certified under ORS 678.375;
(I) A direct entry midwife licensed under ORS 687.420;
(J) A licensed registered nurse who is certified by the Oregon State Board of Nursing as a nurse midwife nurse practitioner;
(K) A regulated social worker authorized to practice regulated social work under ORS 675.510 to 675.600;
(L) A chiropractic physician licensed under ORS 684.054, but only to the extent the chiropractic physician provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays;
(M) A physician’s assistant licensed under ORS 677.512.

(b) A person who is primarily responsible for the treatment of an eligible employee or a family member of an eligible employee solely through spiritual means, including but not limited to a Christian Science practitioner.
(15) "In loco parentis" means in the place of a parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.
(16) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.
(17) "OFLA" is the Oregon Family Leave Act, ORS 659A.150 to 659A.186.
(18) "OFLA leave" means a leave of absence for purposes described in ORS 659A.159 and OAR 839-009-0230(1) through (5). Except that "OFLA leave" does not include leave taken by an eligible employee who is unable to work because of a disabling compensable injury, as defined in ORS 656.005, unless the employee has refused a suitable offer of light duty or modified employment under ORS 659A.043(3)(a)(D) or 659A.046(3)(d). See ORS 659A.162, OAR 839-006-0131(2) and 839-006-0136(4).
(19) "OFLA leave year," for calculating the OFLA leave year entitlement, means a calendar year (January to December), a fixed 12-month period such as a fiscal year, a 12-month period measured forward from the date of the employee's first OFLA leave, or a 12-month period measured backward from the date the employee uses any OFLA leave. The option selected must be applied to all employees. In the absence of an employer policy or collective bargaining agreement defining how an OFLA leave year will be measured, a calendar year will be used.
(20) "Serious health condition" means an illness, injury, impairment or physical or mental condition of an employee or family member:
(a) That requires inpatient care in a medical care facility such as a hospital, hospice or residential facility such as a nursing home. When a family member resides in a long-term residential care facility, leave applies only to:
(A) Transition periods spent moving the family member from one home or facility to another, including time to make arrangements for such transitions;
(B) Transportation or other assistance required for a family member to obtain care from a physician; or
(C) Serious health conditions as described in (b) through (h) of section (20) of this rule.
(b) That the treating health care provider judges to pose an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;
(c) That requires constant or continuing care such as home care administered by a health care professional;
(d) That involves a period of incapacity. Incapacity is the inability to perform at least one essential job function, or to attend school or perform regular daily activities for more than three consecutive calendar days and any subsequent required treatment or recovery period relating to the same condition. This incapacity must involve:
(A) Two or more treatments by a health care provider; or
(B) One treatment plus a regimen of continuing care.
(e) That results in a period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity, such as asthma, diabetes or epilepsy;
(f) That involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, a severe stroke or terminal stages of a disease. The employee or family member must be under the continuing care of a health care provider, but need not be receiving active treatment;
(g) That involves multiple treatments for restorative surgery or for a condition such as chemotherapy for cancer, physical therapy for arthritis, or dialysis for kidney disease that if not treated would likely result in incapacity of more than three days; or
(h) That involves any period of disability of a female due to pregnancy or childbirth or period of absence for prenatal care.
(21) “Spouse” includes:
(a) Individuals in a marriage recognized under state law in the state in which the marriage was entered into;
(b) Individuals in a marriage validly performed in a foreign jurisdiction;
(c) Individuals in a common law marriage that was entered into in a state that recognizes such marriages; and

(d) Individuals who have lawfully established a civil union, domestic partnership or similar relationship under the laws of any state. Individuals described in this subsection are not required to obtain a marriage license, establish a record of marriage or solemnize their relationship.
(22) “Unforeseeable leave” means leave taken as a result of:
(a) An unexpected serious health condition of an employee or family member of an employee; or
(b) An unexpected illness, injury or condition of a child of the employee that requires home care;
(c) A premature birth or a placement for adoption or foster care the exact date of which cannot be previously determined with certainty; or
(d) The death of a family member.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150 - 659A.186, 659A.043, 659A.046

839-009-0220
Relationship of OFLA to FMLA
(1) Leave taken under FMLA counts as OFLA leave provided the employee is also eligible for OFLA leave.
(2) Provisions of OFLA will be construed to the extent possible in a manner that is consistent with any similar provisions of FMLA; however, employers subject to both OFLA and FMLA must apply in a given leave situation the provision that is more beneficial to the employee’s circumstances.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150 - 659A.186

839-009-0230
Purposes for Taking OFLA Leave
Eligible employees may take OFLA leave for the purposes commonly referred to as parental leave, serious health condition leave, pregnancy disability leave, sick child leave, and the death of a family member.
(1) Parental leave is leave taken for the birth of the employee’s child, to care for the employee's newborn, newly adopted or newly placed foster child under 18 years of age or for a newly adopted or newly placed foster child 18 years of age or older who is incapable of self-care because of a physical or mental impairment. It includes leave time to effectuate the legal process required for placement of a foster child or the adoption of a child.
(2) Serious health condition leave is leave taken:
(a) To provide care for a family member with a serious health condition as defined in OAR 839-009-0210(20); or
(b) To recover from or seek treatment for a serious health condition that renders an employee unable to perform at least one essential function of the employee's regular position.
(3) Pregnancy disability leave is leave taken by a female employee for a disability related to pregnancy or childbirth, occurring before, during or after the birth of the child, or for prenatal care. Pregnancy disability leave is a form of serious health condition leave.
(4) Sick child leave is leave taken to care for an employee's child suffering from an illness or injury that requires home care but is not a serious health condition. An employer is not required to grant leave for routine medical or dental appointments.
(5) Leave to deal with the death of a family member is leave taken to attend the funeral or alternative to a funeral of the family member, to make arrangements necessitated by the death of the family member, or to grieve the death of the family member.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150 - 659A.186

839-009-0240
Length of Leave and Other Conditions of OFLA Leave
(1) An eligible employee is entitled to up to a total of 12 weeks of OFLA leave in any one-year period.
(2) In addition to the 12 weeks of leave authorized by ORS 659A.162 (1), a female eligible employee may take a total of 12 weeks of leave within the same leave year for an illness, injury or condition related to pregnancy or childbirth that disables the employee from performing any available job duties offered by the employer. The employee may use all or part of the 12 weeks of leave authorized by 659A.162(1) and all

or part of the 12 weeks of pregnancy disability leave in any order. The employee need not exhaust either type of leave in order to use the other.
(3) An eligible employee taking the entire 12 weeks of OFLA leave authorized by ORS 659A.162 (1) for parental leave may take an additional 12 weeks of sick child leave within the same leave year. If the employee uses less than 12 weeks of parental leave, however, no additional sick child leave is available, except that the balance of the 12 weeks of OFLA leave authorized by ORS 659A.162 may be used for sick child leave or for any OFLA leave purpose.
(4) A female eligible employee may take up to 36 weeks of OFLA leave in one leave year that includes up to 12 weeks of pregnancy disability leave, 12 weeks of parental leave, and up to 12 weeks of sick child leave.
(5) An eligible employee may take up to 24 weeks of OFLA leave in one leave year under the following circumstances:
(a) The employee takes 12 weeks of parental leave, followed by:
(b) Up to 12 weeks of sick child leave.
(6) An eligible employee taking leave under ORS 659A.159(1)(e) and OAR 839-009-0230(5) to deal with the death of a family member is entitled to take up to a total of two weeks of OFLA leave for that purpose.
(a) An eligible employee is entitled to take up to two weeks of OFLA leave upon the death of each family member of the employee within any one-year period, except that the leave taken to deal with the deaths of family members may not exceed the total in ORS 659A.159(1) and subsection (1) of this rule.
(b) A covered employer may not require an eligible employee to take multiple leave periods concurrently if more than one family member of the employee dies during the one year period. If multiple family members of an eligible employee die concurrently, an eligible employee may take up to two weeks of leave for the death of each family member.
(c) All leave taken under ORS 659A.159 (1)(e) and OAR 839-009-0230(5) shall be counted toward the total period of OFLA leave authorized in ORS 659A.159(1) and subsection (1) of this rule.
(d) All leave taken for the death of a family member must be completed within 60 days of the date on which the eligible employee receives notice of the death of the family member. Notice of the death of a family member may be by any means and from any source.
(7) Two or more eligible employees who are family members of each other as defined in OAR 839-009-0210(7), working for the same covered employer, may take OFLA leave at the same time with that covered employer only under the following circumstances:
(a) One eligible family member needs to care for another eligible family member who is suffering from a serious health condition;
(b) One eligible family member needs to care for a child suffering from a serious or non-serious health condition while another eligible family member is suffering from a serious health condition;
(c) Two or more eligible family members are suffering from one or more serious health conditions;
(d) The employer allows family members to take concurrent leave; or
(e) The eligible family members are taking leave for the death of a family member pursuant to ORS 659A.159 (1) (e) and OAR 839-009-0230 (5).
(8) Unless the covered employer approves otherwise, parental leave shall be taken in one uninterrupted period, and shall be completed within 12 months of the birth, adoption or placement of the child. Exceptions shall be made:
(a) To allow intermittent parental leave to effectuate adoption or foster placement of a child. Parental leave taken to effectuate adoption or foster placement of a child is part of the total amount of parental leave available to the employee, but need not be taken in one, uninterrupted period with any remaining parental leave taken after the actual placement of the child.
(b) To allow parental leave to attend the birth of or give birth to the employee's child. Such leave need not be taken in one, uninterrupted period with any remaining parental leave taken after the birth of the child.
(9) The birth, adoption or foster placement of multiple children at one time entitles the employee to take only one 12-week period of parental leave.
(10) A covered employer need not grant sick child leave to an eligible employee if another family member of the child is willing and able to care for the child.
(11) A covered employer may not reduce the amount of OFLA leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury as defined in ORS 656.005.

(a) If an employee uses OFLA leave for a workplace injury pending acceptance of a workers' compensation claim, upon acceptance of the claim any OFLA leave used for the workplace injury must be restored to the employee. If the claim is denied, OFLA leave will be deducted from the employee's entitlement.
(b) If a worker's compensation claim is first denied and then accepted, the employer must restore any OFLA leave taken for the condition covered by worker’s compensation in the leave year in which the worker's compensation claim is accepted.
(c) Notwithstanding this rule, the employer may reduce the amount of OFLA leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury as defined in ORS 656.005 after the employee has refused a suitable offer of light duty or modified employment under ORS 659A.043 (3) (a) (D) or 659A.046(3)(d). See ORS 659A.043(4), 659A.046(5), 659A.162, OAR 839-006-0131(2) and 839-006-0136(4).
(d) An employee unable to work for an employer because of a disabling compensable injury arising out of and in the course of employment for that employer, but who is also employed by and able to work for another employer, may be eligible and qualify to use OFLA leave under the other employer.
(12) For the purpose of intermittent leave, OFLA leave entitlement is calculated for an employee by multiplying the number of hours the employee normally works per week by 12. (For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours OFLA intermittent leave; an employee normally employed to work 50 hours per week is entitled to 12 times 50 hours, or a total of 600 hours OFLA intermittent leave.)
(a) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 months worked prior to the beginning of the leave period must be used for calculating the employee's normal work week. (For example, an employee working an average of 25 hours per week is entitled to 12 times 25 hours, or a total of 300 hours OFLA leave.)
(b) If an employee takes intermittent or reduced work schedule OFLA leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of OFLA leave to which the employee is entitled.
(13) An employee who has previously qualified for and taken some portion of OFLA leave must requalify as an "eligible employee" as defined in OAR 839-009-0210(6) each time the employee begins additional OFLA leave within the same leave year. Exceptions:
(a) An employee who has been granted OFLA leave for a qualifying serious health condition of the employee or family member need not requalify under OAR 839-009-0210(6) each time the employee takes leave for the same individual and the same serious health condition during the same leave year.
(b) A female eligible employee taking, in any order, some or all of 12 weeks of OFLA pregnancy disability leave and some or all of 12 weeks of OFLA leave for any other purpose, need not requalify under OAR 839-009-0210(6) each time she takes OFLA leave within the same leave year.
(c) An employee who has taken 12 weeks of OFLA parental leave, need not requalify under OAR 839-009-0210(6) for up to an additional 12 weeks of leave within the same leave year when used for the purposes of OFLA sick child leave.
(d) An employee unable to work because of a disabling compensable injury as defined in ORS 656.005 need not requalify under OAR 839-009-0210(6) in order to use OFLA leave following a period the employee is off work due to the compensable injury.
(e) An employee who has taken serious health condition leave to care for a family member who dies during the employee’s serious health condition leave, need not requalify under OAR 839-009-0210(6) to take leave for the death of that family member.
(14) An exempt employee is a salaried executive, administrative or professional employee under the federal Fair Labor Standards Act (see 29 CFR § 541 through 541.315) or the state minimum wage and overtime laws (ORS chapters 652 and 653).
(a) When OFLA leave is also covered by FMLA and the employee takes intermittent leave in blocks of less than one day, the employer may reduce the employee's salary for the part-day absence without the loss of the employee's exempt status in accordance with OAR 839-020-0004(30)(a).
(b) When OFLA leave is not covered by FMLA (e.g., the employer has 25 to 49 employees, the leave is taken for a sick child, for the serious health condition of a parent-in-law, for the serious health condition of a registered domestic partner or for the serious health condition of a registered domestic partner's parents or for the death of a family member), and the employee takes intermittent leave in blocks of less than one

day, an employer will jeopardize the employee's exempt status if the employer reduces the employee's salary for the part-day absence.
(15)The requirements of OFLA do not apply to any employer offering eligible employees a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, that provides as one of its options employee leave at least as generous as the leave required by OFLA.
(16) ORS 659A.150 to 659A.186 and these rules do not limit any right of an employee to any leave that is similar to the leave described in 695A.159(1) and OAR 839-009-0230 and to which the employee may be entitled under any agreement between the employer and the employee, collective bargaining agreement or employer policy.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150 - 659A.186, 659A.043, 659A.046

839-009-0250
OFLA Leave: Notice by Employee; Designation by Employer; Notice by Employer Regarding Eligibility or Qualification
(1) Except in situations described in sections (2) and (3) of this rule, a covered employer may require an eligible employee to give 30 days' written notice of the need for foreseeable leave, including an explanation of the need for leave, before starting OFLA leave. The employee is not required to specify that the request is for OFLA leave.
(a) An employee able to give advance notice of the need to take OFLA leave must follow the employer's known, reasonable and customary procedures for requesting any kind of leave, absent unusual circumstances.
(b) An employer may request additional information to determine that a requested leave qualifies for designation as OFLA leave, except in cases of parental leave.
(c) The employer may provisionally designate an absence as OFLA leave until sufficient information is received to make a determination. An employee who calls in sick without providing further information will not be considered to have provided sufficient notice to trigger an employer's obligations under OFLA.
(d) An employee on OFLA leave who needs to take more leave than originally authorized must give the employer reasonable notice prior to the end of the authorized leave, following the employer's known, reasonable and customary procedures for requesting any kind of leave. However, when an authorized period of OFLA leave has ended and an employee does not return to work, an employer having reason to believe the continuing absence may qualify as OFLA leave must request additional information, and may not treat a continuing absence as unauthorized unless requested information is not provided or does not support OFLA qualification.
(2) When an employee is unable to give the employer 30 days' notice but has some advance notice of the need for leave, the employee must give the employer as much advance notice as is practicable.
(3) When taking OFLA leave in an unforeseeable situation, an employee must give verbal or written notice within 24 hours before or after commencement of the leave. This notice may be given by any other person on behalf of an employee taking unforeseeable OFLA leave. The employer may require written notice by the employee within three days of the employee's return to work.
(4) When an employee fails to give notice of foreseeable leave as required by sections (1), (2), and (3) of this rule or the employer's policies:
(a) If the leave qualifies under OFLA only and not under FMLA, the employer may reduce the total period of unused OFLA leave by an amount no greater than the number of days of leave the employee has taken without providing timely notice of leave. This reduction of leave may not exceed three weeks in a one-year leave period; and the employer may subject the employee to disciplinary action under a uniformly applied policy or practice of the employer. *See* ORS 659A.165 (4).
(b) If the leave qualifies under FMLA only, FMLA regulations apply: 29 CFR § 825.302 (Employee Notice Requirements for Foreseeable FMLA Leave) and 29 CFR §825.304 (Employee Failure to Provide Notice). FMLA regulation 29 CFR §825.304 provides that an employer may delay coverage until up to 30 days after notice was received and the employer may take appropriate action under its internal rules and procedures for failure to follows its usual and customary notification rules, as long as the actions are taken in a manner that does not discriminate against employees taking FMLA leave.
(c) If the leave qualifies under both OFLA and FMLA the employer may:

(A) Delay FMLA coverage until up to 30 days after notice was received as permitted by the FMLA regulations at 29 CFR §825.304 (this applies only to leave to which the employee is entitled under FMLA);
(B) Reduce the total period of unused OFLA leave by an amount no greater than the number of days of leave the employee has taken without providing timely notice of leave. This reduction of leave may not exceed three weeks in a one-year leave period (see ORS 659A.165 (4)). This applies only to leave to which the employee is entitled under OFLA; and
(C) In addition to actions permitted under (A) and (B), the employer may also take appropriate action under its internal rules and procedures for failure to follow its usual and customary notification rules, as long as the actions are taken in a manner that does not discriminate against employees taking OFLA or FMLA leave.
(d) A reduction of OFLA leave under (4)(a) or (4)(c)(B) of this rule may not limit OFLA leave under ORS 659A.159(e) and OAR 839-009-0230(5) for the death of a family member.
(5) An employer may not reduce an employee's available OFLA leave or take disciplinary action under (4)(a) or (c) of this rule unless the employer has posted the required Bureau of Labor and Industries Family Leave Act notice or the employer can otherwise establish that the employee had actual knowledge of the notice requirement.
(6) Except in the case of sick child leave and leave for the death of a family member, when an employee requests OFLA leave, or when the employer acquires knowledge that an employee's leave may be for an OFLA-qualifying reason, the employer must provide the employee within five business days a written request for information to verify whether the leave is OFLA-qualifying. Within five business days of receiving the requested information, the employer must notify the employee whether or not the employee is eligible and qualifies to take OFLA leave absent extenuating circumstances. All OFLA absences for the same qualifying reason are considered a single leave event and employee qualification as to that reason for leave does not change during the applicable 12-month period unless the reason is no longer qualifying. If an employer determines that an employee does not qualify for OFLA leave for the reason requested, the employer must notify the employee in writing that the employee does not qualify.
(a) The written notice that the employee does not qualify must state that the employee is ineligible or the reason for requested leave does not qualify for OFLA leave and at least one reason why the employee is not eligible or the reason does not qualify for leave.
(b) If an employer determines that an employee does not qualify for OFLA leave for the reason requested because a medical verification is incomplete or insufficient, the written notice that the employee does not qualify must state what additional information is required to make the verification complete or sufficient, and the employee must be afforded a reasonable period of time to correct the deficiency.
(7) An employer may not request medical verification of the need for sick child leave until after an employee's third occurrence of sick child leave in the same OFLA leave year.
(8) When an employee fails to respond to reasonable employer requests for medical verification of the employee's requested reason for leave to determine whether the leave is OFLA qualifying, the employer may deny use of OFLA leave until medical verification is received.
(9) An employer may not request medical verification of the need for OFLA leave for the death of a family member under ORS 659A.159 (e) and OAR 839-009-0230(5).
(10) Except in the case of sick child leave and leave for the death of a family member, when an employee requests OFLA leave, or when the employer acquires knowledge that an employee's leave may be for an OFLA-qualifying reason, the employer must provide the employee within five business days a written request for information to verify whether the leave is OFLA-qualifying. Within five business days of receiving the requested information from the employee, the employer must notify the employee whether or not the employee is eligible and qualifies to take OFLA leave absent extenuating circumstances. All OFLA absences for the same qualifying reason are considered a single leave event and employee qualification as to that reason for leave does not change during the applicable 12-month period unless the reason is no longer qualifying. If an employer determines that an employee does not qualify for OFLA leave for the reason requested, the employer must notify the employee in writing that the employee does not qualify.
(a) The written notice that the employee does not qualify must state that the employee is ineligible or the reason for requested leave does not qualify for OFLA leave and at least one reason why the employee is not eligible or the reason does not qualify for leave.

(11) An employee who has refused a suitable offer of light duty or modified employment under ORS 659A.043(3)(a)(D) or 659A.046(3)(d) and who otherwise is entitled to OFLA leave under 659A.150 to 659A.186:
(a) Automatically commences a period of OFLA leave upon refusing the offer of employment; and
(b) Need not give notice to the employer that would otherwise be required by this rule that the employee is commencing a period of leave. See ORS 659A.162, OAR 839-006-0131(2) and 839-006-0136(4).
(12) A covered employer may provide an OFLA leave request form. An example of a form that includes information for determining eligibility for OFLA leave as well as leave covered by OFLA and FMLA is found at Appendix A of this rule.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150–659A.186, 659A.043, 659A.046

839-009-0260
Medical Verification and Scheduling of Treatment
(1) An employer may require an employee to provide medical verification of the need for OFLA leave, except that an employer may not require medical verification for parental leave or for the death of a family member.
(2) All requests for medical verification must be in writing and must state the consequences for failure to provide the requested medical verification.
(3) Consistent with ORS 659A.306, the employer must pay the cost of any medical verification not covered by insurance or another benefit plan.
(4) When an employer requires eligible employees to give advance written notice of foreseeable leave and an eligible employee gives such notice, the employer may require the employee to provide medical verification of the need for OFLA leave before the leave starts.
(5) When an employee commences unforeseeable OFLA leave as defined in ORS 659A.165 (2) without prior notice, the employee must provide medical verification within 15 days of the employer's request for verification.
(6) If an employer determines that a medical verification provided by an employee is incomplete or insufficient, the employer must provide written notice that states the verification is incomplete or insufficient and the additional information needed to make it complete or sufficient.
(7) When an employee fails to respond to reasonable employer requests for medical verification of the employee's eligibility for foreseeable leave to determine whether the leave is OFLA qualifying, the employer may deny use of OFLA leave until complete or sufficient medical verification is received.
(8) An employer may not delay the use of OFLA leave when medical verification is not received before the commencement of unforeseeable leave. The employer may designate the leave as provisionally approved, subject to medical verification.
(9) If an employee submits medical verification signed by a health care provider, the employer may not directly request additional information from the employee or family member's health care provider. However, with permission from the employee or family member, a health care provider representing the employer may contact the employee or family member's health care provider to clarify or authenticate the medical verification.
(10) An employer may not request subsequent medical verifications more often than every 30 days and then only in connection with the employee's absence except when:
(a) Circumstances described by the previous medical verification have changed significantly (e.g., the duration or frequency of absences, the severity of conditions, or complications); or
(b) The employer receives information that casts doubt upon the employee's stated reason for the absence.
(11) If an employee requests OFLA leave for any purpose except parental leave or leave for the death of a family member, the employer may require the employee to obtain the opinion of a second health care provider designated by the employer, at the employer's expense. If the opinion of the second provider conflicts with the medical verification provided by the employee, the employer may require the two providers to designate a third health care provider to provide an opinion at the employer's expense (see ORS 659A.168). The opinion of the third provider is binding on both the employer and the employee.
(12) Upon request by the employee, the employer is required to provide the employee with a copy of any second and third medical opinions required under section (11) of this rule. Absent extenuating

circumstances, the requested copies must be provided within five business days after the receipt of the employee's request.
(13) When OFLA leave is taken for the employee's serious health condition, the employer may require the employee to present verification from the employee's health care provider that the employee is able to resume work before restoring the employee to work. The employer may not require the employee to obtain a second opinion about the employee's ability to return to work after taking OFLA leave. (See OAR 839-009-0270(7)).
(14) If an employee has taken sick child leave on all or any part of three separate days during a leave year, the employer may require medical verification from a health care provider on the fourth day or subsequent occurrence of sick child leave within that leave year. The employer must pay the cost of the verification not covered by insurance or another benefit plan (see ORS 659A.306). The opinion of the health care provider is binding, and the employer may not require the employee to obtain a second opinion.
(15) When possible, an employee must make a reasonable effort to schedule medical treatment or supervision at times that will minimize disruption of the employer's operation.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150 - 659A.186

Leave for Victims of Domestic Violence, Harassment, Sexual Assault or Stalking

839-009-0325
Purpose and Scope of these Rules
(1) The Civil Rights Division of the Bureau of Labor and Industries ("division") enforces ORS 659A.270 to 659A.285 which require certain employers to grant leave for victims of domestic violence, harassment, sexual assault or stalking. These rules implement and interpret 659A.270 to 659A285.
(2) The division also enforces ORS 659A.290, requiring all employers to provide reasonable safety accommodation (including use of available paid leave from employment) for, and prohibiting discrimination or retaliation against, victims of domestic violence, harassment, sexual assault or stalking. Additional rules implementing and interpreting ORS 659A.290 are found at OAR 839-005-0160 and 839-005-0170.
(3) ORS 659A.190 to 659A.198 provide for leave for crime victims to attend criminal proceedings. The division does not have authority to enforce ORS 659A.190 to 659A.198.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285

839-009-0330
Unlawful Practices under ORS 659A.270-.290; Prohibited Discrimination; Notice Obligations of All Employers; Obligations of State of Oregon as Employer
(1) It is an unlawful employment practice for an employer covered under ORS 659A.270 to 659A.285 to deny leave for victims of domestic violence, harassment, sexual assault or stalking to an eligible employee or to discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment because the employee inquires about, applies for, or takes leave as provided under 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking.
(2) It is an unlawful employment practice under ORS 659A.290 for any employer to discriminate against an individual because an individual is a victim of domestic violence, harassment, sexual assault or stalking. See OAR 839-005-0160 and 839-005-0170.
(3) Every employer covered under ORS 659A.270 to 659A.285 shall keep summaries of 659A.270 to 695A.285 and summaries of all rules promulgated for the enforcement of these statutes posted in a conspicuous and accessible place in or about the premises where the employees of the covered employer are employed. Employers may download any number of summaries from the website of the Bureau of Labor and Industries at no charge, or upon request of a printed copy from the bureau, the first copy shall be furnished without charge.
(4) Upon request, the bureau shall furnish the complete text of all rules promulgated pursuant to ORS 659A.270 to 659A.285 to any employer without charge.

(5) The State of Oregon shall annually inform all its employees of the provisions of 659A.290, regarding reasonable safety accommodations.
(6) If the State of Oregon has knowledge, or reasonably should have knowledge, that its employee is a victim of domestic violence, harassment, sexual assault or stalking and that any direct or indirect communication from a suspected or convicted perpetrator is made or attempted to be made in the workplace to the eligible employee, the State of Oregon shall immediately inform the employee and offer to report the communication to law enforcement.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285

839-009-0335 (Repealed)

839-009-0340
Definitions: Leave under ORS 659A.270–659A.285
(1) "Covered employer" means an employer who employs 6 or more individuals in the state of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking or in the year immediately preceding the year in which an eligible employee takes the leave.
(2) "Eligible employee" means an employee who is employed in the state of Oregon on the date leave begins under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking and is a victim of domestic violence, harassment, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is the victim of domestic violence, harassment, sexual assault or stalking.
(3) "Dependent" includes an adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.104(1)(a), (3), and (4) or any adult over whom the employee has guardianship.
(4) "Immediate family" of a “victim” as defined in this section includes the victim’s spouse as defined in OAR 839-009-0210(21); domestic partner; custodial parent; non-custodial parent; adoptive parent; foster parent; biological parent; step parent; parent-in-law; parent of domestic partner; sibling; child; stepchild; grandparent; grandchild; a person with whom the victim of domestic violence, harassment, sexual assault or stalking is or was in a relationship of in loco parentis; or any person who had the same primary residence as the victim at the time of the domestic violence, harassment, sexual assault or stalking.
(5) "In loco parentis" means in the place of a parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.
(6) "Minor child" for purposes of OAR 839-009-0325-.0365 and ORS 659A.270-.285 has the same meaning as “child” as defined in OAR 839-009-0210(2) for purposes of parental and sick child leave.
(7) "Parent or guardian" for purposes of an employee taking leave for a minor child or dependent who is a victim of domestic violence, harassment, sexual assault or stalking means a custodial parent, non-custodial parent, step parent, adoptive parent, foster parent, biological parent, same-gender domestic partner of a parent or an employee who is or was in relationship of in loco parentis with a minor child or a dependent.
(8) "Victim of domestic violence" means an individual who has been threatened with abuse or who is a victim of abuse as defined in ORS 107.705.
(9) “Victim of harassment” means an individual against whom harassment has been committed as described in Oregon’s criminal code at ORS 166.065.
(10) "Victim services provider" means a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, harassment, sexual assault or stalking.
(11) "Victim of sexual assault" means an individual against whom a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525
(12) "Victim of stalking" means:
(a) An individual against whom stalking has been threatened or committed as described in ORS 163.732; or
(b)An individual who has obtained a temporary or permanent court’s stalking protective under ORS 30.866.

(13) “Victim” includes any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence, harassment, sexual assault or stalking committed against a victim as defined in subsections (8), (9), (11), and (12), including a member of the victim's immediate family as defined in this rule.
(14) In no event will an alleged perpetrator of domestic violence, harassment, sexual assault, or stalking be considered a victim for the purposes of these rules.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285

839-009-0350
Length of Leave and Other Conditions of ORS 659A.270-.285
(1) A covered employer must allow an eligible employee to take reasonable leave for the purposes provided in ORS 659A.272.
(2) Reasonable leave means any amount of leave that does not cause an undue hardship on a covered employer’s business.
(3) An eligible employee must follow the covered employer's known, reasonable, and customary procedures regarding periodic reporting to the covered employer of the eligible employee's current status.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285

839-009-0355
Undue Hardship: Leave under ORS 659A.270-.285
Undue Hardship means a significant difficulty and expense to a covered employer's business and includes consideration of the size of the covered employer's business and the covered employer's critical need for the eligible employee. Other factors to consider in determining whether granting leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking will cause an undue hardship on a covered employer's business include, but are not limited to:
(1) The length of leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking requested and the relative cost to a covered employer's business;
(2) The overall financial resources of the covered employer's facility or facilities, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility if the leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking were granted;
(3) The overall financial resources of the covered employer, the overall size of the business of the covered employer with respect to the number of its employees and the number, type and location of the covered employer's facilities;
(4) The type of operations conducted by the covered employer, including the composition, structure and functions of the covered employer's workforce.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285

839-009-0360
Intermittent Leave and Alternate Duty under ORS 659A.270-.285
(1) An eligible employee may take leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking in multiple blocks of time and/or requiring an altered or reduced work schedule.
(2) A covered employer may transfer an employee on intermittent leave or a reduced work schedule into an alternate position under the same requirements for OFLA intermittent leave found in OAR 839-009-0245 (1) and (2).
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285

839-009-0362
Notice by Employee: Leave under ORS 659A.270-659A.285
(1) An eligible employee seeking leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking will give the covered employer reasonable advance notice of the employee's intention to take leave unless giving the advance notice is not feasible.
(2) When taking leave in an unanticipated or emergency situation, an eligible employee must give oral or written notice as soon as is practicable. This notice may be given by any other person on behalf of an eligible employee taking unanticipated leave.
(3) An eligible employee able to give advance notice of the need to take leave must follow the covered employer's known, reasonable and customary procedures for requesting any kind of leave;
(4) The covered employer may require the eligible employee to provide certification that:
(a) The eligible employee or the eligible employee's minor child or dependent is a victim of domestic violence, harassment, sexual assault or stalking as defined in OAR 839-009-0340(14), (15), (16) and (17); and
(b) The leave taken is for one of the purposes identified in OAR 839-009-0345.
(5) Any of the following constitutes sufficient certification:
(a) A copy of a police report indicating that the eligible employee or the eligible employee's minor child or dependent was a victim or alleged victim of domestic violence, harassment, sexual assault or stalking as defined in OAR 839-009-0340 (8), (9), (11) and (12); or
(b) A copy of a protective order (defined as 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 individual from contact with an eligible employee or the employee's minor child or dependent, 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 other evidence from a court or attorney that the eligible employee appeared in or is preparing for a civil or criminal proceeding related to domestic violence, harassment, sexual assault or stalking as defined in OAR 839-009-0340 (8), (9), (11) and (12); or
(c) Documentation from an attorney**;** law enforcement officer (defined as all police, corrections, and parole and probation officers who are included in the Public Safety Standards and Training Act as described in ORS 181.610 and 181.651); health care professional (defined as a physician or other health care practitioner who is licensed, certified or otherwise authorized by law to provide health care services); licensed mental health professional or counselor[,]**;** member of the clergy or victim services provider with or from whom the eligible employee or the eligible employee's minor child or dependent is receiving services including but not limited to treatment or counseling; assistance with relocating as a result of domestic violence, harassment, sexual assault or stalking as defined in OAR 839-009-0340 (8), (9), (11) and (12).
(6) Consistent with ORS 659A.306, the covered employer must pay the cost of any medical verification related to OAR 839-009-0345(1)(b) and (c) not covered by insurance or other benefit plan.
(7) The eligible employee will provide the certification within a reasonable time after receiving the covered employer's written request for the certification.
(8) The covered employer may provisionally designate an absence as leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking until sufficient certification is received, if requested, to make a determination.
(9) An eligible employee on leave who needs to take more leave than originally authorized should give the covered employer notice as soon as is practicable prior to the end of the authorized leave, following the covered employer's known, reasonable and customary procedures for requesting any kind of leave. However, when an authorized period of leave has ended and an eligible employee does not return to work, a covered employer having reason to believe the continuing absence may qualify as leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking may request additional information. If the covered employer requests additional information the eligible employee will provide the requested information as soon as is practicable. The covered employer may not treat a continuing absence as unauthorized unless requested information is not provided or does not support leave qualification.
(10) All records and information kept by a covered employer regarding an eligible employee's leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking, including the fact that the eligible employee has requested or obtained such leave, are confidential and

may not be released without the express permission of the eligible employee, unless otherwise required by law.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285

839-009-0363
Use of Paid Leave: ORS 659A.270-659A.285
(1) Leave is unpaid leave unless otherwise provided by:
(a) A collective bargaining agreement;
(b) The terms of an agreement between the eligible employee and the covered employer; or
(c) A covered employer's policy.
(2) An eligible employee taking leave pursuant to an agreement between the eligible employee and the covered employer, a collective bargaining agreement or a covered employer policy may use any paid accrued vacation leave or may use any other paid leave that is offered by the covered employer in lieu of vacation leave during the period of leave.
(3) Subject to the terms of any agreement between the eligible employee and the covered employer or the terms of a collective bargaining agreement or a covered employer policy, the covered employer may determine the order in which paid accrued leave is to be used when more than one type of paid accrued leave is available to the employee.
(4) An eligible employee of the State of Oregon shall be granted leave with pay for the purposes in ORS 659A.272 and OAR 839-009-0345.
(a) Leave with pay taken under this subsection is in addition to any vacation, sick, personal business, or other forms of paid or unpaid leave available to the eligible employee.
(b) The eligible employee must exhaust all other forms of paid leave before the employee may use the paid leave under this section.
(c) An eligible employee may take up to 160 hours of leave with pay authorized by ORS 659A.283 in each calendar year.
(e) The State of Oregon shall allow its eligible employee who has exhausted the 160 hours of leave with pay authorized by ORS 659A.283 to take reasonable additional unpaid leave for the purposes in ORS 659A.272 and OAR 839-009-0345.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285

839-009-0365
Enforcement and Denial of leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Harassment, Sexual Assault or Stalking
(1) A covered employer's duties and obligations under ORS 659A.270 to 659A.285 extend to a successor employer as defined in federal Family and Medical Leave Act rules at 29 CFR §825.107.
(2) It is an unlawful employment practice for a covered employer to count leave under ORS 659A.270 to 659A.285 against an employee in determining the employee's compliance with attendance policies or to count such leave against an employee when determining eligibility for bonuses based on attendance. An employee is entitled to continue eligibility for a bonus based on attendance upon return from leave under ORS 659A.270 to 659A.285 and may not be disqualified from the bonus as a result of taking leave.
(3) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of ORS 659A.270 to 659A.285 or to attempt to do so.
Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285

Oregon Military Family Leave Act (OMFLA)

839-009-0380
Definitions: OMFLA
(1) “Active duty or call to active duty status” means duty under a call or order to active duty, or notification of an impending call or order to active duty, during a contingency operation, pursuant to Title 10 of the United States Code. “Contingency operation” means a military operation that:
(A) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or
(B) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress. (See 10 U.S.C. §101(a)(13))
(2) “Covered employer” means:
(a) The State of Oregon and a department, agency, board or commission of the State of Oregon;
(b) A local government, including but not limited to a county, city, town, municipal corporation, independent public corporation or political subdivision of the State of Oregon; and
(c) A person, firm, corporation, partnership, legal representative, or other business entity that engages in any business, industry, profession, or activity in the state of Oregon and that employs 25 or more individuals in the state of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes OMFLA leave or in the year immediately preceding the year in which an eligible employee takes OMFLA leave.
(3) "Domestic partner" means an individual joined in a domestic partnership.
(4) "Domestic partnership" for the purposes of ORS chapter 659A means two individuals of the same sex who have received a Certificate of Registered Domestic Partnership from the State of Oregon in compliance with ORS 432.405(1) and rules adopted by the State Registrar of the Center for Health Statistics.
(5) “Eligible employee” means an individual who performs services for compensation for an employer for an average of at least 20 hours per week and includes all individuals employed at any site owned or operated in Oregon by an employer, but does not include independent contractors.
(a) In determining an average of at least 20 hours per week, the employer must count actual hours worked using guidelines set out pursuant to the federal Fair Labor Standards Act. (See 29 CFR § 785)
(b) For the purpose of qualifying as an eligible employee, the employee need not perform services solely in the state of Oregon.
(c) Eligibility of employees reemployed following a period of uniformed service: The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. U.S. Department of Labor regulation 20 CFR §1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. Under USERRA, a reemployed service member would be eligible for OMFLA leave if the number of days and the number of hours of work for which the service member was employed by the civilian employer, together with the number of days and number of hours of work for which the service member would have been employed by the civilian employer during the period of uniformed service, meet the eligibility requirements of these rules. In the event that a service member is denied OMFLA leave for failing to satisfy the days and hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under OMFLA.
(d) ORS 659A.082–659A.088 provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the

employee would have attained if the employee had remained continuously employed. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. If a reemployed service member was eligible for leave under OMFLA prior to the date uniformed service began, OMFLA's eligibility requirements are considered met.
(6) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.
(7) “Period of Military Conflict” means a period of war:
(a) Declared by the United States Congress;
(b) Declared by executive order of the President of the United States; or
(c) In which a reserve component of the Armed Forces of the United States is ordered to active duty pursuant to Title 32 of the United States Code or section 12301 or 12302 of Title 10 of the United States Code.
(8) “Spouse” has the meaning given in OAR 839-009-0210(21).
Stat. Auth.: ORS 659A.093 (6)
Stats. Implemented: ORS 659A.090 - 659A.099

839-009-0410
Relationship of OMFLA to OFLA
(1) An eligible employee need not be eligible for protected leave under the Oregon Family Leave Act (“OFLA”) in order to take protected leave under the Oregon Military Family Leave Act (“OMFLA”).
(2) Protected leave taken by an eligible employee under OMFLA may be included in the total amount of leave authorized under ORS 659A.162(1) of OFLA if the employee is also eligible for OFLA leave and has any leave entitlement remaining.
Stat. Auth.: ORS 659A.093(6)
Stats. Implemented: ORS 659A.090 - 659A.099

839-009-0420
Relationship of OMFLA to FMLA
To the extent the employee’s need for OMFLA leave is also covered by the Qualifying Exigency entitlements of the federal Family and Medical Leave Act (FMLA) under 29 CFR §825.126, the employer may run OMFLA leave and FMLA leave concurrently.
Stat. Auth.: ORS 659A.093(6)
Stats. Implemented: ORS 659A.090 - 659A.099

839-009-0460
Enforcement and Retaliation
(1) A covered employer's duties and obligations under OMFLA extend to a successor employer as defined in the federal Family and Medical Leave Act (FMLA) regulations at 29 CFR§ 825.107.
(2) In accordance with the provisions of OMFLA an eligible employee claiming a violation of the OMFLA may file a complaint with the Civil Rights Division of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.
(3) It is an unlawful employment practice for a covered employer to retaliate or in any way discriminate against any person with respect to hiring, tenure or any other term or condition of employment because the person has inquired about OMFLA leave, submitted a request for OMFLA leave or invoked any provision of OMFLA.
(4) Pursuant to ORS 659A.030(1)(f), it is an unlawful employment practice for a covered employer to discharge, expel or otherwise discriminate against any person because the person has filed a complaint, testified or assisted in any proceeding in connection with OMFLA.
(5) It is an unlawful employment practice for a covered employer to count OMFLA leave against an employee in determining the employee's compliance with attendance policies, or to count OMFLA leave against an employee when determining eligibility for bonuses based on attendance.
(6) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of OMFLA or to attempt to do so.

Stat. Auth.: ORS 659A.093 (6)
Stats. Implemented: ORS 659A.090 - 659A.099