



TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

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CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

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FILING CAPTION: Use of OFLA sick child leave during statewide public health emergency

EFFECTIVE DATE: 09/14/2020 THROUGH 03/12/2021

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NEED FOR THE RULE(S):

In March, the Bureau of Labor and Industries adopted a temporary rule to allow an OFLA-eligible employee to use sick child leave if the employee's child's school or place of care was closed in conjunction with a statewide public health emergency declared by a public health official. The temporary rule was adopted in response to the declaration of COVID-19 as a public health emergency and the need to implement social distancing protocol consistent with mitigation strategies recommended by the United States Centers for Disease Control and Prevention (CDC), required by the Governor, and Public Health Director. This protocol included the Governor ordering the statewide closure of all public schools and child care facilities unless operating as an emergency child care facility.

As COVID-19 continues to be a threat to the public health, schools and child care providers continue to implement safety protocols to prevent the spread of COVID-19 and protect the health of employees, children, and teachers. As a result, the agency initiated permanent rulemaking to ensure employees can continue to utilize OFLA sick child leave if their child's school or child care providers are entirely closed or intermittently closed in conjunction with a statewide public health emergency.

Based on public comment received during the permanent rulemaking process related to OAR 839-009-0230(4)(a) and the evolving protocols for child care providers and school reopenings, the agency determined that there would be benefit to additional clarifications in OFLA rules. The amendments are:

- 1) Clearly identifying and defining the scope of what is a "child care provider";
- 2) Defining "closure" for the purpose of schools and child care providers;

3) Use of sick child leave for intermittent school or child care closures. OFLA leave for "serious health conditions" may be taken on an intermittent basis and the statute specifically requires BOLI to make rules clarifying how this occurs. This does not explicitly address the need for intermittent leave for sick child leave because sick child leave is inherently intermittent. It is necessary to address directly the potential for sick child leave to accommodate intermittent closures and hybrid models requiring a recurring pattern of child care or school closures; and

4) Provide a method, if an employer seeks verification from an employee of the need for sick child leave to care for a child because the child's school or child care provider has been closed in conjunction with a statewide public health emergency. An employer is permitted to seek medical verification from a health care provider after a third occurrence of OFLA sick child leave. However, seeking medical verification from a health care provider if the employee is using sick child leave because of school or child care closure does not make sense because the child is not suffering from an illness, injury, or condition that a physician can verify. Therefore, it is necessary to provide a method, if an employer seeks verification from an employee of the need for sick child leave to care for a child because the child's school or place of care has been closed in conjunction with a statewide public health emergency.

JUSTIFICATION OF TEMPORARY FILING:

As COVID-19 continues to be a threat to the public health, schools and child care providers continue to implement safety protocols to prevent the spread of COVID-19 and protect the health of employees, children, and teachers. As a result, the agency initiated permanent rulemaking to ensure employees can continue to utilize OFLA sick child leave if their child's school or child care providers are entirely closed or intermittently closed in conjunction with a statewide public health emergency.

Based on public comment received during the permanent rulemaking process related to OAR 839-009-0230(4)(a) and the evolving protocols for child care providers and school reopenings, the agency determined that there would be benefit to providing clarity to aspects of the rule. However, these clarifications needed to be made in administrative rules not currently being considered for amendment. Therefore, to ensure that employers and employees can implement OAR 839-009-0230(4)(a) with clarity and consistency, it is necessary to take immediate action so that the changes are effective in conjunction with the permanent rule.

Failure to clarify the use of OFLA sick child leave could:

- 1) Undermine efforts to protect public health and prevent the spread of COVID-19;
- 2) Fail to protect children who may be at public health risk or create a public health risk by being together; and
- 3) Result in job loss for employees who do not have access to protected or other forms of leave through their employer and are forced to leave their jobs.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Ready School, Safe Learners: Community COVID-19 Metrics:

<https://www.oregon.gov/oha/PH/DISEASES/CONDITIONS/DISEASESAZ/Emerging%20Respiratory%20Infections/Ready-Schools-Safe-Learners-Community-COVID-19-Metrics.pdf>

RULES:

839-009-0210, 839-009-0250

AMEND: 839-009-0210

RULE SUMMARY: Address the ongoing closure of schools and child care provider due to the COVID-19 public health emergency.

CHANGES TO RULE:

839-009-0210

OFLA: Definitions ¶¶

(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) "Child Care Provider" for the purpose of sick child leave during a statewide public health emergency declared by a public health official means a place of care or person who cares for a child. ¶¶

(a) A person who cares for a child includes but is not limited to individuals paid to provide child care, for example nannies, au pairs, and babysitters or individuals who provide child care at no cost and without a license on a regular basis, for example, grandparents, aunts, uncles, or neighbors.¶¶

(b) Place of care is a physical location in which care is provided for a child including but not limited to day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs. The physical location does not have to be solely dedicated to such care. ¶¶

(4) "Closure" for the purpose of sick child leave during a statewide public health emergency declared by a public health official means a closure that is ongoing, intermittent, or recurring and restricts physical access to the child's school or child care provider.¶¶

(5) "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.¶¶

(46) "Domestic partner" means an individual joined in a domestic partnership.¶¶

(57) "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.¶¶

(68) "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.¶

(79) "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 or leave under ORS 659.159(1)(e) is taken.¶

(810) "FMLA" is the federal Family and Medical Leave Act, 29 USC §2601.¶

(911) "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).¶

(102) "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.¶

(143) "Gender" means an individual's assigned sex at birth, gender identity, or gender expression.¶

(124) "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.¶

(135) "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.¶

(146) "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.¶

(157) "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.¶

(168) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule including but not limited to sick child leave taken requiring an altered or reduced work schedule because the intermittent or recurring closure of a child's school or child care provider due to a statewide public health emergency declared by a public health official.¶

(179) "OFLA" is the Oregon Family Leave Act, ORS 659A.150 to 659A.186.¶

~~(1820)~~ "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).¶

(219) "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.¶

(202) "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.¶

(213) "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.¶

(224) "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.

Statutory/Other Authority: ORS 659A.805

Statutes/Other Implemented: ORS 659A.150 - 659A.186, 659A.043, 659A.046

AMEND: 839-009-0250

RULE SUMMARY: Address the ongoing closure of schools and child care provider due to the COVID-19 public health emergency.

CHANGES TO RULE:

839-009-0250

OFLA: 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 follow 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:¶

(a) For the death of a family member under ORS 659A.159(e) and OAR 839-009-0230(5);¶
~~(10); or~~¶

(b) For the need for sick child leave due to the closure of a child's school or child care provider under OAR 839-009-0230(4)(a).¶

(10) An employer may request verification of the need for sick child leave due to the closure of the child's school or child care provider in conjunction with a statewide public health emergency declared by a public health official. Verification may include:¶

(a) The name of the child being cared for;¶

(b) The name of the school or child care provider that has closed or become unavailable; and¶

(c) A statement from the employee that no other family member of the child is willing and able to care for the child.¶

(d) With the care of a child older than 14, a statement that special circumstances exist requiring the employee to provide care to the child during daylight hours.¶

(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).¶
(112) 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.~~¶

~~[ED. NOTE: Appendix referenced are available from the agency.]~~attached to this rule.

Statutory/Other Authority: ORS 659A.805

Statutes/Other Implemented: ORS 659A.150-659A.186, 659A.043, 659A.046

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

Oregon and Federal
Family and Medical Leave
Health Care Provider Certification

This form is to be completed by physician or other health care provider and returned to the employee or:

Information sought on this form relates only to the condition for which the employee is taking leave.

Employee's Name: _____

Patient's Name (if different from employee): _____

1. On the reverse of this sheet is a description of various "serious health condition" categories that qualify under the Family and Medical Leave Acts. Please check appropriate category or categories:

- 1-Hospital care 3-Pregnancy and/or prenatal care 5-Perm/long-term condition requiring supervision
 2-Absence plus treatment 4-Chronic condition requiring treatment 6-Multiple treatments (non-chronic condition)

2. Provide a description of the medical facts that support your certification and explain how they meet the criteria of the category:

3. Approximate date condition began and probable duration: from ___/___/___ through ___/___/___

4. Probable duration of patient's present incapacity (if different): from ___/___/___ through ___/___/___

5. If this is a chronic condition or pregnancy, is the patient presently incapacitated (see reverse side for definition)?

Yes No If yes, duration and frequency of episodes of incapacity: _____

6. Will it be necessary for the employee to take leave only intermittently or to work on a less than full-time schedule basis because of the condition or treatment? Yes No If yes, duration: _____.

Frequency: One to two days per month Two to three days per month Three to four days per month

Other: Please explain how the employee will use leave intermittently or work a less than full-time schedule, being as specific as possible including frequency and duration of absences:

6. If the patient requires a regimen of treatment, what is the nature of and description of the treatments, estimated number of treatments, and intervals between treatments (see reverse side for definition)? _____

What are the actual or estimated dates of visits for treatment, or frequency of visits for treatment? _____

What is the duration of each treatment and any period required for recovery? _____

7. If this certification relates to the employee's seriously ill family member(s), also complete the following:

a. Does the patient require assistance for basic medical or personal needs, safety, or for transportation? Yes No

b. If no, would the employee's presence to provide psychological comfort be beneficial or assist in the patient's recovery?

Yes No

c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration and frequency of this need: _____

Printed Name of Physician/ Practitioner

Date Signed

Signature of Physician/ Practitioner

Type of Practice/ Field of Specialization

Address

Phone Number

HEALTH CARE PROVIDER CERTIFICATION form (continued)

Federal and Oregon Family and Medical Leave Acts

Definition of a "Serious Health Condition":

A "serious health condition" is defined as an illness, impairment, physical or mental condition that involves one of the following:

1. Hospital care –

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

2. Absence plus treatment –

A period of incapacity of more than three consecutive calendar days (including any period of incapacity or subsequent treatment relating to the same condition), that also involves:

(a) Treatments two or more times by a licensed healthcare provider, nurse, or physician's assistant under direct supervision of a healthcare provider, or by a provider of healthcare services (e.g., physical therapist) under orders of, or on referral by, a healthcare provider, **or**

(b) Treatment by a healthcare provider on at least one occasion which results in a regimen of continuing treatment under supervision of the healthcare provider.

(1) Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment DOES NOT include routine physical, dental, or eye examinations.

(2) A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment DOES NOT include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, or any other similar activities that can be initiated without a visit to a healthcare provider.

3. Pregnancy –

Any period of incapacity due to pregnancy, pregnancy-related illness, or for prenatal care.

4. Chronic conditions requiring treatments –

A chronic serious health condition is one which:

(a) Requires periodic visits for treatment by a healthcare provider, nurse, or physician's assistant under direct supervision of a healthcare provider;

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

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

5. Permanent/ long-term conditions requiring supervision –

A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a healthcare provider. Examples include Alzheimer's, a severe stroke or the terminal states of a disease.

6. Multiple treatments (non-chronic conditions) –

Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a healthcare provider or by a provider of healthcare services under orders of, or on referral by, a healthcare provider, either of restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

Definition of "Incapacitated": Inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

Directions regarding "Regimen of treatment" (question 5): If the patient is under your supervision, provide a general description of such regimen, such as prescription drugs or physical therapy requiring special equipment. If the treatments will be provided by another provider of health services, such as a physical therapist, please state the nature of the treatments.