

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

FILED
01/27/2021 3:05 PM
ARCHIVES DIVISION
SECRETARY OF STATE

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

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/01/2021 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Erin Seiler
503-382-7934
erin.seiler@state.or.us

800 NE Oregon
#1045
Portland, OR 97232

Filed By:
Erin Seiler
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 02/19/2021

TIME: 9:00 AM - 10:00 AM

OFFICER: Erin Seiler

ADDRESS:

800 NE Oregon

#1045

Portland, OR 97232

SPECIAL INSTRUCTIONS:

Due to COVID-19 restrictions, this public hearing will be conducted using GoToMeeting.

<https://global.gotomeeting.com/join/683722845>

You can also dial in using your phone.

United States: +1 (224) 501-3412

- One-touch:

tele: +12245013412,,683722845#

Access Code: 683-722-845

New to GoToMeeting? Get the app now and be ready when your first meeting starts:

<https://global.gotomeeting.com/install/683722845>

As the presiding officer of the hearing I will ask for each public participant to state their name and affiliation before they testify. Written testimony may be submitted via email at erin.seiler@state.or.us.

NEED FOR THE RULE(S):

On September 11, 2020 the Bureau of Labor and Industries (BOLI) approved a permanent rule permitting an employee to use OFLA sick child leave if their child's school or child care provider is entirely closed or intermittently closed in conjunction with a statewide public health emergency. During the permanent rulemaking process for the OFLA sick child leave rule, the agency received public comment that additional definitional and operational clarifications would be useful. Thus, to ensure equity and consistency in the application of the permanent OFLA Sick Child Leave rules, the agency adopted temporary rules to supplement the permanent rules.

The temporary rules did the following:

- 1) Clearly identified and defined the scope of what qualifies as a "child care provider";
- 2) Defined "closure" for the purpose of schools and child care providers;
- 3) Explicitly allowed 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) Provided 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.

As schools and child care providers remain closed or partially closed in conjunction with the statewide public health emergency related to COVID-19 it is critical that the agency take permanent rulemaking action related to the definitional and operational clarifications that should remain in place to ensure consistency and stability for employees and employers.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Executive Order 20-03; Executive Order 20-08; Executive Order 20-29
Ready Schools, Safe Learners Guidance for School Year 2020-21

FISCAL AND ECONOMIC IMPACT:

The proposed amendments to OAR 839-009-0210 and OAR 839-009-0250 do not have a direct fiscal or economic impact to an employer. It does not change eligibility requirements, amount of available leave, or any other employer or employee obligation under OFLA. The proposed rules provide definitional and operational clarifications to an existing administrative rule that that permits an employee to utilize OFLA sick child leave if their child's school or child care providers are entirely or intermittently closed in conjunction with a statewide public health emergency.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) The proposed rules will have no economic impact on state agencies, units of local government, and members of the public.

(2) Effect on Small Businesses (as defined by ORS 183.310(10)):

(a) The proposed rule applies to all small businesses with between 25-50 employees in Oregon.

(b) Small businesses with 25-50 employees already administer OFLA, the proposed rules require no new reporting, recordkeeping, or administrative activities.

(c) Small businesses with 25-50 employees already administer OFLA the proposed rules require no new professional services or equipment supplies, but a small business may experience an increase in time dedicated to the administration of leave requests under OFLA.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of the proposed rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

An Advisory Committee was not appointed for the drafting of these rules. The proposed rules were drafted based on public comment received from interested parties during the public hearing for the rule that permits an employee to use OFLA Sick Child Leave when their child's school or child care provider are entirely or intermittently closed in conjunction with a statewide public health emergency.

RULES PROPOSED:

839-009-0210, 839-009-0250

AMEND: 839-009-0210

RULE SUMMARY: Operationalization of rule permitting an eligible employee to use Sick Child Leave as a result of the closure of a child's school or place of care due to a statewide public health emergency.

CHANGES TO RULE:

(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.¶

(113) "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: Operationalization of rule permitting an eligible employee to use Sick Child Leave as a result of the closure of a child's school or place of care due to a statewide 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 for: ¶

(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