



VAL HOYLE  
Labor Commissioner

## Memo

### NOTICE OF PERMANENT RULEMAKING HEARING

**DATE:** July 24, 2020

**TO:** Interested Parties

**FROM:** Erin Seiler, Senior Policy Advisor

**RE:** Permanent Rulemaking amending: OAR 839-009-0230: OFLA: Purposes for Taking Leave

#### **RULE CAPTION:**

Use of OFLA sick child leave during statewide public health emergency

Not more than 15 words that reasonably identify the subject matter of the agency's intended action.

**NOTICE:** On July 23, 2020 the Oregon Bureau of Labor and Industries filed a Notice of Proposed Permanent Rulemaking Hearing, with the Oregon Secretary of State, to amend the above referenced administrative rule related to reasons for use of OFLA sick child leave during statewide public health emergency.

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.

School districts in Oregon, under guidelines from the Oregon Department of Education, are preparing to reopen schools for the 2020-21 school year. COVID-19 continues to be a threat to the public health, thus reopening schools requires the implementation of safety protocols to prevent the spread of COVID-19 and protect the health of employees, students, and teachers. As part of the reopening plans, school districts will determine whether to reopen schools to all students on-site, use distance learning for all students, or utilize a hybrid model with students learning both on-site and through distance learning. Subsequently, some schools will remain entirely closed or with limited on-site time for students.

It is critical to ensure employees can continue to utilize OFLA sick child leave to protect public health and prevent the spread of COVID-19; protect children who may be at public health risk or create a public health risk by being together; and prevent job loss for employees who do not have access to protected or other forms of leave through their employer and would be forced to leave their jobs.



A public hearing is scheduled for 9:00 a.m. on August 19, 2020. Due to COVID-19 restrictions, this public hearing will be conducted by teleconference only. The meeting is open to the public: Please dial 503-300-2595. No access code is needed. 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](mailto:erin.seiler@state.or.us).

**The deadline for public comment on the proposed rule is 5:00 p.m. on August 31, 2020.** Members of the public are welcome to submit comments by email prior to this deadline.

**COMMENTS:** Comments may be emailed to Erin Seiler at [erin.seiler@state.or.us](mailto:erin.seiler@state.or.us)

**ATTACHMENTS:** Attached are the Notice of Proposed Rulemaking Hearing, the Statement of Need and Fiscal Impact, and a copy of the rules showing the proposed amendments.

OFFICE OF THE SECRETARY OF STATE  
BEV CLARNO  
SECRETARY OF STATE  
JEFF MORGAN  
INTERIM DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION  
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800 SUMMER STREET NE  
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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839  
BUREAU OF LABOR AND INDUSTRIES

**FILED**  
07/23/2020 2:20 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: 08/31/2020 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: 08/19/2020

TIME: 9:00 AM - 10:00 AM

OFFICER: Erin Seiler

ADDRESS:

800 NE Oregon

#1045

Portland, OR 97232

SPECIAL INSTRUCTIONS:

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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.

School districts in Oregon, under guidelines from the Oregon Department of Education, are preparing to reopen schools for the 2020-21 school year. COVID-19 continues to be a threat to the public health, thus reopening schools requires the implementation of safety protocols to prevent the spread of COVID-19 and protect the health of employees, students, and teachers. As part of the reopening plans, school districts will determine whether to reopen schools to all students on-site, use distance learning for all students, or utilize a hybrid model with students learning both on-site and through distance learning. Subsequently, some schools will remain entirely closed or with limited on-site time for students.

It is critical to ensure employees can continue to utilize OFLA sick child leave to protect public health and prevent the spread of COVID-19; protect children who may be at public health risk or create a public health risk by being together; and prevent job loss for employees who do not have access to protected or other forms of leave through their employer and would be forced to leave their jobs.

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#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Executive Order 20-03; Executive Order 20-08; Executive Order 20-29 – available at <https://www.oregon.gov/gov/admin/Pages/executive-orders.aspx>

Ready Schools, Safe Learners Guidance for School Year 2020-21 - available at <https://www.oregon.gov/ode/Pages/default.aspx>

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#### FISCAL AND ECONOMIC IMPACT:

The proposed amendment to OAR 839-009-0230 does 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 amendment allows for an employee, with children, to use the intermittent OFLA sick child leave already provided in law to protect their absence if their child care or child's school is closed in conjunction with a statewide public health emergency declared by a public health official.

However, it is possible that an employer could experience a temporary labor shortage if multiple employees use the protected leave during the same time period. A business may decide to address a temporary labor shortage by hiring temporary employees.

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#### 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) 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) It is possible that as an employer, a state agency or local government, could experience a temporary labor shortage because multiple employees use the protected leave during the same time period. The state agency or local government may decide to address a temporary labor shortage by hiring temporary employees. The proposed rule will have no economic impact on 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 administrator OFLA leave, the amendment requires no new reporting, recordkeeping, or administrative activities.

(c) Small businesses with 25-50 employees already administrator OFLA leave, the amendment requires 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.

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

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

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

An Advisory Committee was not appointed for the drafting of this rule because the proposed amendment mirrors the current temporary rule allowing employees to use protected leave to care for their children during school and child care closures because of COVID-19.

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AMEND: 839-009-0230

RULE SUMMARY: Allow the use of sick child leave for the continued closure of schools and child care facilities because of COVID-19

CHANGES TO RULE:

839-009-0230

OFLA: Purposes for Taking 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, or condition that requires home care but is not a serious health condition.¶¶

(a) Sick child leave includes absence to care for an employee's child whose school or place of care has been closed in conjunction with a statewide public health emergency declared by a public health official.¶¶

(b) 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.

Statutory/Other Authority: ORS 659A.805

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