



# FAMILY AND MEDICAL LEAVE

## EMPLOYEE PACKET B

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**Leave for:**

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1. FMLA Military Caregiver Leave

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**DISCLOSURE:** Please read this statement before proceeding.

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This packet is a summary of Family and Medical Leave policy and procedures. In all cases applicable state and federal laws, rules, policies, and collective bargaining agreements govern the employee's and the agency's rights and obligations, not this document.

The law requires the agency to provide these entitlements.

Federal and state law prohibit retaliation against an employee with respect to hiring or any other term or condition of employment because the employee asked about, requested, or used Family and Medical Leave.

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**Family and Medical Leave follow:**

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The Federal Family and Medical Leave Act, as amended, 29 USC §§ 2601 et seq; section 585 of the National Defense Authorization Act for FY 2008 and federal regulations 29 CFR Part 825

The Oregon Family Leave Act as amended, Oregon Revised Statutes (ORS) 659A.150 through 659A.186 and ORS 659A.306 and Oregon Administrative Rules (OAR) 839-009-0200 through 839-009-0320, OAR 166-3000010 through 166-300-0045, and OAR 101-030-0005 through 101-030-0027 and OAR 839-009-0370 through 839-009-0460

State HR Policy 60.000.15 Family and Medical Leave

Any applicable collective bargaining agreement

**For more information refer to agency policy and your agency Human Resource and Payroll offices.**

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### **What is family and medical leave?**

The Family and Medical Leave Act (FMLA) and the Oregon Family and Medical Leave Act (OFLA) protect an eligible employee's absence from work under certain conditions. Federal and state laws determine eligibility, if your absence qualifies as FMLA or OFLA and how much leave time you may take.

### **Am I eligible for FMLA and OFLA leave?**

To be eligible for FMLA or OFLA leave you must meet the following requirements:

<b>Eligibility for FMLA</b>	<b>Eligibility for OFLA</b>
Employee must have been employed by Oregon state government for a total of at least 12 months (if months are non-consecutive there can be no more than a seven-year break in service); and	<b>To qualify for Parental leave</b> (leave to care for a newborn child or newly placed adopted or foster child) employee must have been employed by Oregon state government for a period of 180 calendar days immediately preceding the date leave begins.
Employee must have worked for at least 1250 hours during the 12-month period immediately preceding the leave.	<b>To qualify for leave for a serious health condition, Bereavement leave or Sick Child leave (to care for the employee's child with a non-serious health condition requiring home care)</b> , in addition to the 180-day requirement above, the employee must have worked an average of 25 hours per week.
Both of the above requirements apply to all types of FMLA leave.	To qualify for OFLA Military Family leave, the employee must have worked an average of 20 hours per week (there is no 180-day requirement).

When counting the number of hours worked to determine eligibility, the agency counts all hours the employee was actually at work, employment as a temporary worker, and qualifying absences for military leave. Paid or unpaid leave time does not count as hours worked for eligibility purposes. Exception: Hours paid to an employee by workers compensation count towards their eligibility for OFLA leave.

### **What are qualifying purposes to take FMLA or OFLA?**

There are a variety of reasons that qualify as FMLA and OFLA leave. This packet specifically addresses leave for:

- **FMLA Military Caregiver Leave:** Leave you may take to care for your spouse, parent, child, or next of kin, who is a Covered Servicemember, with a serious injury or illness incurred in the line of duty on federal active duty. This is FMLA leave only.

Other FMLA and OFLA leave types can be found in the State HR Policy 60.000.15 Family and Medical Leave. Information packets describing Family and Medical Leave, FMLA Qualifying Exigency and OFLA Military Leave are in the policy toolkit.

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### **What is FMLA Military Caregiver Leave?**

FMLA Military Caregiver leave is only available under federal law. This leave allows an eligible employee protected leave to care for their spouse, parent, son, daughter or next of kin who is a covered servicemember with a serious injury or illness incurred in the line of duty on active duty.

- **Spouse:** The employee's husband or wife as defined by Oregon state law.
- **Parent:** The employee's parent is the biological or adoptive mother or father of the employee, or an individual who stood in loco parentis (in place of a parent) when the employee was a child.
- **Son or Daughter:** The biological, adopted, foster or stepchild, a legal ward, or a child of an employee standing in loco parentis. There is no age limit to a son or daughter for FMLA Military Caregiver leave.
- **Next of Kin:** The nearest blood relative of a Covered Servicemember (other than the spouse, parent, son, or daughter) in the following priority order (29 CFR 825.122(d) provides further detail):
  1. A blood relative designated in writing by the servicemember, as his or her nearest blood relative
  2. Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions
  3. Brothers and sisters
  4. Grandparents
  5. Aunts and uncles
  6. First cousins

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### **What is a covered servicemember?**

A Covered Servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which the servicemember is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list. Outpatient status means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient or a military

unit established to provide command and control of members of the Armed Forces receiving medical care as outpatients.

- **Serious Injury or Illness**

A serious injury or illness is one incurred by the servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating.

- **Active Duty**

A federal call to duty under a call or order to active duty under a provision of law referred to in Section 101(a)(13)(B) of Title 10, United States Code.

### **How much FMLA Military Caregiver Leave do I get?**

You are entitled to up to 26 weeks of FMLA Military Caregiver leave in a single 52-week period (leave year). Your leave entitlement of up to 26 weeks for FMLA Military Caregiver leave is based on a "rolling forward" leave year and includes all types of FMLA leave used during the 52-week period following the date the Military Caregiver leave began. Your leave year will begin the Sunday immediately preceding the first day of leave and go forward 52 weeks. If you and your spouse both work for Oregon state government and need to take FMLA Military Caregiver leave for the same purpose, you must share your entitlement.

#### **Leave entitlement for part-time employees and employees using FMLA intermittently:**

If you are a part-time employee your leave entitlement is pro-rated. For example, if you normally work 30 hours per week, you are entitled to up to 26 weeks of leave at 30 hours per week. Leave taken on an intermittent basis is calculated by the hour. If you are a full-time employee working 40 hours per week, you are entitled to up to 1040 hours of leave. A part-time employee's hourly entitlement is prorated. For example, if you normally work 30 hours per week, your hourly entitlement is 780 hours.

### **Do I have to take all my FMLA Military Caregiver leave at once?**

**There are three types of FMLA Military Caregiver leave schedules.**

1. Continuous leave: Leave taken in a block of time. For example, an employee takes six weeks of leave to care for their spouse who is an injured Covered Servicemember.
2. Intermittent leave: Leave taken sporadically in a minimum of one-hour increments. For example, an employee misses two days of work a week to care for her parent who is an ill Covered Servicemember.
3. Reduced schedule leave: Leave taken where the employee is scheduled to work less than the employee's normal work hours in a day or week. For example, an employee normally scheduled to work eight hours a day, instead works six hours and takes the remaining two hours as FMLA Military Caregiver leave to care for his son who is an injured Covered Servicemember.

## **How do I request FMLA Military Caregiver Leave?**

Generally, you must give 30 calendar days' notice for planned absences (paid or unpaid) related to family and medical leave. Follow agency procedures for submitting a request for leave. If you are unable to request leave in advance due to an emergency or unforeseeable event, let the agency know as soon as possible. You are not required to specifically state the leave is for FMLA Military Caregiver leave, but you must provide enough information so the agency can determine if the leave qualifies. The agency may ask for more information if necessary.

## **What happens after I request FMLA Military Caregiver Leave?**

### **Notice of eligibility**

After you make a request for FMLA Military Caregiver leave, the agency will generally let you know within five business days if you are eligible for the leave entitlement and if the agency needs more information such as a FMLA Military Health Care Certification PD 615B.

### **FMLA Military Health Care Certification PD 615B**

If you are required to provide a FMLA Military Health Care Certification PD 615B, the agency will give you a FMLA Military Health Care Certification PD 615B for completion. There is a section on the form for you and the Covered Servicemember to complete and a section that must be completed by a Health Care Provider which includes a United States Department of Defense (DOD) health care provider or a health care provider who is either: (1) a United States Department of Veterans Affairs (VA) health care provider, (2) a DOD TRICARE network authorized private health care provider, or (3) a DOD non-network TRICARE private health care provider

The agency uses this information to determine if your reason for the leave qualifies under FMLA Military Caregiver leave. The FMLA Military Health Care Certification form must be returned within 15 days or your leave can be denied. Denied leave means you do not have job protection under FMLA.

### **Invitational Travel Orders and Invitational Travel Authorizations**

Instead of the FMLA Military Health Care Certification PD 615B, the agency will accept as sufficient certification "invitational travel orders" ("ITOs") or "invitational travel authorizations" ("ITAs") issued to any family member to join an injured or ill servicemember at their bedside. An ITO or ITA is sufficient certification only for the duration of time specified in the ITO or ITA. During that time period, an eligible employee may take leave to care for the Covered Servicemember in a continuous block of time or on an intermittent basis. After the ITO or ITA has expired, the agency may require you to provide a completed FMLA Military Health Care Certification PD 615B in order to continue FMLA Military Caregiver leave.

## **Final determination**

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

### **Am I eligible for other protected leaves?**

If the Covered Servicemember's illness or injury also is considered a serious health condition, you may be eligible for OFLA job protection to care for a family member with a serious health condition for up to 12 weeks. Your OFLA leave entitlement will run at the same time as 12 weeks of your 26-week FMLA Military Caregiver leave entitlement. The same applies to leave used for other FMLA purposes during the 12 months after the FMLA Military Caregiver leave begins. In other words, the 12-week FMLA entitlement is not in addition to the 26-week FMLA Military Caregiver leave entitlement.

### **How do I show my absence as FMLA and OFLA leave?**

Your FMLA and OFLA leave is documented and tracked in the Workday system. To show your absence as family and medical leave, enter an absence request which corresponds with the date you took paid or unpaid leave due to the qualifying condition. This absence request is separate from your request for paid or unpaid leave. Choose the type of leave you are using (this may be listed on a letter from your absence partner and will be FMLA, OFLA, Paid Leave Oregon, or a combination of the leaves). If you are unable to enter your own absence request, your supervisor will do it for you. Stop entering family and medical leave absence requests when your FMLA or OFLA entitlements end. Seek approval from your supervisor to use other leave or leave without pay as necessary. Refer questions about entering protected leave absence requests to your supervisor, human resources, or agency payroll.

### **Am I paid during FMLA Military Caregiver Leave?**

FMLA Military Caregiver leave is an unpaid leave. Except for reasons below, while on FMLA Military Caregiver leave, you must use all of your accrued leave (except compensatory time) before going into leave without pay. You may choose whether to use your compensatory time. All paid and unpaid leave used for FMLA Military Caregiver leave purposes counts toward your FMLA Military Caregiver leave entitlement.

If you are using your leave in a block of time exceptions to the requirement to use your paid leave are: (1) If you are represented, your collective bargaining agreement may allow you to reserve a certain amount and type of leave while you are on FMLA Military Caregiver leave; (2) If you are unrepresented or management service you may reserve 60 hours of sick or vacation leave while on Military Caregiver leave.

For any FMLA or OFLA absence you do not have to use your accrued leave if you are also receiving worker's compensation time loss benefits. For any FMLA or OFLA absence if you are receiving payments from your disability insurance provider, you are not required to use your paid leave except as required by the disability insurance contract.

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### **Will my insurance continue?**

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If you use any amount of FMLA or OFLA leave in a month, the agency pays its share of premiums for your medical, dental, and employee-only basic life insurance for that month. If you normally pay a portion of the premiums for your health insurance, you may 1) continue timely payments during the leave period to avoid cancellation or 2) opt to have the agency pay these premiums on your behalf. You may self-pay premium payments through payroll. Payments made by the agency are recoverable upon the first available paycheck(s) after the employee returns to work, not to exceed 10% of their gross pay of each pay period.

Your optional insurances continue as long as you use sufficient hours or use sufficient paid leave. When you are on leave without pay you may continue some of your optional insurances by paying the premiums. You must continue timely payments during the period of leave to avoid cancellation. You may self-pay these premium payments through payroll.

If you exhaust your Family and Medical Leave entitlements, are in leave without pay, and not in a current Affordable Care Act (ACA) stability period, you have the option of continuing coverage under COBRA. You will be notified by a third-party administrator regarding how to continue your health and dental insurances while on leave without pay.

Your insurance resumes normally if you return from FMLA immediately following your FMLA absence. If you return beyond that timeframe, you must work a minimum 80 hours in the month to receive the employer contribution for the following month, unless you are in a current ACA Stability Period.

If you do not return to work following FMLA or OFLA, you may be required to reimburse the agency for the full premium cost of health care coverage paid on your behalf, unless a recurrence, or continuation or onset occurs of the injured or ill covered servicemember, or a serious health condition occurs or the reason for not returning is beyond your control.

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### **What happens to my job when I take FMLA Military Caregiver Leave?**

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Upon returning from FMLA Military Caregiver leave you have a right to be restored to the position you held prior to your leave or a position with equivalent pay and benefits with the following exceptions:

- If your position was eliminated through an agency layoff process, you must be treated as if you were not on FMLA Military Caregiver leave and will be treated the same as similarly situated employees in accordance with an agency policy or an applicable collective bargaining agreement.

- If you are a temporary or limited duration employee, the agency will return you to your position to the extent the placement or position still exists.
- If you do not return to work after your FMLA entitlement ends, you may be subject to termination under an applicable law, rule, policy, or collective bargaining agreement.

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**What if I need to extend my leave beyond my FMLA Military Caregiver leave entitlement?**

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Your job protection ends at the exhaustion of your leave entitlement for FMLA Military Caregiver leave. If you are unable to return to work following your FMLA Military Caregiver leave, you may request an extension of your absence. The agency may grant an extension if continuing your leave does not impose undue a hardship for the agency and complies with law, policy, or an applicable collective bargaining agreement.