



# FAMILY AND MEDICAL LEAVE

## EMPLOYEE PACKET C

### Leave for:

1. FMLA Qualifying Exigency Leave
2. OFLA Military Family Leave

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

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.

### Family and Medical Leave follow:

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 166-300-0010 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:

Eligibility for FMLA	Eligibility for OFLA
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 Qualifying Exigency Leave.** This leave is taken to tend to the exigencies resulting from your husband or wife, parent, or child who is called into active federal military duty.
- **OFLA Military Leave.** This leave is taken when your spouse or domestic partner is notified of an impending call; order to active military duty or on active duty; before deployment; or during respite from active duty during deployment.

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

## Section 1. Specifics for Qualifying Exigency Leave

### What is FMLA Qualifying Exigency Leave?

FMLA Qualifying Exigency leave is protected leave to attend to qualifying exigencies when your spouse, parent, son, or daughter is on active duty or called into active duty in support of a contingency operation for the military.

- **Spouse:** The employee's husband or wife as defined by Oregon state law.
- **Parent:** The biological or adoptive mother or father of an 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 limited under the definition of son or daughter for FMLA Qualifying Exigency leave.
- **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.

### What is a FMLA Qualifying Exigency?

The following circumstances are considered qualifying exigencies (additional detail is contained in 29 CFR 825.126):

- **Short notice deployment:** When the covered military member receives notice that the member will be deployed in seven days or less, you may take a maximum of seven days of FMLA Qualifying Exigency leave to address any issue arising from an impending call to duty (deployment) received by a covered military member. You must begin the leave within seven days of the deployment notice received by the military member.
- **Military events and activities related to deployment.**
- **Arranging for alternative childcare or schools or providing care on an urgent, immediate need basis because of the deployment.** For example: Your spouse is the deployed military member and normally provides the childcare for your children, you use FMLA Qualifying Exigency leave while arranging for new childcare. Your spouse is the deployed military member and normally transports your child to school, you use FMLA Qualifying Exigency leave while arranging for alternate transportation for the child. Your parent is the deployed military member and normally stays home with your sick child with a non-serious health condition, instead you stay home with the sick child using FMLA Qualifying Exigency leave. (Note: the last example potentially qualifies under OFLA Sick Child leave).
- **Attending meetings with the school or daycare staff when the meetings are necessary due to circumstances arising from the deployment.** For example: Your spouse is the deployed military member and normally attends parent-required school or daycare-related conferences and meetings, instead you attend the meetings using FMLA Qualifying Exigency leave.
- **Financial and legal arrangements related to the military member's deployment.**
- **Counseling for you, or for you to attend with the military member or your child, as the need arises from the deployment.**
- **Up to five days to spend with a military member on rest and recuperation (R and R).**
- **Post-deployment activities sponsored by the military (limited to a period of 90 days following the termination of the military member's active duty status.)**
- **Leave needed to address issues related to the death of the military member.**
- **The agency may agree to permit leave for other deployment-related activities not encompassed in the other categories.**

## How much FMLA Qualifying Exigency Leave do I get?

You are entitled to up to 12 weeks of leave during the leave year if you meet the eligibility and purpose requirements.

**Leave entitlement for part-time employees and employees using FMLA Qualifying Exigency leave 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 12 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 480 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 360 hours.

## How do I request FMLA Qualifying Exigency Leave?

Generally you must give 30 calendar days' notice for planned absences (paid or unpaid) for Qualifying Exigency 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 or for short notice deployment, let the agency know as soon as possible. You are not required to specifically state the leave is for FMLA or OFLA, 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 Qualifying Exigency Leave?

### Notice of eligibility

After you make a request for FMLA Qualifying Exigency 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 Qualifying Exigency Certification.

### FMLA Qualifying Exigency Certification

If you are required to provide a FMLA Qualifying Exigency Certification, the agency will give you a FMLA Qualifying Exigency Certification PD 615C to complete. The agency uses this information to determine if your reason for the leave qualifies under FMLA Qualifying Exigency leave. The FMLA Qualifying Exigency Certification and any documentation you provide as required by the FMLA Qualifying Exigency 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.

### Final determination

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

## Section 2. Specifics for OFLA Military Family Leave

### What is OFLA Military Family Leave?

OFLA Military Family leave is protected leave you may take when your spouse or same-sex domestic partner is:

1. A member of the Armed Forces of the United States, the National Guard or the military reserve forces of the United States, and
2. Your spouse or domestic partner is notified of an impending call; ordered to active duty or on active duty, before deployment; or during respite from active duty during deployment.

## **What activities qualify for OFLA Military Family Leave?**

You may take leave around the time of an impending call or order to active duty, when your spouse or domestic partner is about to be deployed, and when your spouse or domestic partner is on respite leave from active duty.

## **How much OFLA Military Family Leave do I get?**

You are entitled to up to 14 days per occurrence of OFLA Military Family leave. The leave is deducted from your 12 weeks of OFLA leave entitlement. Your entitlement ends once you use 12 weeks of OFLA leave for any purpose in the leave year. The leave may be taken as a block of time or intermittently. For example, you may wish to take five days of OFLA Military Family leave when your spouse or domestic partner receives notice of deployment and then take nine days when your spouse or domestic partner is on respite leave.

## **How do I request OFLA Military Family Leave?**

You must notify your agency of your need for leave within five days of impending call or order to active duty or when your spouse or domestic partner is on 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. The agency may ask for more information if necessary such as military orders.

## **What happens after I request OFLA Military Family Leave?**

The agency will acknowledge receipt of your request for leave. The agency may require you to produce the military orders or notification of pending call to duty.

### **Section 3. Applies to both, Qualifying Exigency and Military Family Leave**

## **Will my insurance continue during my leave?**

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 will continue under both FMLA and OFLA 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 or OFLA immediately following your FMLA or OFLA 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 another qualifying exigency occurs, a recurrence 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.

## **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 family and medical leave qualifying condition as the type of leave requested. 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 Qualifying Exigency and OFLA Military Family leave?**

FMLA Qualifying Exigency and OFLA Military Family leave are unpaid leave entitlements and all FMLA and OFLA used for these purposes count toward your FMLA, OFLA or both entitlements. Specifics follow:

**FMLA Qualifying Exigency leave:** Except for the reasons below, while using FMLA Qualifying Exigency leave, you must use your all paid leave (except compensatory time) before using leave without pay. You may choose whether to use your compensatory time. All paid and unpaid leave counts toward your FMLA entitlement.

If you take the leave in a continuous block of time the 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 this leave, (2) If you are unrepresented or management service you may reserve 60 hours of sick or vacation leave while on this leave.

For any FMLA or OFLA absence you do not have to use your accrued paid 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.

**OFLA Military Family leave:** you may choose whether you wish to use your accrued paid leave or compensatory time.

## **What happens to my job when I take FMLA and OFLA leave?**

If you return from OFLA leave, or leave that qualifies for both FMLA and OFLA, you have a right to be restored to the position you held prior to your leave. If you return from FMLA-only 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. The following exceptions apply to both FMLA and OFLA:

- If your position was eliminated through an agency layoff process, you must be treated as if you were not on FMLA or OFLA leave and will be treated the same as similarly situated employees according to 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 are unable to perform an essential function of your position and reasonable accommodations are not appropriate, FMLA and OFLA job protection ends. You may be subject to termination under an applicable law, rule, policy or collective bargaining agreement.

## **What if I need to extend my leave beyond my FMLA Qualifying Exigency or OFLA Military Family Leave entitlement?**

If you are unable to return to work following your FMLA Qualifying Exigency leave or OFLA Military Family leave, you may request an extension of your absence. The agency may grant an extension if continuing your leave does not impose an undue hardship for the agency and complies with law, policy, or an applicable collective bargaining agreement.

