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Division CHRO	REFERENCE ORS 659A.090 through 659A.099; ORS 659A.150 through 659A.186; ORS 659A.306; ORS 243.798; OAR 839-009- 0210 through 839-009-0460; OAR 166-300-0010 through 166-300-0045; OAR 101-030-0005 through 101-030-0027	
Policy Owner Chief Human Resource Office		
SUBJECT Oregon Family Leave Act (OFLA)	APPROVED SIGNATURE <i>COO Director's SIGNATURE</i> ON FILE WITH THE CHIEF HUMAN RESOURCES OFFICE	

POLICY STATEMENT

Oregon state government provides leave to employees according to the Oregon Family Leave Act (OFLA) and the Oregon Military Family Leave Act (OMFLA).

AUTHORITY

Oregon Military Family Leave Act, ORS 659A.090 through 659A.099; Oregon Family Leave Act (OFLA), as amended, ORS 659A.150 through 659A.186; ORS 659A.306; ORS 243.798; OAR 839-009- 0210 through 839-009-0460; OAR 166-300-0010 through 166-300-0045; OAR 101-030-0005 through 101-030-0027; the Americans with Disabilities Act (ADA), as amended (including the ADA Amendments Act), 42 USC § 12101 *et seq*; the Fair Labor Standards Act (FLSA), as amended, 29 USC § 201 *et seq*; and the Uniform Services Employment and Reemployment Rights Act (USERRA), as amended, 38 USC §4301 *et seq*.

APPLICABILITY

All employees, where not in conflict with an applicable collective bargaining agreement.

ATTACHMENTS

Required postings

Health Care Provider Certification Insurance benefits guide

Additional policy leave attachments by leave type:

- A. Sick Child Leave
- B. OFLA Military Family Leave
- C. OFLA Bereavement Leave

DEFINITIONS

Agency: includes the appointing authority, the human resource staff, and individuals designated by the appointing authority to administer the agency’s Family and Medical leave program.

Bereavement Leave: leave taken to deal with the death of a family member, including 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.

Child Placement Leave: leave taken before Jan. 1, 2025, to effectuate the legal process required for placement of a foster child or the adoption of a child.

Employee: A person holding a full- or part-time permanent, limited duration, temporary, seasonal, or academic position in state service.

Leave Year: 52 weeks beginning the Sunday immediately preceding the first day of leave.

Oregon Family Leave Act (OFLA): Oregon law that protects an employee's absence from work under certain conditions.

Oregon Military Family Leave Act (OMFLA): Oregon law that protects an employee's absence from work under certain circumstances.

Public Health Emergency: a public health emergency declared under ORS 433.441 and an emergency declared under ORS 401.165 if related to a public health emergency as defined in ORS 433.442.

Paid Leave Oregon: an insurance program administered by the Oregon Employment Department that provides up to 14 weeks of pay for qualifying conditions and protects an eligible employee's absence from work.

Pregnancy Disability Leave: leave taken by an employee for their own disability related to pregnancy, including pregnancy termination or childbirth, whether the disability occurs before, during or after the birth of the child, or for prenatal care, including fertility or infertility treatment.

Sick Child Leave: leave taken to care for an employee's child suffering from an illness, injury or condition that requires home care. Sick child leave includes leave to care for an employee's child whose school or childcare provider has been closed in conjunction with a statewide public health emergency declared by a public health official.

Also refer to State HR Policy 10.000.01, Definitions.

NOTE: Subsequent sections of the policy include other definitions relevant to the OFLA leave type.

POLICY

(1) An agency is required to notify an employee of their rights under OFLA when requested by the employee or when agency management learns that protected leave may be needed. State law prohibits retaliating against an employee with respect to hiring or any other term or condition of employment because the employee asked about, requested or used any type of OFLA leave.

(2) An eligible employee receives up to 12 weeks in a leave year of protected time off under OFLA for:

a. Sick Child leave:

i. To care for a child under the age of 18 or incapable of self-care because of a mental or physical disability:

1. Who has a serious or non-serious illness, injury or condition and requires home

care.

2. Whose school or childcare provider has been closed in conjunction with a statewide public health emergency declared by a public health official.

b. Bereavement Leave: Up to two weeks per family member, for a maximum of four weeks total, in a one-year time period (to be taken within 60 days of notification of the death) to deal with the death of a family member by: attending the funeral or alternative to a funeral, making arrangements necessitated by the death, or grieving.

i. "Family member" means an individual related to an eligible employee by blood or affinity or an individual who is an eligible employee's:

(a) Spouse or domestic partner

(b) Child or the child's spouse or domestic partner

(c) Parent or the parent's spouse or domestic partner

(d) Sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner

(e) Grandparent or the grandparent's spouse or domestic partner; or

(f) Grandchild or the grandchild's spouse or domestic partner.

c. Oregon Military Family Leave: Up to 14 working days per deployment related to the deployment of an employee's spouse or domestic partner.

(3) Pregnancy Disability Leave: An eligible employee receives up to 12 weeks in a leave year of protected time off under OFLA for pregnancy-related disability. This is separate from the 12 weeks of protected time off for Sick Child Leave, Bereavement Leave, and Oregon Military Family Leave, above.

(4) Child Placement Leave: An eligible employee receives up to two weeks in a leave year of protected time off under OFLA to effectuate the legal process required for placement of a foster child or adoption of a child between July 1, 2024, and Dec. 31, 2024.

(5) An eligible employee may use all or part of the types of leave described in sections (2) through (4) in any order. The employee need not exhaust any type of leave to use another.

(6) An agency prorates the OFLA leave entitlement hours for part-time employees. Example:

a. The entitlement for a part-time employee who works 30 hours a week is up to 12 weeks of leave at 30 hours a week or 360 hours of intermittent or reduced-schedule leave in a leave year for their own serious health condition.

(7) An eligible limited duration or temporary employee's OFLA leave ends when the employee's assignment expires regardless of whether the person has exhausted their leave entitlement.

(8) The agency reduces the employee's applicable OFLA entitlement balance by the corresponding OFLA leave type used in the current leave year.

- (9) Any leave taken under OFLA is in addition to leave taken under Paid Leave Oregon. OFLA leave may not be taken concurrently with any leave under Paid Leave Oregon.
- (10) Required posting: Agencies must display the following poster in the worksite: "Oregon Family Leave"
- (11) Eligibility for leave: The agency determines eligibility for leave as follows. Eligibility is not prorated for part-time employees.
- a. To qualify for sick child, bereavement, or pregnancy disability leave, the employee must have worked for Oregon state government for a period of 180 calendar days immediately preceding the date leave begins and worked an average of 25 hours per week.
 - b. To qualify for Oregon Military Family Leave the employee need only work for Oregon state government an average of 20 hours per week.
 - c. During a public health emergency, employees who have been employed 30 or more days by Oregon state government and have worked at least an average of 25 hours a week during the 30 days are eligible for any OFLA qualifying condition.
 - d. Once an employee is determined to be eligible as defined in a. or c. above for sick child leave, bereavement leave, pregnancy disability leave, or child placement leave, the employee's eligibility for that purpose does not change during the leave year.
Exceptions:
 - i. An eligible employee taking, in any order, some or all of 12 weeks of OFLA pregnancy disability leave and some or all of 12 weeks of OFLA leave for any other purpose, need not requalify under a. or c. above each time the employee takes OFLA leave within the same leave year.
 - ii. An eligible employee who has taken two weeks of OFLA child placement leave, need not requalify under a. or c. above for up to an additional 12 weeks of OFLA sick child leave within the same leave year.
 - iii. An employee unable to work because of a disabling compensable injury as defined in ORS 656.005 (Oregon workers' compensation statute) need not requalify under a. or c. above in order to use OFLA leave following a period the employee is off work due to the compensable injury.
 - e. Employees who separate from employment for any reason or become unscheduled and remain employed and were eligible for OFLA at the time of separation, and are reemployed within 180 days, are eligible for OFLA upon time of hire.
 - f. To determine an employee's eligibility for OFLA leave, the agency counts the hours the employee actually worked, the hours worked in another state agency, hours worked as a temporary employee (state or Qualified Rehabilitation Facility temp) for a state agency, military leave time (per federal USERRA law and State HR Policy 60.000.25 Military Leave), and paid hours spent performing union business. Hours paid to an employee by workers compensation also count towards their eligibility for OFLA leave.

- g. The amount of time the employee worked prior to a break in service or becoming unscheduled is restored to the employee when they return within 180 days.

(12) Types of leave schedules:

- a. Continuous leave: Leave taken in a block of time. For example, an employee takes two weeks of leave to plan and attend a funeral for a qualifying person.
- b. Intermittent leave: Leave taken sporadically. For example, an employee misses three days of work throughout a month to attend to the adoption process. Conditions for use of intermittent leave are outlined in the policy attachments for each specific leave type, where applicable.
- c. Reduced-schedule leave: Leave taken where the employee is scheduled to work less than the employee's normal hours in a day or week. For example, an employee scheduled to work eight hours a day, works six hours and takes the remaining two hours as OFLA due to a serious health condition of their child. Conditions for use of reduced-schedule leave are outlined in the policy attachments for each specific leave type, where applicable.

(13) An agency does not designate OFLA if an employee is absent due to a disabling compensable injury (ORS 656.005(7)) or pending a determination of a workers' compensation claim. If the claim is denied or if an employee refuses an offer of transitional work (see State HR Policy 50.020.05 Early Return to Work of Injured Workers), an agency immediately designates OFLA leave beginning the date of the denial if the employee meets eligibility and purpose requirements. If the denial is reversed upon appeal, an agency restores the designated OFLA hours to the employee.

(14) OFLA will run concurrently with the Federal Medical Leave Act (FMLA), when applicable.

(15) Employee requirements to request OFLA leave: An employee makes a request to the agency 30 calendar days in advance for a planned or foreseeable absence. The employee is not required to use the word OFLA, but they must give enough information that the agency can determine if the reason for the leave might qualify as OFLA. If the employee does not give enough information, the agency may ask questions as to the nature of the leave. Exceptions:

- a. For medical emergencies, other unforeseeable events or short-notice situations, an employee, or their family member if the employee is medically unable, must notify the agency as soon as possible.
- b. For unplanned or pre-approved intermittent leave, an employee follows agency call-in procedures and states the leave is for sick child, bereavement, pregnancy disability or child placement OFLA leave.
- c. For OMFLA leave, an employee notifies the agency within five business days of the employee's spouse or same-gender domestic partner receiving official notice of an impending call or order to active duty or of a leave from deployment, or as soon as possible in situations where official notice is provided less than five days from commencement of the leave.

(16) Agency's initial response to a request for OFLA leave and eligibility determination: Under most circumstances an agency provides an initial written response to the employee within five

business days telling the employee whether they are eligible for OFLA leave and that the leave may count as OFLA.

- a. If the employee is not eligible for leave, the agency provides at least one reason for the determination. For example, the employee has not worked enough hours to qualify.
- b. Written notice of eligibility must be sent at the commencement of each purpose of leave.
- c. If the employee is eligible for leave, the agency:
 - i. For Sick Child Leave, designates the leave upon first use in a leave year
 1. Medical certification may be requested after an employee has taken all or any part of three separate days during a leave year for a purpose other than to care for a child who requires home care due to the closure of the child's school or childcare provider due to a public health emergency.
 - ii. For Oregon Military Family leave, the agency may provisionally designate the leave upon first use.
 1. Military certification or military orders may be requested upon notification of the need for leave.
 - iii. When medical verification, military certification or military orders is requested, the agency:
 1. Must inform the employee of the consequences for failing to provide the requested information.
 2. Notifies the employee of their rights and responsibilities listed in Section 18.
- d. An agency shall not require medical certification for child placement, sick child leave due to the closure of a child's school or childcare provider as a result of a public health emergency, or bereavement leave.
- e. An agency may not request subsequent medical certifications during an approved OFLA leave.
 - i. When an approved period of OFLA leave has ended and an employee does not return to work, an agency 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.
- f. An agency may not require the employee to obtain a second or third medical opinion.

(17) Agency's determination if leave qualifies as OFLA: Within five business days of receiving information such as a medical verification, military certification or military orders, the agency provides the employee with a written response that states if the reason for the employee's leave qualifies as OFLA, and:

- a. If the employee's reason or purpose for the leave does not qualify for OFLA, the agency provides at least one reason for the determination in the written response.
 - i. If the employee provides the agency with information that would have been sufficient to provisionally designate the leave for a qualifying reason prior to July 1, 2024, the agency shall provide the employee written information within 14 calendar days of the ability to apply for Paid Leave Oregon benefits including the contact information for Paid Leave Oregon. An agency may comply with this requirement by providing the employee with the Paid Leave Model Notice.
- b. If the employee's reason or purpose for leave qualifies as OFLA, the agency designates the leave as such and notifies the employee of:
 - i. Their rights and responsibilities listed in Section 18.
 - ii. The number of weeks, days or hours of leave that will count against the employee's OFLA entitlements if the leave is taken in a block of time or as a predictable reduced schedule.
 - iii. If the OFLA leave is intermittent or it is not possible to provide the specific amount of time that counts against the employee's OFLA entitlement, the employee may request the agency provide a notice of the amount counted against OFLA. The request can be no more than every 30 days and only when the employee has OFLA during those 30 days.

(18) Employee's rights and responsibilities under OFLA:

- a. Employees are responsible for providing sufficient information for the agency to determine if the leave qualifies.
- b. Employees must use paid leave according to this policy or a collective bargaining agreement.
- c. Employees are entitled to insurance premium information.
- d. An employee who requests leave for pregnancy disability leave is entitled to know whether the agency will require a fitness-for-duty certification before returning to work. The fitness-for-duty certificate must verify whether the employee is able to return to work, whether the employee has any job-related restrictions, and the duration of any restrictions.

(19) Core PEBB Insurance: During months when an employee uses OFLA, the agency pays its share of health care contributions for a benefit eligible employee's enrolled core benefit (medical, dental, and vision and basic employee-only life insurance).

- a. An employee must pay their share of the premium payment and any surcharges related to their core benefits. An employee in leave without pay status is required to make arrangements with the agency to pay for their share of the premium payments and surcharges associated with the employee's core benefits. A family member may make arrangements to make premium payments if the employee is incapacitated.
 - i. An employee may submit monthly payments to the agency for the employee portion of core benefits.

ii. An employee may choose to have the employee portion of core benefit premiums paid by the agency on their behalf during months an employee uses OFLA. 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.

b. An employee may be required to reimburse an agency for the employer’s portion and any agency paid employee’s portion of insurance premiums paid on the employee’s behalf if the employee fails to return to work unless the failure to return to work is because of a serious health condition under ORS Chapter 657B or another circumstance beyond the employee's control.

(20) Optional PEBB insurances:

a. If an employee works an insufficient number of hours in a month to cover their optional insurances while on OFLA or is in leave without pay status, the employee must pay premiums for the optional PEBB insurances that may be continued.

i. An employee may submit monthly payments to the agency for the continued optional insurance benefits.

(21) PEBB Insurances after exhaustion of OFLA:

a. When OFLA has been exhausted, all insurance coverage terminates when the employee, who is not in a current Affordable Care Act (ACA) Stability Period, does not work enough hours in the month, uses insufficient paid leave, or fails to make a premium payment. Should the employee wish insurance to continue, they may self-pay some insurance premiums under COBRA. The employee receives information about self-paying insurance through a third-party administrator.

(22) Use of paid leave: OFLA provides unpaid leave entitlements. However, this policy requires an employee to use available paid leave prior to using leave without pay with some exceptions listed in the chart below. The agency counts all paid and unpaid leave used during OFLA leave toward the employee’s OFLA entitlement. An employee chooses whether to use compensatory time (unless required by a collective bargaining agreement).

Leave Situation	Represented Employees (The column below is the employee’s requirement to use or reserve leave in the leave situation listed in the left-hand column)	Management Service, Unclassified Executive Service or Unrepresented Employees (the column below is the employee’s requirement to use or reserve leave in the situation listed in the far left-hand column)
Employee is on OFLA leave types in a block of time <u>and</u> employee is not on OMFLA leave, workers’ compensation or receiving payments from a disability provider.	Employee must use paid leave but may be able to reserve leave according to an applicable collective bargaining agreement. Employee may not reserve accrued paid leave	Employee must use paid leave but may reserve 60 hours of sick or vacation leave or a combination of both for use upon return to work. Employee may not

	when on intermittent or reduced-schedule leave.	reserve accrued paid leave when on intermittent or reduced-schedule leave.
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Leave Situation	Represented Employees (The column below is the employee's requirement to use or reserve leave in the leave situation listed in the left-hand column)	Management Service, Unclassified Executive Service or Unrepresented Employees (the column below is the employee's requirement to use or reserve leave in the situation listed in the far left-hand column)
Employee receives payments from a disability provider while they are on OFLA.	<p>Employee chooses if they will use paid leave.</p> <p>If the employee chooses to use paid leave, paid leave must be used until exhausted prior to entering into leave without pay.</p> <p>If the employee chooses to use leave without pay, leave without pay shall end when disability payments end. Employee resumes use of accrued paid leave when disability payments end.</p>	<p>Employee chooses if they will use paid leave.</p> <p>If the employee chooses to use paid leave, paid leave must be used until exhausted prior to entering into leave without pay.</p> <p>If the employee chooses to use leave without pay, leave without pay shall end when disability payments end. Employee resumes use of accrued paid leave when disability payments end.</p>
Employee exhausts OFLA and continues to receive payments from a disability provider.	<p>Employee chooses if they will use paid leave.</p> <p>If the employee chooses to use paid leave, paid leave must be used until exhausted prior to entering into leave without pay.</p> <p>If the employee chooses to use leave without pay, leave without pay shall end when disability payments end. Employee resumes use of accrued paid leave when disability payments end.</p>	<p>Employee chooses if they will use paid leave.</p> <p>If the employee chooses to use paid leave, paid leave must be used until exhausted prior to entering into leave without pay.</p> <p>If the employee chooses to use leave without pay, leave without pay shall end when disability payments end. Employee resumes use of accrued paid leave when disability payments end.</p>
Employee is on OMFLA leave.	Employee chooses if they will use paid leave. If the employee chooses to use accrued paid leave, the employee chooses	Employee chooses if they will use paid leave. If the employee chooses to use accrued paid leave, the

	the order in which to use the leave.	employee chooses the order in which to use the leave.
Leave Situation	Represented Employees (The column below is the employee's requirement to use or reserve leave in the leave situation listed in the left-hand column)	Management Service, Unclassified Executive Service or Unrepresented Employees (the column below is the employee's requirement to use or reserve leave in the situation listed in the far left-hand column)
Employee is on OFLA Bereavement leave	The first few days are paid by the employer if the employee is eligible per the relevant collective bargaining agreement. Employee uses their own accrued paid leave for time that is not employer paid. Employee may request donated hardship leave if addressed in a collective bargaining agreement.	Eligible employees are paid for the first three days (24 hours), prorated for part-time employees, by the employer per occurrence under State HR Policy 60.000.10 Special Leaves with Pay. The employee is required to use their own accrued paid leave for the remainder of the period. The employee may request donated hardship leave if the employee will be in leave without pay during bereavement leave. The employee may receive up to 40 hours of donated leave per occurrence.

(23) Returning from leave:

- a. An agency has the option to require an employee who returns from pregnancy disability leave to provide a "fitness for duty statement" from a health care provider. The statement must certify the employee is able to return to work, whether the employee has any job-related restrictions, and the duration of any restrictions. (The agency must communicate this requirement when it initially responds to the employee's request for leave.)

(24) Reinstatement rights:

- a. An agency restores an employee who returns from OFLA only, to the position of employment held by the employee when the leave began. If the position no longer exists, an agency returns the employee to an equivalent position with equivalent pay, benefits and other terms and conditions of employment. The following exceptions apply:
 - i. If an equivalent position is not available, the employer shall offer the employee an equivalent job site located within 50 miles of the job site of the employee's former position, if such a position is available. If equivalent positions are available at multiple job sites, the employer shall first offer the employee the position at the job site that is nearest to the job site of the employee's former position.

- ii. If an agency eliminates the employee's position through layoff, the agency treats the employee as if the employee was not on OFLA, in the same manner as similarly situated employees, according to the agency's policy or applicable collective bargaining agreement.
 - iii. An agency restores an unclassified, temporary, or limited duration employee to the extent the employee's placement, appointment or position still exists.
 - iv. If an employee does not return from leave or is unable to perform an essential function of the position the employee held prior to the commencement of OFLA, with or without reasonable accommodation, the employee may be subject to termination under applicable law, rule, policy or collective bargaining agreement.
- b. An agency has no obligation to continue to employ an employee who has exhausted their OFLA leave if the employee cannot return to the position they held prior to OFLA, or cannot perform an essential function of the position, with or without reasonable accommodation.¹ The following exceptions apply:
- i. An employee who cannot return to work after exhausting their OFLA leave entitlement, who is not receiving disability payments, and who still has sick leave, must notify the agency of the need to continue their absence using accrued sick leave according to State HR Policy 60.000.01 Sick Leave with Pay, an applicable agency policy, or an applicable collective bargaining agreement.
 - ii. An agency has the option to grant an employee's request to extend an absence when continuing the leave does not impose an undue hardship on the agency and it complies with law, policy, applicable collective bargaining agreement, and reasonable accommodation provisions of the Americans with Disabilities Act Amendments Act (ADAAA). An agency may request the employee provide medical certification verifying the need for continued leave.

(25) Effect on seniority, salary increases and recognized service date: Use of OFLA does not affect an employee's seniority, eligibility for salary increases or the employee's recognized service date. The agency treats an employee using OFLA leave as if the employee is not on leave, up to the point where the employee's OFLA entitlement ends. Unpaid leave affects an employee's PERS retirement benefits.

(26) OFLA recordkeeping: An agency maintains records of the OFLA leave taken by its employees according to the recordkeeping requirements and purging schedules of OAR 166- 300-0035(3)(5)(6). An agency keeps OFLA medical records in a secured location in the Oregon state Human Resources Information System separate from an employee's personnel file. These records will be available to the appropriate personnel in any agency in which the employee is currently employed.

¹ An employee has reinstatement rights under OFLA as long as the employee returns immediately (the next business day for an employee on full-day leave) after the employee's leave entitlement ends and can perform all essential functions of the position, with or without reasonable accommodation. An agency may still have an obligation to employ the person, but it is no longer under OFLA.

(27) An agency may send all eligibility and designation letters to the employee's work email before and after the time the employee is on OFLA leave. The agency may send eligibility and designation letters to the employee's personal email if the employee wants to provide their personal email address during the time the employee is on OFLA leave. Otherwise, eligibility and designation letters are delivered in person or sent through U.S. mail. An agency may not send an employee's completed medical certification through unsecure email. However, the agency is not prohibited from receiving medical documentation via email if the employee chooses to provide it in this manner.

(28) Refer to the appropriate federal and state laws for situations regarding family and medical leave not covered in this policy.