

SUBJECT: Statutorily Required Leaves With and Without Pay NUMBER: 60.000.12
DIVISION: Chief Human Resources Office EFFECTIVE DATE: 01/01/14

APPROVED: Signature on file with Chief Human Resources Office

POLICY STATEMENT: This policy describes leave with and without pay granted by state statute.

AUTHORITY: ORS 10.061; 10.090; 236.040; 240.145(3); 243.325; 243.330 243.335; 401.378; 401.550; 404.100; 404.110; 404.130; 652.250; 659A.190 to 659A.198; 659A.230; 659A.236; 659A.270 to 290; OAR 839-005-0160 to 839-005-0170; 839-009-0325 to 839-009-0365

APPLICABILITY: All employees subject to ORS 240, State Personnel Relations Law, where not in conflict with collective bargaining agreement.

ATTACHMENTS: Certification for Requested Leave to address Domestic Violence, Harassment Sexual Assault or Stalking issues

DEFINITIONS: See State HR Policy 10.000.01, Definitions; and OAR 105-010-0000

POLICY:

(1) LEAVES WITH PAY

(a) Court, Legislative Committee or Quasi-Judicial Body Witness Leave with Pay (ORS 659A.230(1) and 659A.236)

(A) An employee receives leave with pay to appear in court, before a legislative committee or in front of a quasi-judicial body as a witness for matters other than official assigned duties, if a subpoena or other proper authority requires such appearance. The agency should retain a copy of the summons and court release, if applicable, to support the leave.

(B) Compensation received while performing officially assigned duties belongs to the agency. If the appearance occurs during off-duty hours, the employee may keep any compensation.

(b) Jury Service Leave (ORS 10.061 & 10.090)

An employee receives jury leave upon request. Except where an applicable collective bargaining agreement provides otherwise, the employee must waive any jury fees except for expense reimbursement. The agency may request and retain a copy of the jury summons and court release, if applicable, to support the leave.



(c) **Leave to Address Domestic Violence, Harassment, Sexual Assault or Stalking (ORS 659A.270 thru 659A.290)**

(A) **Definitions**

- (i) **Covered employer:** an employer who employs six or more persons in Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave to address domestic violence, harassment, sexual assault or stalking, or in the year immediately preceding the year in which an eligible employee takes leave to address domestic violence, harassment, sexual assault or stalking. Each agency, board and commission is a separate covered employer for the purpose of this definition.
- (ii) **Public employer:** Oregon state government.
- (iii) **Dependent:** an adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.104(1)(a), (3), and (4) or any adult of whom the employee has guardianship.
- (iv) **Eligible employee:** an employee who works for a state agency on the date leave begins under ORS 659A.270 to 659A.290 who is the victim of domestic violence, harassment, sexual assault or stalking or the parent or guardian of a minor child or dependent who is a victim of domestic violence, harassment, sexual assault or stalking.
- (v) **Immediate family:** spouse, domestic partner, father, mother, sibling, child, stepchild, grandparent, or any person who had the same primary residence as the victim at the time of the domestic violence, harassment, sexual assault or stalking.
- (vi) **Minor child:** biological, adopted, foster or stepchild, or a child with whom the employee is or was in relationship of in loco parentis. This definition includes the biological, adopted, foster, or stepchild of an employee's registered domestic partner. A minor child is under age 18.
- (vii) **Protective order:** an order authorized by ORS 30.866, 107.095 (1)(c), 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750 or any other order that restrains an individual from contact with an eligible employee or the employee's minor child or dependent.
- (viii) **Undue hardship:** a significant difficulty and expense to a covered employer. This definition includes consideration of the size of the agency and the agency's critical need for the eligible employee.
- (ix) **Victim of domestic violence:** an individual who has been threatened with abuse or who is a victim of abuse as defined in ORS 107.705; or any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence committed against the victim, including a member of the victim's immediate family. In no event will the alleged perpetrator of domestic violence be considered a victim for

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the purposes of this policy.

- (x) Victim of harassment: an individual against whom harassment has been committed as described in [ORS 166.065](#). In no event will the alleged perpetrator of harassment be considered a victim for the purposes of this policy.
- (xi) Victim of sexual assault: an individual against whom a sexual offense has been threatened or committed as described in [ORS 163.305 to 163.467 or 163.525](#); or any other person who has suffered financial, social, psychological or physical harm as a result of a sexual assault committed against the victim, including a member of the victim's immediate family. In no event will the alleged perpetrator of sexual assault be considered a victim for the purposes of this policy.
- (xii) Victim of stalking: an individual against whom stalking has been threatened or committed as described in [ORS 163.732](#); or any other person who has suffered financial, social psychological or physical harm as a result of a stalking committed against the victim, including a member of the victim's immediate family; or an individual who has obtained a court's stalking protective order or a temporary court's stalking protective order under [ORS 30.866](#). In no event will the alleged perpetrator of stalking be considered a victim for the purposes of this policy.
- (xiii) Victim service provider, prosecutor based victim assistance program or a nonprofit program that offers safety planning, counseling, support or advocacy related to domestic violence, harassment, sexual assault or stalking.

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(B) Paid Leave

A covered employer must grant up to 160 hours of leave with pay in each calendar year to an eligible employee for the purposes specified in (C) below. The 160 hours of paid leave is in addition to any vacation, sick, personal business or other form of paid or unpaid leave available to the eligible employee. An employee must exhaust all other forms of paid leave before the employee may use the paid leave established by this policy.

(C) An eligible employee may use the 160 hours of employer-paid leave for any of the following purposes:

- (i) To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, harassment, sexual assault or stalking;
- (ii) To seek medical treatment for or to recover from injuries caused by domestic violence, harassment, sexual assault or stalking of the eligible employee or the employee's minor child or dependent;
- (iii) To obtain, or to assist a minor child or dependent in obtaining counseling from a

licensed mental health professional related to an experience of domestic violence, harassment, sexual assault or stalking;

- (iv) To obtain services from a victim services provider for the eligible employee or the employee's minor child or dependent; or
- (v) To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the employee's minor child or dependent. Relocate includes:
 - (I) Transition periods spent moving the eligible employee or the eligible employee's minor child or dependent from one home or facility to another, including but not limited to time to pack and make security or other arrangements for such transitions related to domestic violence, harassment, sexual assault or stalking;
 - (II) Transportation or other assistance required for an eligible employee or the eligible employee's minor child or dependent related to the domestic violence, harassment, sexual assault or stalking.

(D) Notification Requirements:

- (i) An eligible employee seeking leave under this policy must give reasonable advance notice of the employee's intention to take leave unless giving the advance notice is not feasible. When taking leave in an unanticipated or emergency situation, an eligible employee must give oral or written notice as soon as is practicable. Notice may be given by any other person on behalf of an eligible employee taking unanticipated leave.

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(E) Certification requirements:

- (i) An eligible employee must provide, within a reasonable amount of time, written certification that the leave is for the employee or the employee's minor child or dependent who is a victim of domestic violence, harassment, sexual assault or stalking; and the leave is taken for one of the purposes identified in (1)(c)(C).

(F) Intermittent Leave, Altered or Reduced Work Schedule and Alternate Duty:

- (i) An eligible employee may take leave under ORS 659A.270 to 659A.285 in multiple blocks of time, intermittently, and/or supplementing an altered or reduced work schedule.
- (ii) An agency may transfer an employee on intermittent leave or a reduced work schedule into an alternate position with the same or different duties to accommodate the leave, provided the following exist:
 - (I) The eligible employee accepts the transfer position voluntarily and without coercion;
 - (II) The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;
 - (III) The transfer to an alternate position is used only when there is no other reasonable option available that would allow the eligible employee to use intermittent leave or reduced work schedule; and
 - (IV) The transfer is not used to discourage the eligible employee from taking intermittent or reduced work schedule leave, or to create a hardship for the eligible employee.

(V) The agency returns the eligible employee to the eligible employee's former position when the eligible employee notifies the employer that the employee is ready to return to the former position.

(G) If an agency has knowledge, or reasonably should have knowledge, that an employee is a victim of domestic violence, harassment, sexual assault or stalking, and if anyone makes or attempts to make, in the victim's workplace, direct or indirect communication to the eligible employee related to his or her victimization, the agency shall immediately inform the employee and offer to report the communication to law enforcement.

(H) Prohibited Behavior

(i) The agency must not deny leave, but may limit the amount of leave an eligible employee takes to address the issues stated above, if the employee's leave creates an undue hardship to the agency. If the agency limits leave, it must document the occurrence and the reason for limiting leave; the agency also must inform the employee in writing.

(ii) An agency must not discharge, threaten to discharge, demote, suspend, or in any other manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment because an employee inquires about, applies for, or takes leave under this policy.

(iii) An agency must not refuse to hire an otherwise qualified person because the person is a victim of domestic violence, harassment, sexual assault or stalking.

(iv) An agency must not discharge, expel or otherwise discriminate against an employee because the person has filed a complaint, testified or assisted in any proceeding in connection with the Oregon Victim of Certain Crimes Leave Act (OVCCLA).

(I) All records and information kept by an agency regarding an eligible employee's leave under this section, including the documentation that shows an employee requested or obtained leave under this section, are confidential. The agency may not release such records without the express permission of the employee, or unless otherwise required by law. The agency must retain this information in a separate confidential file for three years.

(J) To the extent the employee's need for leave under this section is also covered by the Federal Medical Leave Act and/or Oregon Family Leave Act the leave types run concurrently.

(d) Red Cross Disaster Relief Services Leave with Pay ([ORS 401.378](#))

An agency may grant leave with pay not to exceed 15 work days in any 12-month period to an employee to participate in disaster relief services in Oregon. To qualify for such leave the employee must be a certified disaster services volunteer of the American Red Cross. "Disaster" means an event designated at level II and above by the American Red Cross. The employee must present their currently valid disaster services American Red Cross volunteer certification at the time of the leave request. The agency should maintain a copy of the certification on file.

(e) Search and Rescue Operation Leave with Pay ([ORS 404.100, 404.110, 404.130 & 652.250](#))

An employee receives leave with pay not to **exceed five** work days for each operation identified by an incident number if requested by a law enforcement agency, the Department of Transportation, the United States Forest Service, or any local civil defense organization.

(f) World, Pan American, or Olympic Event Training Leave with Pay ([ORS 243.325, 243.330 & 243.335](#))

An agency may grant a leave-with-pay loan to participate in official training camps and competitions for World, Pan American, or Olympic events not to exceed 90 calendar days per calendar year. The conditions under which such a loan may be granted must conform to ORS 243.325 to 243.335.

(2) LEAVES WITHOUT PAY

- (a) The agency has discretion to grant leave without pay for reasons other than specified in this policy. The agency may grant such leave when the employee's absence will not seriously affect the agency. For the general state policy on leave without pay applicable to ORS 240 covered employees, see State HR Policy 60.000.11, Leave without Pay, or applicable collective bargaining agreement.

(A) Crime Victim Leave ([ORS 59A.190 to 59A.198](#))**(i) Definition**

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- (I) Covered employer: an employer who employs six or more persons in Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave to attend a criminal proceeding or in the year immediately preceding the year in which an eligible employee takes leave to attend a criminal proceeding. Each agency, board and commission is a separate covered employer for the purpose of this definition.
- (II) Crime victim: a person or a member of the immediate family of the person who has suffered financial, social, psychological or physical harm as a result of a person felony, as defined in the rules of the Oregon Criminal Justice Commission, [OAR 213-003-0001\(14\)](#).
- (III) Immediate family: spouse, domestic partner, father, mother, sibling, child, stepchild, grandchild and grandparent.
- (IV) Criminal proceeding: any proceeding that constitutes a part of a criminal action or occurs in court in connection with a prospective, pending or completed criminal action. This definition includes a juvenile proceeding under ORS Chapter 419C or any other proceeding at which a crime victim has a right to be present.
- (V) Undue hardship: a significant difficulty and expense to a business including consideration of the agency's critical need for the employee.

- (B) The agency may not deny leave **to attend a criminal proceeding under this policy**, but may limit the amount of leave an eligible employee takes to attend a criminal proceeding if the employee's leave creates an undue hardship to the agency. If leave is limited, the agency must document the occurrence and the reason for limiting leave and inform the employee in writing.
- (C) Agencies must allow an eligible employee to use accrued vacation, personal business leave and compensatory time, and - as a last resort - leave without pay, to attend a criminal proceeding. The agency may determine the order in which the employee uses accrued leave when more than one type of accrued leave is available. An employee must exhaust all accrued vacation and personal business leave and, when appropriate, compensatory time, before requesting leave without pay. An eligible employee will be granted leave without pay if he or she does not have accrued vacation, personal business leave and compensatory time (when appropriate), unless the leave creates an undue hardship to the agency.
- (i) An employee is eligible to take Crime Victim Leave if:
- (I) he or she worked for the state an average of more than 25 hours per week for at least 180 days immediately before the date the employee takes leave to attend a criminal proceeding; and
 - (II) he or she or a member of the immediate family is a crime victim.
- (ii) An eligible employee must give the agency **reasonable notice of the employee's intention to take leave to attend a proceeding; and copies of any notices of scheduled criminal proceeding that the employee receives from a law enforcement agency under [ORS 147.417](#).**
- (iii) All records kept by an agency regarding an eligible employee's leave, or notices received are subject to the laws that relate to confidentiality. The agency must retain such records in a separate confidential file for three years.
- (iv) An agency must not deny leave to an eligible employee or discharge, threaten to discharge, intimidate or coerce an employee because the employee takes leave to attend a criminal proceeding.
- (v) An employee who **claims** to be aggrieved by an unlawful employment practice as specified above may file a civil action under ORS 659A.885.
- (vi) For court appearances associated with domestic violence, harassment, sexual assault or stalking, see (1)(c)(B) above.**

(D) Court Appearance ([ORS 659A.230](#))

- (i) An employee may request and receive leave without pay to appear as a plaintiff or defendant in a civil or criminal court proceeding not connected with the defendant's officially assigned duties. The agency must maintain documentation of the summons and court release in the employee's personnel file. For court appearance leave with pay applicable to ORS 240

covered employees see HRSD State Policy, 60.000.10, Special Leaves with Pay, or applicable collective bargaining agreement.

(ii) An employee is granted leave without pay for a court appearance only after exhausting accrued vacation leave and personal business leave.

(i) For court appearances associated with Crime Victim Leave, see section (1)(a)(A) above.

~~(ii)~~ **For court appearances associated with domestic violence, harassment, sexual assault or stalking, see (1)(c)(B) above.**

(F) Peace Corps ([ORS 236.040](#))

(i) A full-time salaried employee receives leave without pay for at least two years if he or she provides a copy of Peace Corps appointment documents. Upon completion of service in the Peace Corps, the employee is returned to the last position she or she held, at the same salary step and without loss of seniority, leave accrual rate or other rights. Failure of the employee to report within 90 calendar days after completion of the Peace Corps service may result in termination.

(ii) An employee is granted Peace Corps leave without pay only after exhausting accrued vacation leave and personal business leave.

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