

OSBA Model Sample Policy

Revised/Reviewed: GCBDA/GDBDA-AR(1)

Family Leave * (Version 2)

{Highly recommended administrative regulation (AR). The law does not require districts to have this information in an AR, but the district is recommended to follow the law. Having an AR in place can assist with compliance. This AR is intended for districts with between 25 and 50 employees. If the district does not have 25 employees, the district should not use this AR.}

Employee Eligibility

FMLA benefits are available to employees who have been employed by the district for at least 12 months, have worked at least 1,250 hours during the past 12-month period and work at a worksite that employs 50 district employees within 75 miles of the worksite.¹

Generally, in order for an employee to be eligible for the benefits under OFLA, the employee must work an average of 25 hours or more per week during the 180 calendar days immediately prior to the first day of the start of the requested leave.² For parental leave purposes, an employee becomes eligible upon completing at least 180 days immediately preceding the date on which the parental leave begins; there is no minimum average number of hours worked per week.

An employee is eligible to take leave for purposes of OFLA during a period of time covered by a public health emergency except:

1. An employee who has worked for the district for fewer than 30 days immediately before the date on which the family leave would commence; or
2. An employee who has worked for the district for an average of fewer than 25 hours per week in the 30 days immediately before the date on which the family leave would commence.

An employee of the district is eligible to take leave for purposes of OFLA if the employee:

1. Separates from employment with the district, irrespective of any reason:
 - a. Is eligible to take leave OFLA at the time the employee separates; and
 - b. Is reemployed by the district within 180 days of separation from employment; or
2. Is eligible to take OFLA leave:
 - a. At the beginning of a temporary cessation of scheduled hours of 180 days or less; and

¹ While the district is subject to FMLA, the district does not have any eligible employees. Consequently, FMLA eligibility language has been omitted from this AR.

² The requirements of OFLA do not apply to any employer offering eligible employees a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, which provides as one of its options employee leave at least as generous as the leave required by OFLA.

- b. Returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

Additional OFLA leave taken by the employee within any one-year period continues to count against the length of OFLA leave the employee is entitled. The amount of time that an employee is deemed to have worked for the district prior to a break in service due to a separation from employment or a temporary cessation of scheduled hours shall be restored to the employee when the employee is reemployed by the district within 180 days of separation from employment or when the employee returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

An employee who has previously qualified for and has taken some portion of OFLA leave, may request additional OFLA leave within the same leave year. In such instances, the employee must requalify as an eligible employee for each additional leave requested unless one of the following exceptions apply:

1. An 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 leave in the same leave year;
2. An employee who has taken 12 weeks of parental leave need not requalify to take an additional 12 weeks in the same leave year for sick child leave;
3. An employee granted leave for a serious health condition for the employee or a family member need not requalify if additional leave is taken in this leave year for the same reason;
4. An employee unable to work because of a disabling compensable injury³ need not requalify in order to use OFLA leave following a period the employee is off work due to the compensable injury; and
5. An employee who has taken serious health condition leave to care for a family member who dies during the employee's serious health condition need not requalify to take leave for the death of that family member.

OMFLA applies to employees who work an average of at least 20 hours per week. There is no minimum number of days worked when determining employee eligibility for OMFLA.

In determining if an employee has been employed for the preceding 180 calendar days, the district must consider days, paid or unpaid, an employee is maintained on payroll. Full-time public school teachers who have been maintained on payroll by the district for 180 consecutive calendar days are thereafter deemed to have been employed for an average of at least 25 hours per week during the 180 days immediately preceding the start date of the OFLA leave.

In determining average workweek, the employer must count the actual hours worked using the Fair Labor Standards Act (FLSA) guidelines.

Qualifying Reason

Eligible employees may access OFLA for the following reasons:

³ As defined in ORS 656.005.

1. Serious health condition of the employee or the employee's covered family member. Serious health condition means:

P An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility;

- b. An illness, disease or condition that in the medical judgement of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care;
- c. Any period of disability due to pregnancy, or period of absence for prenatal care; or
- d. Any period of absence for the donation of a body part, organ or tissue, including preoperative or diagnostic services, surgery, post-operative treatment and recovery.⁴

2. Parental leave (separate from eligible leave as a result of the child's serious health condition):

- a. Bonding with and the care for the employee's newborn (within 12 months following birth);
- b. Bonding with and the care for a newly adopted child or newly placed child in foster care under the age of 18 (within 12 months of placement);
- c. Care for a newly adopted child or newly placed child in foster care over 18 years of age who is incapable of self-care because of a physical or mental impairment (within 12 months of placement);
- d. Time to effectuate the legal process required for placement of a child in foster care or the adoption of a child.

3. Sick Child Leave: leave for non-serious health conditions of the employee's child. For OFLA, sick child leave includes absence to care for an employee's child whose school or child care provider has been closed⁵ in conjunction with a statewide public health emergency declared by a public health official.⁶

4. Bereavement Leave: leave related to the death of a covered family member.⁷

5. Eligible employees may access OMFLA for the purpose of spending time with a spouse or domestic partner who is in the military and has been notified of an impending call or order to active duty, or who has been deployed during a period of military conflict.

⁴ This definition is from ORS 659A.150(7). A more detailed definition is available in OAR 839-009-0210(22).

⁵ "Closure" for the purpose of sick child leave during a statewide public health emergency declared by a public health official means a closure that is ongoing, intermittent, or recurring and restricts physical access to the child's school or child care provider. OAR 839-009-0210(4).

⁶ The district may request verification of the need for sick child leave due to a closure during a statewide emergency. Verification may include:

1. The name of the child being cared for;
2. The name of the school or child care provider that has closed or become unavailable;
3. A statement from the employee that no other family member of the child is willing and able to care for the child; and
4. With the care of a child older than 14, a statement that special circumstances exist requiring the employee to provide care to the child during daylight hours.

⁷ Bereavement leave under OFLA must be completed within 60 days of when the employee received notice of the death.

6. The eligibility of an employee who takes multiple leaves for different qualified reasons during the same leave year may be reconfirmed at the start of each qualified leave requested.

Provisions

1. Family member:

a. For the purposes of OFLA, “family member” means:

- (1) Spouse or domestic partner;
- (2) Child or the child’s spouse or domestic partner;
- (3) Parent or the parent’s spouse or domestic partner;
- (4) Sibling or stepsibling, or the sibling’s or stepsibling’s spouse or domestic partner;
- (5) Grandparent or the grandparent’s spouse or domestic partner;
- (6) Grandchild or the grandchild’s spouse or domestic partner; or
- (7) Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.⁸

2. Child:

- a. For the purposes of OFLA, “child” means a biological or adopted child, a child in foster care or stepchild of the employee, the child of the employee’s domestic partner, or a child with whom the employee is or was in a relationship of “in loco parentis”.
- b. For the purposes of parental and sick child leave under OFLA, the child must be under the age of 18 or an adult dependent child substantially limited by a physical or mental impairment.

3. In loco parentis:

- a. For the purposes of OFLA, “in loco parentis” means person in the place of the parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

4. Public health emergency:

⁸ “Affinity” means a relationship for which there is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship. This bond may be demonstrated by, but is not limited to the following factors, with no single factor being determinative:

- a. Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills or beneficiary designations;
- b. Emergency contact designation of the employee by the other individual in the relationship or the emergency contact designation of the other individual in the relationship by the employee;
- c. The expectation to provide care because of the relationship or the prior provision of care;
- d. Cohabitation and its duration and purpose;
- e. Geographic proximity; and
- f. Any other factor that demonstrates the existence of a family-like relationship.

For OFLA a public health emergency means;

P A public health emergency declared under ORS 433.441.
An emergency declared under ORS 401.165 if related to a public health emergency as defined in ORS 433.442.

Leave Period

For the purpose of calculating an employee's leave period, the district will use [the calendar year] [any fixed 12-month "leave year"] [the 12-month period measured forward from the date the employee's leave begins] [a "rolling" 12-month period measured backward from the date the employee uses any family and medical leave][a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences]{9}. The same method for calculating the one-year period for OFLA leave entitlement shall be used for all employees. However, in all instances, the leave period for the purposes of shall be dependent on the start of any such leave regardless of the district's designated leave period described above.

Leave Duration

For the purposes of OFLA, an eligible employee is generally entitled to a total of 12 weeks of qualified leave during the designated leave period. However, an employee may be entitled to an additional, full 12 weeks of parental leave during the designated leave period following the birth of a child regardless of how much OFLA qualified leave the employee has taken prior to the birth of such child during the designated leave period. Likewise, an employee who uses the full 12 weeks of parental leave during the designated leave period, will be entitled to an additional 12 weeks of sick child leave under OFLA.¹⁰ OFLA does not combine the leave entitlement for spouses working for the district. Under OFLA, family members who work for the district may be restricted from taking concurrent OFLA qualified leave.¹¹

For the purposes of OMFLA, an eligible employee is entitled to 14 days of leave per call or order to active duty or notification of a leave from deployment. When an employee also meets the eligibility requirements of OFLA, the duration of the OMFLA leave counts toward that employee's leave entitlement during the designated leave period.

For the purpose of tracking the number of leave hours an eligible employee is entitled and/or has used during each week of the employee's leave, leave entitlement is calculated by multiplying the number of hours the eligible employee normally works per week by 12¹². If an employee's schedule varies from

{⁹ Beginning July 1, 2024, districts are required to use the final bracketed option for OFLA purposes. See SB 999 (2023). Prior to making a change to the leave period calculation, 60 days' notice must be provided to employees.}

¹⁰ Sick child leave under OFLA need not be provided if another family member, including a noncustodial biological parent, is willing and able to care for the child.

¹¹ Exceptions to the ability to require family members from taking OFLA qualified leave at different times are when 1) employee is caring for the other employee who has a serious medical condition; 2) one employee is caring for a child with a serious medical condition when the other employee is suffering a serious medical condition; 3) each family member is suffering a serious medical condition; 4) each family member wants to take Bereavement Leave under OFLA; and 5) the employer allows the family members to take concurrent leave.

¹² For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours of leave.

week-to-week, a weekly average of the hours worked over the 12 months worked prior to the beginning of the leave period shall be used for calculating the employee's normal workweek¹³. If an employee takes intermittent or reduced work schedule leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of leave to which the employee is entitled.

Intermittent Leave

With the exception of parental leave which must be taken in one continuous block of time, an eligible employee is permitted under OFLA to take intermittent leave for any qualifying reason.

Intermittent leave is taken in multiple blocks of time (i.e., hours, days, weeks, etc.) rather than in one continuous block of time and/or requiring an altered or reduced work schedule. For OFLA this includes but is not limited to sick child leave taken requiring an altered or reduced work schedule because the intermittent or recurring closure of a child's school or child care provider due to a statewide public health emergency declared by a public health official.

When an exempt employee is eligible for OFLA but not FMLA leave, and the employee takes intermittent leave in blocks of less than one day, the district will jeopardize the employee's exempt status if the district reduces the employee's salary for the party-day absence.

An employee's intermittent leave time is determined by calculating the difference between the employee's normal work schedule and the number of hours the employee actually works during the leave period. The result of such calculation is credited against the eligible employee's leave entitlement.

Holidays or days in which the district is not in operation, are not counted against the eligible employee's intermittent OFLA leave period unless the employee was scheduled and expected to work on any such day.

Alternate Work Assignment

The district may transfer an employee recovering from a serious health condition to an alternate position which accommodates the serious health condition provided:

1. The employee accepts the position voluntarily and without coercion;
2. The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;
3. The transfer is compliant with any applicable collective bargaining agreement;
4. The transfer is compliant with state and federal law, including but not limited to the applicable protections provided for in OFLA; and
5. The transfer is not used to discourage the employee from taking OFLA leave for a serious health condition or to create a hardship for the employee.

¹³ For example, an employee working an average of 25 hours per week is entitled to 12 times 25 hours, or a total of 300 hours of leave.

The district may transfer an eligible employee who is on intermittent OFLA leave to another position with the same or different duties to accommodate the leave, provided:

1. The employee accepts the transfer position voluntarily and without coercion;
2. The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;
3. The transfer is compliant with any applicable collective bargaining agreements;
4. The transfer is compliant with state and federal law, including but not limited to the applicable protections provided for in OFLA;
5. The transfer to an alternate position is used only when there is no other reasonable option available that would allow the employee to use intermittent leave or reduced work schedule; and
6. The transfer is not used to discourage the employee from taking intermittent or reduced work schedule leave, or to create a hardship for the employee.

If an eligible employee is transferred to an alternative position to accommodate the employee's serious health condition, and as a result the employee works fewer hours than the employee was working in the original position, the employee's OFLA leave time is determined by calculating the difference between the employee's normal work schedule and the number of hours the employee actually works during the leave period.

When an employee is transferred to alternate position as described above but such transfer does not result in a reduced schedule, time worked in any such alternate position shall not be considered for the purpose of OFLA leave. An employee working in an alternate position retains the right to return to the employee's original position unless all OFLA leave taken in that leave year plus the period of time worked in the alternate position exceeds 12 weeks.

Special Rules for School Employees

For the purposes of OFLA, "school employee" means employee employed principally as instructors in public kindergartens, elementary schools, secondary schools or education service districts.

OFLA leave that is taken for a period that ends with the school year and begins with the next semester is considered consecutive rather than intermittent. In any such situation, the eligible school employee will receive any benefits during the break period that employees would normally receive if they had been working at the end of the school year.

1. Foreseeable Intermittent Leave Exceeding 20 Percent of Working Days

When the qualified leave is foreseeable, will encompass more than 20 percent of the eligible school employee's regular work schedule during the leave period, and the purpose of such leave is to care for a family member with a serious medical condition, for a servicemember with a serious medical condition or because of the employee's own serious medical condition, the district may require the eligible school employee to:

- a. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- P** Temporarily transfer the eligible school employee to an alternate position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than the employee's original position.

2. Limitation on Leave Near the End of the School Year

When an eligible school employee requests leave near the end of the school year, the district may require the following:

- a. When the qualified leave begins more than five weeks before the end of the school year:
 - (1) For the purposes of OFLA leave, if the reason for the leave is because of the eligible school employee's own serious health condition, the eligible school employee may be required to remain on leave until the end of the school year, provided:
 - (a) The leave will last at least three weeks; and
 - (b) The employee's return to work would occur within three weeks of the end of the school year.
- b. For the purposes of OFLA leave, when the qualified leave begins within five weeks of the end of the school year and the purpose of such leave is parental leave, for the serious health condition of a family member or for the serious health condition of a servicemember, the eligible school employee may be required to remain on leave until the end of the school year provided:
 - (1) The leave will last more than two weeks; and
 - (2) The employee would return to work during the two-week period before the end of the school year.
- c. For the purposes of OFLA leave, when the qualified leave begins within three weeks of the end of the school year and the purpose of such leave is parental leave, for the serious health condition of a family member or for the serious health condition of a servicemember, the eligible school employee may be required to remain on leave until the end of the school year provided the length of the leave will last more than five working days.

If the district requires an eligible school employee to remain on leave until the end of the school year as described above, additional leave required by the employer until the end of the school year shall not count against the eligible school employee's leave entitlement.

Paid/Unpaid Leave

OFLA does not require the district to pay an eligible employee who is on a qualified leave. Paid Family Medical Leave Insurance (PMFLI) leave taken via Paid Leave Oregon or an equivalent plan will run concurrently with OFLA when taken for the same purpose. Subject to any related provisions in any applicable collective bargaining agreement [an employee may elect to use any available accrued paid leave

including personal and sick leave, or available accrued vacation leave during the leave period.}]¹⁴ This includes when an employee is being paid through PMFLI. The district will notify the eligible employee that the requested leave has been designated as OFLA leave and ask the employee about the use of available accrued paid leave.

Eligible employees who request OMFLA leave shall not be required to use any available accrued paid time off during the OMFLA leave period.

Benefits and Reinstatement

When an eligible employee returns to work following a OFLA qualified leave, the employee must be reinstated to the same position the employee held when the leave commenced, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

During an OFLA qualified leave, an eligible employee does not accrue seniority or other benefits that would have accrued while the employee was working, unless the terms of a collective bargaining agreement, other agreement or other district policy provide otherwise.¹⁵ The eligible employee is also subject to layoff to the same extent similarly situated employees not taking OFLA leave are subject unless the terms of an applicable collective bargaining agreement, other agreement or the district's policies provide otherwise.

For the purposes of OFLA, the district will continue to pay the employer portion of the eligible employee's group health insurance contribution (if applicable) during the qualified leave period. The eligible employee is required to pay the employee portion of any such group health insurance contribution as a condition of continued coverage.

For the purposes of OMFLA, the eligible employee is entitled to a continuation of benefits.

Fitness-for-Duty Certification

Prior to the reinstatement of an employee following a leave which was the result of the employee's own serious health condition, the district may require the employee to obtain and present a Fitness-for-Duty Certification. If the district is going to require a fitness-for-duty certification upon return to work, the district must notify the employee of such requirement when the leave is designated as OFLA leave. Failure to provide the certification may result in a delay or denial of reinstatement.

For the purposes of OFLA qualified leave, any out-of-pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the district.

Application

Under state law, an eligible employee requesting OFLA leave shall provide at least 30 days' notice prior to the leave date if the leave is foreseeable. The notice shall be written and include the anticipated start date, duration and reasons for the requested leave. When appropriate, the eligible employee must make a

¹⁴ {Coordinate with any language regarding use of accrued leave during PMFLI from GDBDF/GDBDF or any equivalent plan information.}

¹⁵ See also ORS 342.934(4)(d) in reduction force situations.

reasonable effort to schedule treatment, including intermittent leave and reduced leave, so as not to unduly disrupt the operation of the district.

The district may request additional information to determine that the requested leave qualifies as OFLA leave. The district may designate the employee as provisionally on OFLA leave until sufficient information is received to properly make a determination. An eligible employee able to give advance notice of the need to take OFLA leave must follow the district's known, reasonable and customary procedures for requesting any kind of leave.

For the purposes of OFLA, an eligible employee is required to provide oral or written notice within 24 hours of commencement of the leave in unanticipated or emergency leave situations. The employee may designate a family member or friend to notify the district during that period of time. Failure of an employee to provide the required notice for leave covered by OFLA may result in the district deducting up to three weeks from the employee's unused OFLA leave in that one-year leave period. The employee may be subject to disciplinary action for not following the district's notice procedures.

In all cases, proper documentation must be submitted no later than three working days following the employee's return to work.

Medical Certification

The district may require an eligible employee to provide medical documentation, when appropriate¹⁶, to support the stated reason for such leave. The district will provide written notification to an employee of this requirement within five working days of the employee's request for leave. If the employee provides less than 30 days' notice, the employee is required to submit such medical certification no later than 15 calendar days after receipt of the district's notification that medical certification is required.

Any additional certifications, including second and third opinions, will be in accordance with applicable law.

Posted Notice

The district will post the Bureau of Labor and Industries Family Leave notice in each building or worksite that is accessible to and regularly frequented by employees.¹⁷ The district will also post a notice explaining the provisions of FMLA and providing information concerning the procedures for filing complaints.¹⁸

Record Keeping

The district will maintain all records as required by federal and state laws including dates leave is taken by employees, identified separately from other leave; hours/days of leave; copies of general and specific

¹⁶ Medical documentation is not allowed in every situation. Review current laws and guidance for more information.

¹⁷ https://www.oregon.gov/boli/employers/Documents/BOLI_Printable_FamilyMedLv.pdf; electronic posting is not sufficient to satisfy this requirement, but may be used to supplement the physical posting.

¹⁸ <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fmlaen.pdf>; electronic posting is sufficient as long as it is posted prominently where it can be readily seen by employees and applicants for employees. The poster and the text must be large enough to be easily read and contain fully legible text.

notices to employees, including Board policy(ies) and regulations; premium payments of employee health benefits while on leave and records of any disputes with employees regarding granting of leave.

P Documentation will be maintained separately from personnel files as confidential medical records.

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