

OSBA Model Sample Policy

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Oregon Family Leave *

(Version 2)

(For employers that offer OFLA or employers with 25 to 49 employees)

Coverage

The Oregon Family Leave Act (OFLA) and the Oregon Military Family Leave Act (OMFLA) covers districts that employ 20 or more part-time or full-time employees in Oregon based on employment during each working day during any of the 20 or more workweeks in the calendar year in which the leave is to be taken or in the calendar year immediately preceding the year in which the leave is to be taken.

Eligibility

An eligible employee is an employee employed in the state of Oregon on the date OFLA leave begins. OFLA applies to employees who work an average of 25 hours or more per week during the 180 calendar days or more immediately prior to the first day of the start of the requested leave.¹ For parental leave purposes, an employee becomes eligible upon completing at least 180 calendar days immediately preceding the date on which the parental leave begins. There is no minimum average number of hours worked per week when determining employee eligibility for parental leave.

An employee of a covered employer 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 worked for the covered employer for fewer than 30 days immediately before the date on which the family leave would commence; or
2. An employee who worked for the covered employer 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 a covered employer is eligible to take leave for purposes of OFLA if the employee:

1. Separates from employment with the covered employer:
 - a. Is eligible to take leave OFLA at the time the employee separates; and
 - b. Is reemployed by the covered employer 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
 - b. Returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

Any OFLA leave taken by the employee within any one-year period continues to count against the length of time of OFLA leave the employee is entitled. The amount of time that an employee is deemed to have worked for a covered employer prior to a break in service due to a separation from employment or a

¹ The requirements of OFLA do not apply to an 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 leave required by OFLA.

temporary cessation of scheduled hours shall be restored to the employee when the employee is reemployed by the employer 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. A female employee who has taken 12 weeks of pregnancy disability leave need not requalify leave in the same leave year for any other purpose;
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; and
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, unless the reason is no longer qualifying.

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, when applicable, the employer must consider days (e.g. paid or unpaid) an employee is maintained on payroll for any part of a workweek. Full-time public school teachers who have been maintained on payroll by a district for 180 consecutive calendar days are 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. This provision is eligible for rebuttal if for example the employee was on a nonpaid sabbatical.

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

Qualifying Reasons

Eligible employees may access OFLA for the following reasons:

1. Serious health condition of the employee or the employee's covered family member:
 - a. Inpatient care;
 - b. Continuing treatment;
 - c. Chronic conditions;
 - d. Permanent, long-term or terminal conditions;
 - e. Multiple treatments;
 - f. Pregnancy and prenatal care.
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 or newly placed foster child under the age of 18 (within 12 months of placement);
 - c. Care for a newly adopted or newly placed foster child 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 foster child or the adoption of a child.

3. Sick Child Leave: leave for non-serious health conditions of the employee's child. Sick child leave includes absence to care for an employee's child whose school or child care provider has been closed² in conjunction with a statewide public health emergency declared by a public health official.³
4. Bereavement Leave: leave related to the death of a covered family member.⁴
5. Eligible employees may access OMFLA for the purpose of spending time with a spouse or same-gender 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.
6. The eligibility of an employee who takes multiple leaves for different qualified reasons during the same district designated leave period may be reconfirmed at the start of each qualified leave requested.

Definitions

1. Family member:

For the purposes of OFLA, "family member" means:

- a. Spouse⁵;
- b. Same-gender domestic partner;
- c. Parent;
- d. Parent-in-law;
- e. Parent of employee's same-gender domestic partner;
- f. Child;
- g. Child of employee's same-gender domestic partner;
- h. Grandchild;
- i. Grandparent;
- j. Persons who are "in loco parentis"

2. Child:

- a. For the purposes of OFLA, "child" means biological, adopted, foster child or stepchild of the employee, the child of the employee's same-gender 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.

² "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).

³ 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; and
3. A statement from the employee that no other family member of the child is willing and able to care for the child. 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.

⁴ Bereavement leave under OFLA must be completed within 60 days of when the employee received notice of the death.

⁵ "Spouse" means individuals in a marriage, including "common law" marriage, same-sex marriage or same sex individuals with a Certificate of Registered Domestic Partnership.

3. In loco parentis:

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:

For OFLA a public health emergency means;

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

Leave Period

For the purposes 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]. The same method for calculating the 12-month period for OFLA leave entitlement shall be used for all employees. However, in all instances, the leave period for the purposes of OMFLA shall be dependent on the start of any such leave, regardless of the district’s designated 12-month 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 district’s designated leave period. However, an eligible employee is entitled to an additional full 12 weeks of parental leave during the district’s 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 district’s designated leave period. Likewise, an employee who uses the full 12 weeks of parental leave during the district designated leave period, will be entitled to an additional 12 weeks of sick child leave under OFLA during the district’s designated leave period for the purpose of caring for a child(ren) with a non-serious health condition requiring home care.⁶ OFLA does not combine the leave entitlement for spouses working for the district. However, under OFLA, family members who work for the district may be restricted from taking concurrent OFLA qualified leave.⁷

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 the employee’s leave entitlement during the district’s designated leave period.

Except as otherwise noted above, qualified leave under OFLA for an eligible employee will run concurrently during the district’s 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

⁶ Sick child leave under OFLA need not be provided if another family member, including a non-custodial biological parent, is willing and able to care for the child.

⁷ 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 members want to take bereavement leave under OFLA; and 5) the employer allows the family members to take concurrent leave.

hours the eligible employee normally works per week by 12⁸. If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks worked prior to the beginning of the leave period shall be used for calculating the employee's normal workweek¹⁹. 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.

D 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 (hours, days, weeks, etc.) rather than in one continuous block and/or requires a modified 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 reduced work schedule is due to the temporary 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 employee is eligible for OFLA leave the employer:

1. May allow an exempt employee, as defined by state and federal law, with accrued paid time off to take OFLA leave in blocks of less than a full day, but;
2. May not reduce the salary of an employee who is taking intermittent leave when they do not have accrued paid leave available. To do so would result in the loss of exemption under state law.

An employee's OFLA 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 leave period unless the employee was scheduled and expected to work on any such day.

E 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 to accommodate the employee's condition, and provides 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 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.

⁸ 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.

⁹ 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 a foreseeable 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 and has equivalent pay and benefits;
3. The transfer is compliant with any applicable collective bargaining agreement;
4. The transfer is compliant with state law, including but not limited to the 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 alternate position, 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 worked during the leave period. The result of such calculation is credited against the eligible employee's leave entitlement.

When an employee is transferred to an 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 employees 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 members 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
- b. 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:

D 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 in 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. Subject to any related provisions in any applicable collective bargaining agreement, ^{10} [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.] [the district requires the eligible employee to use any available accrued sick leave, vacation or personal leave days (or other available paid leave established by Board policy(ies) and/or collective bargaining agreement) in the order specified by the district and before taking OFLA leave without pay during the leave period.] [the district requires the eligible employee to use any available accrued paid leave, including personal and sick leave or available accrued vacation leave before taking OFLA leave without pay during the leave period. The employee may select the order in which the available paid leave is used.]

The district will notify the eligible employee that the requested leave has been designated as OFLA leave and, if required by the district, that available accrued paid leave shall be used during the OFLA leave period. In the event the district is aware of an OFLA qualifying exigency, the district shall notify the eligible employee of its intent to designate the leave as such regardless of when the request has been made by the eligible employee. Such notification will be given to the eligible employee prior to the

¹⁰ {The district must choose one of the following from the three available bracketed options to complete this paragraph, and delete the other two.}

commencement of the leave or within two working days of the employee's notice of an unanticipated or emergency leave, whichever is sooner.

When the district does not have sufficient information to make a determination of whether the leave qualifies as OFLA leave, the district will provide the required notice promptly when the information is available, but no later than two working days after the district has received the information. Oral notices will be confirmed in writing no later than the following payday. If the payday is less than one week after the oral notice is given, written notice will be provided no later than the subsequent payday.

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 Insurance

When an eligible employee returns to work following a OFLA qualified leave, the employee must be reinstated to the 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 employer's policy provide otherwise.¹¹ The eligible employee is also subject to layoff to the same extent as 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 provides otherwise.

For the purposes of OFLA, the school 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. The certification will specifically address the employee's ability to perform the essential functions of the employee's job as they relate to the health condition that was the reason for the leave. 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 fitness-for-duty 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.

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

Application

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, duration and reasons for the requested leave. When appropriate, the eligible employee must make a reasonable effort to

¹¹ See also ORS 342.934(4)(d) in reduction force situations.

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 employer'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 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] [shall] require an eligible employee to provide medical documentation, when appropriate, to support the stated reason for the leave, other than to care for a child who requires home care due to the closure of the child's school or child care provider as a result of a public health emergency. The district will provide written notification to employees of this requirement within three working days of employee's request for leave. If the employee does not provide 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.

Second and Third Opinions

For the purposes of OFLA and except for leave related to sick child leave under OFLA, the district may require the employee to obtain a second opinion from a health care provider designated by the district. If the first and second verifications conflict, the employee may require the two health care providers to jointly designate a third health care provider for the purpose of providing a verification. This third verification shall be final and binding.

Notification

Any notice required by state laws explaining employee rights and responsibilities will be posted in all staff rooms and the district office. Additional information may be obtained by contacting the [superintendent] [personnel director].

Record Keeping/Posted Notice

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

Medical documentation will be maintained separately from personnel files as confidential medical records.

The district will post notice of OFLA¹² requirements.

¹² Poster available at <https://www.oregon.gov/boli/employers/pages/required-worksites-postings.aspx>.