

Family and Medical Leave – FMLA/OFLA Family and Medical Leave

A policy for administering the Federal and State Leave laws for eligible employees at
Portland State University

This Policy Covers:

Leave for a serious Health Condition

Parental Leave

Oregon Family Leave Act (OFLA) Child Leave

Other Federal and Medical Leave Act (FMLA) Policies:

FMLA Military Caregiver Leave

FMLA Qualifying Exigency Leave

Please read this statement before proceeding

This packet is a summary of Family and Medical leave policy and procedures. In all cases applicable state and federal laws, rules, policies and collective bargaining agreements govern the employee's and PSU's rights and obligations, not this document.

FMLA and OFLA are not optional. The law requires PSU to provide these entitlements.

Federal and state law prohibit retaliation against an employee with respect to hiring or any other term or condition of employment because the employee asked about, requested or used Family and Medical Leave.

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What is Family and Medical Leave?

The Family and Medical Leave Act (FMLA) and the Oregon Family and Medical Leave Act (OFLA) protect an eligible employee’s absence from work under certain conditions. Federal and state laws determine if you are eligible and if your absence qualifies as FMLA or OFLA and how much leave time you may take. At PSU, these laws are incorporated into the Family and Medical Leave policy outlined here. Neither FMLA nor OFLA are paid leaves, however, you may access your accruals to pay yourself. Refer to page 6, “Am I Paid During FMLA and OFLA Leave?” Only FMLA ensures that your core benefits are covered. Please see page 7, “Will My Insurance Continue?” for details.

Am I Eligible for FMLA and OFLA Leave?

The state uses a “rolling backward year” to determine an employee’s FMLA and OFLA leave entitlement. This means that PSU looks backward on the calendar for one year from the first day of your requested leave. This method tells us if you are eligible for FMLA and/or OFLA leave and how much of this job-protected time you have available to use.

To be eligible for FMLA and/or OFLA leave you must meet the following requirements:

Employees Eligible for FMLA	Employees Eligible for OFLA
Employee must have been employed by the Oregon University System (OUS) for a total of at least 12 months (if months are non-consecutive there can be no more than a seven-year break in service); and	Employee must have been employed by the Oregon University System (OUS) for a period of 180 calendar days immediately preceding the date leave begins; and
Employee must have worked at least 1250 hours during the 12-month period immediately preceding the leave.	Employee must have worked an average of 25 hours per week during the preceding 180-day period, unless the leave is to care for a newborn child or newly placed adopted or foster child (Parental leave).
When counting the number of hours worked to determine eligibility, PSU counts all hours the employee was actually at work, employment as a temporary worker, a student worker, and qualifying absences for military leave. Paid or unpaid leave time, such as time-off for vacation, does not count as hours worked.	

What are Qualifying Reasons to Take FMLA and OFLA Leave?

Under both FMLA and OFLA, you may take leave for these reasons

1. To recover from or seek treatment for your own serious health condition that renders you incapacitated. This includes pregnancy related disability and absence for prenatal care.
2. To care for your husband or wife, your parent or your biological, adopted, step or foster child with a serious health condition who is 17 years of age or younger or incapable of self-care due to a physical or mental disability. Parent includes someone who stood “in loco parentis” (in place of a parent) when the employee was a child. Child includes someone to whom the employee stands “in loco parentis”.
3. For Parental leave, which is leave to care for your newborn, newly adopted or newly placed foster child in your home.

In addition under OFLA, you may also take leave for these reasons

1. To care for your same-sex domestic partner with a serious health condition. Opposite-sex domestic partners are not covered.
2. To care for your or your domestic partner’s biological, adopted, step or foster child of any age with a serious health condition.
3. To care for your parent-in-law or your same-sex domestic partner’s parent with a serious health condition.
4. To care for your grandparent or grandchild with a serious health condition.
5. For Sick Child leave, which is leave to provide care for your child or your spouse’s or same-sex domestic partner’s child with a non-serious health condition who needs home care. The child must be 17 years of age or younger or be incapable of self-care due to a physical or mental disability.

What is a Serious Health Condition?

Serious Health Condition: An illness, injury, impairment, or physical or mental condition that involves one or more of the following:

- **Hospital care:** Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or as a consequence of inpatient care.
- **Absence plus treatment:** A period of incapacity of more than three consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves one or both of the following:
 - Treatment received in person, two or more times by a health care provider, a nurse, or a physician’s assistant under direct supervision of a health care provider, or a provider of health care services (e.g., physical therapist) under orders of or referred by a health care provider.
 - Treatment by a health care provider on at least one occasion resulting in a regimen of continuing treatment under the supervision of the health care provider.
 - Note that a “**Regimen of Continuing Treatment**” includes a course of prescription medication such as an antibiotic or physical therapy requiring special equipment to resolve or alleviate the health condition. A regimen of continuing treatment does not include taking over-the-counter medications such as aspirin, antihistamines or salves, bed-rest, drinking fluids, exercise, and other similar activities that could be initiated without a visit to a health care provider.
- **Any period of incapacity for pregnancy, pregnancy-related illness, or for prenatal care (pregnancy disability).** The following absences related to pregnancy disability qualify:
 - Part-day or full-day absences for severe morning sickness.
 - Periods of bed rest ordered by the physician of the pregnant employee.
 - A reduced work schedule because of pregnancy complications.
 - Routine prenatal visits to the doctor.
 - Leave following childbirth if the employee is incapacitated since the definition of pregnancy disability

includes incapacity due to pregnancy or childbirth. Pregnancy is a temporary condition and not a covered disability that requires reasonable accommodation under the Americans with Disabilities Act Amendments Act (ADAAA).

- **Chronic conditions:** A chronic condition is one which:
 - Requires periodic in-person treatments by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider.
 - Continues over an extended period of time, including, recurring episodes of a single underlying condition.
 - May cause episodic rather than a continuing period of incapacity; for example, asthma, diabetes, epilepsy.
- **Permanent or long-term conditions requiring supervision:** A period of incapacity that is permanent or long-term due to a condition for which treatment is potentially ineffective. The employee or family member is under supervision of a health care provider, not necessarily receiving active treatment. Examples are Alzheimer's disease, a severe stroke, the terminal stages of a disease.
- **Multiple treatments (non-chronic conditions):** Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by a health care provider for one or both of the following reasons:
 - Restorative surgery after an accident or other injury.
 - For a condition that in the absence of treatment or medical intervention, will likely result in a period of incapacity of more than three consecutive calendar days. For example: chemotherapy or radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease.

Some other definitions that are important for understanding what qualifies as a Serious Health Condition include:

- **Incapacity:** The inability to work, attend school or perform other regular daily activities due to a serious health condition or treatment for or recovery from a serious health condition.
- **Treatment:** Includes examinations to determine if a serious health condition exists and for evaluations of the condition. The definition does not include routine physical examinations, eye examinations or dental examinations.

How Much FMLA and OFLA Leave Do I Get?

Under both FMLA and OFLA you are entitled to:

Up to 12 weeks of protected absence leave during a 12-month period if you meet the eligibility and purpose requirements stated in this policy, measured using the rolling backward method. Some reasons qualify under both leaves and some qualify only as one leave type. Leave qualifying under both FMLA and OFLA are designated at the same time and used concurrently.

OFLA may entitle you to additional leave under the following circumstances:

1. If you are a female employee and you take any amount of leave up to 12 weeks for your own pregnancy-related disability, you may take up to an additional 12 weeks of OFLA leave for any OFLA-qualifying purpose.
2. If you are a male or female employee and use a full 12 weeks of Parental leave under OFLA, you may take up to 12 additional weeks of OFLA leave in the same leave year for Sick Child leave.

Leave entitlement for part-time employees and using FMLA and OFLA leave intermittently

If you are a part-time employee your leave entitlement is pro-rated. For example, if you normally work 30 hours per week, you are entitled to up to 12 weeks of leave at 30 hours per week. Leave taken on an intermittent basis is calculated by the hour. If you are a full-time employee working 40 hours per week, you are entitled to up to 480 hours of leave. A part-time employee's hourly entitlement is prorated. For example, if you normally work 30 hours per week, your hourly entitlement is 360 hours.

More than one qualifying condition

You may need FMLA and/or OFLA leave for more than one qualifying condition or purpose at the same time or in the same leave year. Having more than one qualifying condition does not extend the amount of your entitlement.

Spouses and family members working for PSU

If you and your spouse both work for PSU you must share the 12-week FMLA entitlement for Parental leave (for the birth, adoption, or foster child placement) or to care for a parent with a serious health condition.

If you and a family member both work for PSU you may not take OFLA leave at the same time except under one of the following circumstances: 1) one of you needs to care for the other who has a serious health condition; 2) one of you needs to care for a child with a serious health condition while the other is suffering from a serious health condition; 3) you both have a serious health condition or; 4) if PSU grants an exception under special circumstances.

What if I am on Time Loss Due to Workers' Compensation?

Only FMLA leave is applied when you are absent from work for a disabling approved compensable injury or if you have a pending determination of a workers' compensation claim.

If your pending workers' compensation claim is denied, OFLA leave will be counted for the employee's entire absence starting with the first day of leave.

If you have a disabling compensable injury and refuse an offer of transitional work, OFLA leave will immediately begin if you meet eligibility and purpose requirements for OFLA.

Do I have to take all my FMLA and OFLA at Once?

There are three types of FMLA and OFLA leave schedules.

1. Continuous leave: leave taken in a block of time. For example, an employee takes six weeks of leave due to a serious health condition.
2. Intermittent leave: Leave taken sporadically. For example, an employee misses five days of work a month due to a serious health condition.
3. Reduced schedule leave: Leave taken where the employee is scheduled to work less than the employee's normal work hours in a day or week. For example, an employee normally scheduled to work eight hours a day, instead works six hours and takes the remaining two hours as FMLA and/or OFLA due to a serious health condition.

What if I Don't Want to Use FMLA and OFLA Leave?

If you are an eligible employee who is absent from work for a reason that qualifies as FMLA and/or OFLA leave, PSU has no choice but to designate the absence as FMLA, OFLA or both. The amount of paid leave an employee has accrued or the employee's desire to "save FMLA and OFLA until later" are not a factor. FMLA and OFLA are not benefits. They are an entitlement that must be applied as the need occurs.

How Do I Request FMLA or OFLA Leave for a Serious Health Condition or Parental Leave?

You must generally give 30 calendar days notice for planned absences (paid or unpaid) related to family and medical leave by submitting the FMLA/OFLA Employee Family And Medical Leave Request Form, which is on our website on the [Policies, Contracts and Forms](#) page. If you are unable to request leave in advance due to an emergency or unforeseeable event, let PSU know as soon as possible. You are not required to specifically state the leave is for FMLA and/or OFLA, but you must provide enough information so PSU can determine if the leave qualifies. PSU may ask for more information if necessary.

Because FMLA and OFLA are not optional, PSU can designate leave as FMLA and/or OFLA without your agreement.

What Happens After I Request FMLA or OFLA Leave?

Notice of eligibility

After Human Resources receives your request for FMLA or OFLA leave, a PSU leave representative will generally let you know within five business days if you are eligible for the leave entitlement and if PSU needs more information such as a medical certification.

Medical Certification

If you are required to provide a Medical Certification, PSU will either mail you the correct form or direct you to our website at <http://www.pdx.edu/hr/> where you can find the Medical Certification to take to your medical provider. PSU uses this information to determine if your reason for the leave qualifies under FMLA and/or OFLA. The Medical Certification must be returned within 15 days or your leave can be denied. Denied leave means you do not have job protection under FMLA and OFLA. PSU will reimburse you for any out-of-pocket costs for obtaining a required Medical Certification that are not covered by your insurance. You should submit a receipt to your department (there should be no confidential information on the receipt), who will follow PSU's procedure for requesting reimbursement. The account code is 24999. Departments should use their own index code. You may be asked to provide another Medical Certification under certain circumstances. In certain exceptional situations, PSU may have enough information to designate FMLA and/or OFLA leave without medical certification.

Final determination

PSU will inform you once we have enough information to determine whether your absence qualifies as FMLA and/or OFLA leave. PSU will tell you how much FMLA and/or OFLA leave time you have available, requirements to use your paid leave, information about insurance, and your reinstatement rights. **PSU requires a Fitness for Duty Certification before returning to work if you are absent for your own serious health condition.**

What Else Do I Need to Know About Parental Leave?

Parental leave is time for you to bond with your child after the child's birth, adoption or foster placement in your home. Parental leave must be completed within one year of the birth, adoption or placement. You may take intermittent Parental leave prior to the adoption or placement of a foster child if your presence is required to affect the adoption or placement. In other situations, Parental leave must be taken in a continuous block unless your department agrees to allow you to take it on an intermittent or reduced schedule that is agreed to by PSU and you.

What if I Need to Be Absent for OFLA Sick Child Leave?

OFLA Sick Child leave is part of your 12-week OFLA entitlement. It is used intermittently. Follow normal call in procedures each time you need to be absent for OFLA Sick Child leave to care for your child 17 years of age or younger (or incapable of self-care due to a mental or physical disability), who has a non-serious health condition (i.e. head cold, ear ache, flu), requiring home care. PSU can inform you whether you qualify for OFLA Sick Child leave. PSU may require you to provide a Medical Certification after the third time you take OFLA Sick Child leave in the leave year.

Am I Paid During FMLA and OFLA Leave?

Neither the Oregon Family Leave Act (OFLA) nor the federal Family Medical Leave Act (FMLA) offer paid leaves, however, you pay yourself as outlined below depending on your employee classification. **Important:** FMLA does NOT start after paid leave is used up. The FMLA and /or OFLA leave and your sick pay usage start at the same time. They run concurrently as does your short-term disability insurance, if you have purchased that optional benefit.

Classified employees: you are required to use any accrued sick, vacation and personal leave you have available before you go on leave without pay except for 40 hours of vacation as outlined in accordance with the Classified staff OPEU/SEIU OUS Collective Bargaining Agreement. You may choose whether to use compensatory time. All paid and unpaid leave used for FMLA and OFLA purposes counts against your FMLA and OFLA entitlement. Use

your normal reporting process to let your department know what type of accrual you are using. You are required to complete your monthly time sheet for Payroll as well as the FMLA hour tracking sheet.

Classified employees who exhaust their accruals and did not withhold 40 hours of vacation at the start of their FMLA leave may request "hardship leave" in accordance with the Classified staff OPEU/SEIU OUS Collective Bargaining Agreement. You tell us whether or not you want to use all your vacation or save up to 40 hours when you complete and submit the FMLA/OFLA Employee Family And Medical Leave Request Form.

Unclassified employees: you are required to use your accrued sick leave while you are on FMLA and/or OFLA. You must exhaust your sick accrual before you go on leave without pay during a FMLA leave. If you exhaust all accruals including vacation and do not have disability insurance you may be eligible to have an unearned sick leave advance. For more information regarding eligibility for an unearned sick leave advance and how you pay it back, please contact PSU's Leaves Manager.

Even though you do not have to use your vacation accruals for either FMLA and/or OFLA, you may wish to meet with the benefits manager to see how vacation pay can be used to continue benefit coverage when you are only protected under OFLA. The OFLA leave protects your job, but does not ensure that PSU will continue to cover your core benefits.

Use your normal reporting process to let your department know what type of accrual you are using. You are required to report your use of accruals monthly through your department to Payroll as well as to submit the FMLA hour tracking sheet.

Will My Insurance Continue?

Under FMLA only, if you use any amount of FMLA leave in a month, PSU pays its share of premiums for your medical, dental and employee-only basic life insurance for that month. If you normally pay a portion of your premiums, you must continue timely payments during the period of leave to avoid cancellation. Insurance is not paid if you are on OFLA only. Insurance continues under OFLA only as long as you work sufficient hours or use sufficient paid leave.

Your optional insurances continue under both FMLA and OFLA as long as you use sufficient hours or use sufficient paid leave. When you do not have sufficient hours or paid leave, you may continue some of your optional insurances by paying the premiums. You may self-pay these premium payments by writing a check to Portland State University or by having the amount deducted from future paychecks. Be sure to work out the process, your deadline to pay, and the exact amount you owe with the Leaves Manager.

If you are only on OFLA leave and on leave without pay, you have the option of continuing certain coverage under the federal COBRA laws. You will be notified by the third party administrator, BenefitHelp Solutions, regarding how to continue your health and dental insurances as well as your health flexible spending account while on leave without pay. Be aware of the deadlines for enrollment and payment.

Your insurance will resume normally if you return from FMLA or OFLA leave immediately following your FMLA or OFLA absence. If you return after that date you will be considered to have returned from leave without pay (LWOP). An eligible employee returning from leave without pay must work at least 80 hours in the month they return to work or be an unclassified employee in at least a .5 FTE annualized position to be eligible for medical, dental, life and employee basic life coverage in the following month.

If you do not return to work following family and medical leave, you may be required to reimburse PSU for the full premium cost of health care coverage paid on your behalf, unless a recurrence, continuation, or onset of a serious health condition (or a serious illness or injury of a covered servicemember) occurs or the reason for not returning is beyond your control.

What Happens to My Job When I Take FMLA and OFLA Leave?

Before you return from FMLA or OFLA leave for your own serious health condition, PSU requires you to provide a statement from your medical provider verifying you are able to return to work, and if you have any work limitations or job restrictions.

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

If your position was eliminated through the layoff process, you must be treated as if you were not on FMLA or OFLA leave and will be treated the same as similarly situated employees in accordance with PSU policy or an applicable collective bargaining agreement.

If you are a temporary or limited duration employee, PSU will return you to your position to the extent the placement or position still exists.

If you are unable to perform an essential function of your position and reasonable accommodations are not appropriate, FMLA and OFLA job protection ends. You may be subject to termination under an applicable law, rule, policy or collective bargaining agreement.

What if I Need to Extend My Leave Beyond My FMLA or OFLA Entitlement?

If you are unable to return to work following your FMLA or OFLA leave or cannot perform all essential functions of your job, you may request an extension of your absence for either a continuous, intermittent or reduced schedule. PSU may grant an extension when continuing your leave does not impose undue hardship for PSU and continuing your leave complies with law, policy, an applicable collective bargaining agreement, and reasonable accommodation provisions of the Americans with Disabilities Act Amendments Act (ADAAA). For more information about PSU's ADA accommodation policy please refer to their [website](#).

To apply for a Personal Leave at the discretion of your department complete the Personal /Discretionary Leave form, which is on our website on the [Policies, Contracts and Forms](#) page.