

# Family and Medical Leave – FMLA Military Caregiver Leave

A policy for administering the Federal Military Caregiver Leave for eligible employees at Portland State University

## This Policy Covers:

The Federal Family and Medical Leave Act (FMLA) Military Caregiver Leave, which is leave to care for your spouse, parent, child, or next of kin, who is a Covered Servicemember, with a serious injury or illness incurred in the line of duty on federal active duty. This leave is protected under FMLA only.

*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 6, “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:**

<b>Employees Eligible for FMLA</b>	<b>Employees Eligible for OFLA</b>
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?

**This policy specifically addresses FMLA leave for:** FMLA Military Caregiver leave, which is leave to care for your spouse, parent, child, or next of kin, who is a Covered Servicemember, with a serious injury or illness incurred in the line of duty on federal active duty. This is a FMLA leave only. It is not covered under OFLA.

**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 FMLA Military Caregiver Leave?**

FMLA Military Caregiver leave is only available under federal law. This leave allows eligible employees protected leave to care for the employee's spouse, parent, son, daughter or next of kin who is a covered service member with a serious injury or illness incurred in the line of duty on active duty.

**Spouse:** The employee's spouse is the husband or wife of the employee as defined by Oregon state law.

**Parent:** The employee's parent is the biological or adoptive mother or father of the employee, or an individual who stood in loco parentis (in place of a parent) when the employee was a child.

**Son or Daughter:** The employee's son or daughter is the biological, adopted, foster or stepchild, a legal ward, or a child of an employee standing in loco parentis. There is no age limit to a son or daughter for FMLA Military Caregiver leave.

**Next of Kin:** The nearest blood relative of a Covered Servicemember (other than the spouse, parent, son or daughter) in the following priority order (29 CFR 825.122(d) provides further detail):

1. A blood relative designated in writing by the servicemember, as his or her nearest blood relative.
2. Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions.
3. Brothers and sisters.
4. Grandparents.
5. Aunts and uncles.
6. First Cousins.

## **What is a Covered Servicemember?**

A Covered Servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list. Outpatient status means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient or a military unit established to provide command and control of members of the Armed Forces receiving medical care as outpatients.

### **Serious Injury or Illness**

A serious injury or illness is one that is incurred by the servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank or rating.

## **Active Duty**

A federal call to duty under a call or order to active duty under a provision of law referred to in Section 101(a)(13)(B) of Title 10, United States Code.

## **How Much FMLA Military Caregiver Leave Do I Get?**

You are entitled to up to 26 weeks of FMLA Military Caregiver leave in a single 12-month period. Your leave entitlement of 26 weeks for FMLA Military Caregiver leave is based on a “rolling forward” leave year and includes all types of FMLA leave used during the 12 month period following the date the Military Caregiver leave began. If you and your spouse both work for PSU and need to take FMLA Military Caregiver leave for the same purpose, you must share your entitlement.

### **Leave entitlement for part-time employees and employees using FMLA 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 26 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 1040 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 780 hours.

## **Do I have to take all my FMLA Military Caregiver Leave at Once?**

**There are three types of FMLA Military Caregiver leave schedules.**

1. Continuous leave: Leave taken in a block of time. For example, an employee takes six weeks of leave to care for their spouse who is an injured Covered Servicemember.
2. Intermittent leave: Leave taken sporadically in a minimum of one hour increments. For example, an employee misses two days of work a week to care for her parent who is an ill Covered Servicemember.
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 Military Caregiver leave to care for his son who is an injured Covered Servicemember.

## **What if I Don’t Want to Use FMLA Military Caregiver Leave?**

If you are an eligible employee who is absent from work for a reason that qualifies as FMLA Military Caregiver leave, PSU has no choice but to designate the absence as FMLA Military Caregiver leave. The amount of paid leave an employee has accrued or the employee’s desire “save FMLA Military Caregiver leave until later” are not a factor. FMLA Military Caregiver leave is not a benefit. It is an entitlement that must be applied as the need occurs.

## **How Do I Request FMLA Military Caregiver 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 the agency know as soon as possible. You are not required to specifically state the leave is for FMLA Military Caregiver leave, but you must provide enough information so the agency can determine if the leave qualifies. The agency may ask for more information if necessary.

Because FMLA Military Caregiver leave is not optional, the agency can designate leave as FMLA Military Caregiver leave without your agreement.

## What Happens After I Request FMLA Military Caregiver 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 the FMLA Certification for Serious Injury or Illness of Covered Servicemember.

### FMLA Certification for Serious Injury or Illness of Covered Servicemember

If you are required to provide FMLA Certification for Serious Injury or Illness of Covered Servicemember, 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 Certification. There is a section on the form for you and the Covered Servicemember to complete and a section that must be completed by a Health Care Provider (a United States Department of Defense (DOD) health care provider or a health care provider who is either: (1) a United States Department of Veterans Affairs (VA) health care provider, (2) a DOD TRICARE network authorized private health care provider, or (3) a DOD non-network TRICARE private health care provider)

PSU uses this information to determine if your reason for the leave qualifies under FMLA Military Caregiver leave. This FMLA Certification must be returned within 15 days or your leave can be denied. Denied leave means you do not have job protection under FMLA. PSU will reimburse you for any out-of-pocket costs for obtaining the required 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.

### Invitational Travel Orders and Invitational Travel Authorizations

Instead of the FMLA Certification for Serious Injury or Illness of Covered Servicemember, the agency will accept as sufficient certification "invitational travel orders" ("ITOs") or "invitational travel authorizations" ("ITAs") issued to any family member to join an injured or ill servicemember at his or her bedside. An ITO or ITA is sufficient certification only for the duration of time specified in the ITO or ITA. During that time period, an eligible employee may take leave to care for the Covered Servicemember in a continuous block of time or on an intermittent basis. After the ITO or ITA has expired, PSU may require you to provide a completed FMLA Certification for Serious Injury or Illness of Covered Servicemember in order to continue FMLA Military Caregiver leave.

### 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.

## Am I Eligible for Other Protected Leave?

If the Covered Servicemember's illness or injury also is considered a serious health condition, you may be eligible for OFLA job protection to care for a family member with a serious health condition for up to 12 weeks. Your OFLA leave entitlement will run at the same time as 12 weeks of your 26 week FMLA Military Caregiver leave entitlement. The same applies to leave used for other FMLA purposes during the 12 months after the FMLA Military Caregiver leave begins. In other words, the 12-week FMLA entitlement is not in addition to the 26-week FMLA Military Caregiver leave entitlement.

## Am I Paid During FMLA Military Caregiver 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.

**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.

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 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 Military Caregiver Leave?**

Upon returning from FMLA Military Caregiver 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 with the following exceptions:

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

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

If you do not return to work after your FMLA entitlement 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 Military Caregiver Leave Entitlement?**

Your job protection ends at the exhaustion of your leave entitlement for FMLA Military Caregiver leave. If you are unable to return to work following your FMLA Military Caregiver leave, you may request an extension of your absence. 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.

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.