

Family and Medical Leave – FMLA Qualifying Exigency Leave

A policy for administering the Federal Qualifying Exigency Leave for eligible employees at Portland State University

This Policy Covers:

The Federal Family and Medical Leave Act (FMLA) Qualifying Exigency Leave, which is leave to tend to exigencies resulting from your husband or wife, parent or child who is called into federal 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 5, "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:

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?

This policy specifically addresses FMLA leave for: FMLA Qualifying Exigency leave which is leave to tend to exigencies resulting from your husband or wife, parent, or child who is called into federal active duty. This is a FMLA leave only. It is not covered under OFLA.

There are other reasons that may qualify for FMLA or OFLA leave, as follows:

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 Qualifying Exigency Leave?

FMLA Qualifying Exigency leave is protected leave to attend to qualifying exigencies when your spouse, parent, son, or daughter is on active duty or called into active duty in support of a contingency operation for the military.

Spouse: The employee's husband or wife as defined by Oregon state law.

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

Son or daughter: The biological, adopted, foster or stepchild, a legal ward, or a child of an employee standing in loco parentis. There is no age limited under the definition of son or daughter for FMLA Qualifying Exigency leave.

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.

What is a FMLA Qualifying Exigency?

The following circumstances are considered qualifying exigencies (additional detail is contained in 29 CFR 825.126):

Short notice deployment: When your covered military member receives notice that he or she will be deployed in seven days or less, you may take a maximum of seven days of FMLA Qualifying Exigency leave to address any issue arising from an impending call to duty (deployment) received by a covered military member. You must begin the leave within seven days of the deployment notice received by the military member.

Military events and activities related to deployment.

Arranging for alternative childcare or schools or providing care on an urgent, immediate need basis because of the deployment. For example: Your spouse is the deployed military member and normally provides the childcare for your children, so you use FMLA Qualifying Exigency leave while arranging for new childcare. Your spouse is the deployed military member and normally transports your child to school, so you use FMLA Qualifying Exigency leave while arranging for alternate transportation for the child. Your parent is the deployed military member and normally stays home with your sick child with a non-serious health condition, so instead you stay home with the sick child using FMLA Qualifying Exigency leave. (Note: the last example potentially qualifies under OFLA Sick Child leave also.)

Attending meetings with the school or daycare staff when the meetings are necessary due to circumstances arising from the deployment. For example: Your spouse is the deployed military member and normally attends parent-required school or daycare-related conferences and meetings, so instead you attend the meetings using FMLA Qualifying Exigency leave.

Financial and legal arrangements related to the military member's deployment.

Counseling for you, or for you to attend with the military member or your child, as the need arises from the deployment.

Up to five days to spend with a military member on rest and recuperation (R and R).

Post-deployment activities sponsored by the military (limited to a period of 90 days following the termination of the military member's active duty status.)

Leave needed to address issues related to the death of the military member.

The agency may agree to permit leave for other deployment-related activities not encompassed in the other categories.

How Much FMLA Qualifying Exigency Leave Do I Get?

You are entitled to up to 12 weeks of leave during a 12-month period if you meet the eligibility and purpose requirements measured using the rolling backward method.

Leave entitlement for part-time employees and employees using FMLA Qualifying Exigency 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.

What if I Don't Want to Use FMLA Qualifying Exigency Leave?

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

How Do I Request FMLA Qualifying Exigency 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 Qualifying Exigency 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 Qualifying Exigency leave is not optional, the agency can designate leave as FMLA Qualifying Exigency without your agreement.

What Happens After I Request FMLA Qualifying Exigency 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 Qualifying Exigency Certification

If you are required to provide FMLA Qualifying Exigency 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 Certification.

PSU uses this information to determine if your reason for the leave qualifies under FMLA Qualifying Exigency 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.

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 Qualifying Exigency Leave?

FMLA Qualifying Exigency leave is unpaid, 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 leave and your sick pay or vacation 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 purposes counts against your FMLA 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. You must exhaust your sick accrual before you go on leave without pay during a FMLA leave.

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, 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.

Your optional insurances continue under both FMLA 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.

Your insurance will resume normally if you return from FMLA leave immediately following your FMLA 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 Qualifying Exigency Leave?

Upon returning from FMLA Qualifying Exigency 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 Qualifying Exigency 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 Qualifying Exigency Leave Entitlement?

Your job protection ends at the exhaustion of your leave entitlement for FMLA Qualifying Exigency leave. If you are unable to return to work following your FMLA Qualifying Exigency 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.