




OREGON DEPARTMENT OF FISH AND WILDLIFE POLICY

Human Resources Division

Title:	Family and Medical Leave	HR_460_04
Supersedes:	HR_460_04 dated November 1, 2010	
Applicability:	All employees (including temporary employees) subject to ORS 240 State Personnel Relations Law, except where in conflict with a collective bargaining agreement.	
Reference:	Federal Family and Medical Leave Act, as amended, 29 USC § 2601 <u>et seq</u> ; federal regulations 29 CFR Part 825; Oregon Military Family Leave Act, ORS 659A.090 through 659A.099; Oregon Family Leave Act (OFLA), as amended ORS 659A.150 through 659A.186; ORS 659A.306; OAR 839-009-0200 through 839-009-0460; OAR 166-300-0010 through 166-300-0045; OAR 101-030-0005 through 101-030-0027; the Americans with Disabilities Act (ADA), as amended (including the ADA Amendments Act), 42 USC § 12101 <u>et seq.</u> ; the Fair Labor Standards Act (FLSA), as amended, 29 USC 201 <u>et seq</u> ; and the Uniformed Services Employment and Reemployment Rights Act (USERRA), as amended, 38 USC §4301 <u>et seq</u> ; and State Policy 60.000.15.	
Effective Date:	May 15, 2014	Approved: 

I. PURPOSE

To describe standards and guidelines for the proper administration of family and medical leave for employees of the Department of Fish and Wildlife (“department”) in accordance with the Federal Family and Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA).

II. DEFINITIONS

- A. Federal Family and Medical Leave Act (FMLA) and Oregon Family and Medical Leave Act (OFLA): Federal and state laws that protect an employee’s absence from work under certain conditions.
- B. For the purposes of this policy the Oregon Military Family Leave Act is referred to as OFLA Military Family Leave.
- C. Department: For the purpose of this policy the word “department” includes the appointing authority, the human resource staff, and individuals designated by the appointing authority to administer the department’s Family and Medical leave program.
- D. Subsequent sections of the policy include other definitions relevant to the FMLA or OFLA leave type.
- E. State HR Policy 10.000.01 Definitions and OAR 105-010-0000.

III. POLICY

A. FMLA and OFLA leaves are not optional. Federal and state law prohibit retaliating against an employee with respect to hiring or any other term or condition of employment because the employee asked about, requested or used any type of FMLA or OFLA leave. The Department of Fish and Wildlife grants an eligible employee time off up to 12 weeks (480 hours for a full-time employee who works 40 hours per week) of protected time off under FMLA and OFLA for the purposes listed in the chart below. The policy with its attachments, also describe exceptions to the 12-week entitlement. Other than the exceptions described in this policy or its policy attachments, an employee’s leave entitlement is limited to 12 weeks per leave in a 12 month time period, no matter how many different leave-types are used.

Qualifying purposes under FMLA	Qualifying purposes under OFLA
To tend to the employee’s own serious health condition	To tend to the employee’s own serious health condition
<p>To tend to the serious health condition of the employee’s:</p> <ul style="list-style-type: none"> • Spouse: husband or wife as defined under Oregon state law and a same sex spouse of an employee if they are married in a state that legally recognizes same sex marriage • Parent: the employee’s biological or adoptive mother or father, or an individual who stood in loco parentis¹ (in place of a parent) when the employee was a child • Child: The employee’s biological, adopted, foster or stepchild, a legal ward, or a child of an employee standing in loco parentis. The child must be 17 years of age or younger. The age limit does not apply if the child is incapable of self-care because of a mental or physical disability under the ADA as interpreted by the EEOC per 29 C.F.R. § 825.122(d)(2). 	<p>To tend to the serious health condition of the employee’s:</p> <ul style="list-style-type: none"> • Spouse or same-sex domestic partner as defined under Oregon state law • Parent: the employee’s biological or adoptive mother or father, or an individual who stood in loco parentis (in place of a parent) when the employee was a child, and the parent of the spouse or same- sex domestic partner • Child (of any age): The employee’s biological, adopted, foster or stepchild, a legal ward, or a child of an employee standing in loco parentis, and the child of the same-sex domestic partner • Grandparent or grandchild
Parental leave: to care for the employee’s newborn, newly adopted child or newly placed foster child.	Parental leave: to care for the employee’s newborn, newly adopted child or newly placed foster child.
Qualifying Exigency leave: to attend to qualifying exigencies when the employee’s spouse, parent, son, or daughter is on active duty or called into active duty in support of a contingency operation for the military.	Sick child leave: to care for a child 17 years of age or younger who has a non-serious health condition and requires home care. The age limit does not apply if the child is incapable of self-care because of a mental or physical disability.
<p>Military Caregiver leave: [Up to 26 weeks (1040 hours for a full-time employee who works 40 hours per week) in a single 12-month period] to care for the employee’s spouse, parent, son or daughter of any age, or next of kin who is a covered servicemember with a serious injury or illness incurred in the line of duty on active duty, or a veteran discharged under other than dishonorable conditions within five years of receiving medical treatment, recuperation or therapy for a serious injury or illness.</p> <p>The single 12 month period is applied on the following basis: per covered servicemember, per injury or illness. This includes (is not in addition to) time used for other FMLA qualifying purposes during the 12-month period.</p>	<p>An eligible female employee taking any amount of OFLA leave for her own pregnancy-related disability may take up to 12 more weeks of OFLA leave in the same leave year for any OFLA-qualifying purpose.</p> <p>_____</p> <p>An eligible employee taking a full 12 weeks of Parental leave under OFLA may take up to 12 additional weeks of OFLA leave in the same leave year for Sick Child leave.</p> <p>_____</p> <p>Military Family leave: [Up to 14 working days per deployment] related to the deployment of an employee’s spouse or same-sex domestic partner. The 14 days is included in the 12-week OFLA entitlement.</p>
	Bereavement leave: [Up to two weeks per family member, in a one year time period to be taken within 60 days of notification of the death] to deal with the death of a family member by: attending the funeral or alternative to a funeral, making arrangements necessitated by the death, or grieving.

¹ The Wage and Hour Division of the US Department of Labor issued an Administrator’s Interpretation No. 2010-3 on June 22, 2010 to clarify the definition of “son or daughter” under Section 101(12) of the FMLA as it applies to an employee standing “in loco parentis” to a child.

1. The department prorates the FMLA or OFLA leave entitlement for part-time employees. Examples (1) The entitlement for a part-time employee who works 30 hours a week is up to 12 weeks of leave at 30 hours a week or 360 hours of intermittent or reduced-schedule leave in a 12-month period for his or her own serious health condition; (2) An employee who uses FMLA Military Caregiver leave and works 30 hours a week is entitled to up to 26 weeks of leave at 30 hours a week or 780 hours of intermittent or reduced-schedule leave in a 12-month period.
2. An eligible limited duration or temporary employee's FMLA or OFLA leave ends when the employee's assignment expires regardless of whether the person has exhausted his or her leave entitlement.

B. Required Posting: The department informs employees about FMLA and OFLA by publishing these posters: "Oregon Family Leave Act Notice to Employers and Employees" and "Employee Rights Under the Family and Medical Leave Act." Federal law requires the department give information about FMLA to applicants and employees upon hire. To satisfy the first requirement, DAS posted a link to FMLA information on the E-Recruit Applicant Information page. The second requirement can be satisfied by giving the newly hired employee a copy of the FMLA poster. The department may use additional methods of informing newly hired employees about FMLA and OFLA.

C. The Department follows this Policy for All FMLA and OFLA Leave-Types (except where otherwise specifically applicable). Additional requirements for specific leave types are contained in the following policy attachments (see links at bottom of this policy):

- Leave for a Serious Health Condition
- Parental leave
- OFLA Sick Child leave
- FMLA Military Caregiver leave
- FMLA Qualifying Exigency leave
- OFLA Military Family leave
- OLFA Bereavement leave

D. Eligibility for Leave: The department determines eligibility for leave using the chart below. Eligibility requirements are not pro-rated for part-time employees.

Employees Eligible for FMLA	Employees Eligible for OFLA
To qualify for all FMLA leave-types the employee must have worked for Oregon state government 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 worked for at least 1250 hours during the 12-month period immediately preceding the leave.	To qualify for leave for serious health condition, or Sick Child or Bereavement leave the employee must have worked for Oregon state government for a period of 180 calendar days immediately preceding the date leave begins and worked an average of 25 hours per week.
	To qualify for Parental leave the employee must have worked for Oregon state government for a period of 180 calendar days immediately preceding the date leave begins.
	To qualify for OFLA Military Family leave the employee need only work for Oregon state government an average of 20 hours per week.

1. The department counts only the hours the employee actually worked at the department (not paid or unpaid leave), the hours worked in another state agency, hours worked for Oregon state government as a temporary employee (state or Qualified Rehabilitation Facility temp) for a state agency, and military time (per federal USERRA law and ODFW Policy HR_460_10 Military Leave) to determine an employee's eligibility for FMLA and OFLA leave.

2. The department uses a “rolling backward” year to determine the employee’s total entitlement. This means the department looks backward on the calendar for one year from the first day of the requested leave. The department reduces the employee’s FMLA entitlement by any FMLA leave used in the previous 12 months for the employee’s own or a family member’s serious health condition, Parental leave, FMLA Military Caregiver leave or FMLA Qualifying Exigency leave. The department reduces the employee’s OFLA entitlement by any OFLA leave used in the previous 12 months for employee’s own or a family member’s serious health condition, Parental leave, Sick Child leave or OFLA Military Family leave and OFLA Bereavement leave.
3. To determine the amount of an employee’s entitlement to FMLA Military Caregiver leave, the department uses a “rolling forward” leave year. This means the leave year for Military Caregiver leave starts on the first day of the first occurrence of Military Caregiver leave. The employee has one year from the first day of the leave to use the 26-week leave entitlement. An employee may use the leave in a block of time, intermittently or on a reduced schedule as necessary to care for the covered servicemember. If the employee exhausts the leave before the year is over, the employee is not eligible for additional FMLA Military Caregiver leave during that year. The department does not reduce the employee’s entitlement to FMLA Military Caregiver leave by the amount of FMLA leave used prior to the start of the Military Caregiver leave.

E. Types of Leave Schedules:

1. Continuous Leave: Leave taken in a block of time. For example, an employee takes six weeks of leave due to illness.
2. Intermittent Leave: Leave taken sporadically. For example, an employee misses five days of work a month due to a serious health condition. Conditions for use of intermittent leave are outlined in the policy attachments for each specific leave-type, where applicable.
3. Reduced Schedule Leave: Leave taken where the employee is scheduled to work less than the employee’s normal hours in a day or week. For example, an employee scheduled to work eight hours a day works six hours and takes the remaining two hours as FMLA and OFLA due to a serious health condition. Conditions for use of reduced-schedule are outlined in the policy attachments for each specific leave-type, where applicable.

F. Dual Entitlement: If the reason for the leave qualifies under both FMLA and OFLA, the department designates both FMLA and OFLA leave to an eligible employee, except in the following circumstance:

1. The department does not designate OFLA leave for an employee’s absence due to a disabling compensable injury or pending a determination of a workers’ compensation claim. If the workers’ compensation provider denies the claim or if an employee refuses an offer of transitional work as outlined in ODFW Policy HR_480_06 Management of Injured Workers, the department immediately designates OFLA leave if the employee meets eligibility and purpose requirements. If the denial is reversed upon appeal, the department restores the designated OFLA hours to the employee. (For a definition of compensable injury see ORS 656.005(7)).
2. The department grants FMLA leave to an employee whose absence results from a workers’ compensation claim if the employee meets eligibility and purpose requirements of FMLA.

G. Entitlement When Spouses and Family Members Work for Oregon State Government:

1. Spouses who are both employed by Oregon state government share the FMLA entitlement for Parental leave, leave to care for a parent with a serious health condition, and FMLA Military Caregiver Leave. The department may choose to lift the requirement that spouses share the entitlement when the absence of both employees does not cause a hardship for the department. (Note: The FMLA Military Caregiver leave 26-week entitlement is shared by spouses, the FMLA Qualifying Exigency leave entitlement is not shared).
2. Family members who are employed by Oregon state government may not take OFLA leave at the same time unless:
 - a. One employee needs to care for the other employee who is suffering from a serious health condition.
 - b. One employee needs to take care of a child with a serious health condition while the other employee is suffering from a serious health condition.
 - c. Both employees have a serious health condition.
 - d. The employees are taking OFLA Bereavement leave.
 - e. The department chooses to grant permission to use leave at the same time when the absence of the family members does not cause a hardship for the department.

H. Employee Requirements to Request FMLA or OFLA Leave: An employee makes a request to the department at least 30 calendar days in advance for a planned or foreseeable absence². An employee is not required to use the words FMLA or OFLA, but he or she must give enough information that the department can determine if the reason for leave might qualify as FMLA, OFLA or both. If the employee does not give enough information, the department may ask questions as to the nature of the leave. Exceptions:

1. For medical emergencies, other unforeseeable events, or short-notice situations, an employee, or his or her family member if the employee is medically unable, must notify the department as soon as possible.
2. For unplanned absences of OFLA Sick Child leave or pre-approved intermittent leave, an employee follows department call-in procedures and states the leave is to care for his or her sick child or for pre-approved FMLA or OFLA leave.
3. For OFLA Military Family leave, an employee notifies the department within five business days of the employee's spouse or same-sex domestic partner receiving office notice of an impending call or order to active duty or of a leave from deployment, or as soon as possible in situations where office notice is provided less than five days from commencement of the leave.
4. **Medical Certification for Serious Health Condition:** The department may, at its option, require an employee to provide medical certification from a health care provider verifying the need for leave for a serious health condition for the employee or the employee's family member. If requiring medical certification, the department makes available to the employee the Medical Certification PD 615A (see links at bottom of policy). The department may not

² The penalty for failure to give a 30 day notice is located in 29 CFR 825 for an employee using exclusively FMLA and in ORS 659A.165 for an employee using exclusively OFLA.

require medical certification for Parental leave for the birth of a newborn, newly adopted or newly placed foster child.

- a. An employee must provide a required Medical Certification prior to taking leave or within 15 days after the department requests the medical certification, whichever is later. In some extenuating circumstances, more than 15 days may be allowed, when despite the employee's diligent efforts he or she is unable to provide the certification in 15 days.
 - 1) If the employee refuses to or does not provide a required medical certification per FMLA and OFLA statutes and applicable collective bargaining agreement, the department may deny FMLA or OFLA leave. Denied FMLA and OFLA leave is not protected under the FMLA and OFLA statutes.
 - 2) The department may recoup from the employee insurance payments made on the employee's behalf where the employee is not entitled to insurance.
- b. If the Medical Certification is incomplete or insufficient, the department advises an employee in writing what additional information is needed to make the certification complete and sufficient. In such instances the department allows the employee up to seven calendar days to obtain a complete and sufficient certification from his or her health care provider.
- c. If the employee needs FMLA only and the department needs authentication or clarification of a Medical Certification, the department may, at its option, contact the employee's health care provider for the purposes of authentication or clarification of the Medical Certificate, subject to any applicable provisions of the Health Insurance Portability and Accountability Act (HIPAA). An employee's immediate supervisor may not contact the health care provider. If an employee refuses to provide necessary HIPAA authorization to his or her health care provider to communicate with the department designee and does not otherwise clarify the certification (if needed), FMLA leave may be denied.
- d. If an employee needs OFLA or both OFLA and FMLA, and the department needs authentication or clarification of a Medical Certificate, a health care provider representing the department may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authentication of the Medical Certificate. If an employee refuses to provide necessary HIPAA authorization to his or her health care provider to communicate with the department designee and does not otherwise clarify the certification (if needed), FMLA and OFLA leave may be denied.
- e. If the department has reason to doubt the validity of a Medical Certification for an employee's serious health condition, the department may, at its option, require a second opinion under FMLA and OFLA statutes. If the second opinion conflicts, the department may, at its option, require a third opinion, which is binding.
- f. If an employee's absence is for the employee's own serious health condition, the department may, at its option, require the employee to present a fitness for duty certification before returning to work, certifying whether the employee is able to return to work, whether the employee has any job-related restrictions and the duration of any restrictions.
- g. The department pays uninsured expenses related to required Medical Certifications. An employee must submit receipts for uninsured expenses following the department's policy regarding reimbursement.

- h. The department may, at its option, require a new Medical Certification when the employee requests leave for a new condition, and at the beginning of each leave year for each qualifying condition if the employee continues to have need for leave.
5. **Medical Recertification:** The department may require updated medical information under the following circumstances:
- a. An employee requests an extension of leave.
 - b. Circumstances (including duration or frequency of absences) described in the previous certification changed significantly.
 - c. The department receives information casting doubt on the employee's stated reasons for the absence.
 - d. To determine if the employee must reimburse the department for health care contributions paid on the employee's behalf.
 - f. If the employee does not return to work following FMLA or OFLA leave.
 - g. Every six months for an ongoing condition in connection with an absence.
 - h. No more than every 30 days (unless the initially requested leave period had an end date that was greater than 30 days), if none of the above circumstance apply.
- I. Department's Response to a Request for OFLA Sick Child Leave:** When initially designating OFLA Sick Child leave, the department sends written information to the employee stating whether the employee is eligible for OFLA Sick Child leave, the employee's rights and responsibilities under OFLA including coding time appropriately, and any requirement to provide medical certification after the third occurrence of OFLA Sick Child leave in a 12-month period.
- J. Department's Initial Response to a Request for FMLA or OFLA Leave and Eligibility Determination³:** Under most circumstances, the department provides an initial written response to the employee within five business days telling the employee whether he or she is eligible for FMLA or OFLA leave, that the leave may count as FMLA, OFLA or both, and:
- 1. If the employee is not eligible for one or both leaves, the department provides at least one reason for the determination. For example, the employee has not worked enough hours to qualify.
 - 2. If the employee is eligible for one or both leaves the department may provisionally designate the leave until the employee provides further information. Additionally, the department notifies the employee of his or her rights and responsibilities list in Section II, L, and whether the employee must provide medical certification or military orders (in order for the department to determine if the employee's reason for the leave qualifies as FMLA, OFLA or both). If the department requires medical or military certification or military orders, the department must also notify the employee of the consequence for failing to provide the information.
- K. The Department's Determination if Leave Qualifies as FMLA, OFLA or Both:** Within five business days of receiving information such as a medical or military certification or military

³ An agency may designate or deny FMLA or OFLA leave in the initial written response if the agency has enough information to make the determination if the employee is eligible and his or her need for leave qualifies. The agency's response must include (where applicable) the provisions in Sections J, I, K and L.

orders, the department provides the employee with a written response that states, whether the reason for the employee's leave qualifies as FMLA, OFLA or both, and:

1. If the employee's reason or purpose for the leave does not qualify for FMLA, OFLA, or both, the department provides at least one reason for the determination. For example, the leave did not qualify as a serious health condition.
2. If the employee's reason or purpose for leave qualifies as FMLA, OFLA or both, the department designates the leave as such and notifies the employee of:
 - a. His or her rights and responsibilities listed in Section II., L.
 - b. The amount of weeks, days or hours that will count against the employee's FMLA and OFLA entitlements if the leave is taken in a block of time or as a predictable reduced schedule.
 - c. If the FMLA leave is intermittent or it is not possible to provide the specific amount of time that will count against the employee's FMLA entitlement, the employee may request that the department provide a notice of the amount counted against FMLA. The request can be no more than every 30 days and only when the employee has FMLA during those 30 days.

L. Employee's Rights and Responsibilities under FMLA and OFLA:

1. Employees are entitled to receive a description of the rolling backward leave year used to calculate FMLA and OFLA.
2. Employees must use paid leave according to this policy or an applicable collective bargaining agreement.
3. Employees are entitled to insurance premium information, including the requirement to repay insurance premiums paid by the department if the employee does not return to work.
4. An employee who requests leave for his or her own serious health condition is entitled to know whether the department will require a fitness for duty certification before returning to work. The fitness for duty certification must verify whether the employee is able to return to work, whether the employee has any job-related restrictions, and the duration of any restrictions.

M. Insurance: During months when an employee uses FMLA, the department pays its share of health care contributions for the employee's medical, dental and basic employee-only life insurance for an employee otherwise qualified for insurance. An employee must continue to pay his or her share of the premium payment and any surcharges related to his or her insurance plan. An employee in leave without pay is required to make arrangements with the department to pay for his or her share of the premium payments and surcharges associated with the employee's plan. A family member may make arrangements to make premium payments if the employee is incapacitated. Premium payments made by the department on an employee's behalf may be recovered by the department.

1. An employee may be required to reimburse the department for the employer's portion of insurance premiums paid on the employee's behalf if the employee fails to return to work, unless the reason for the employee's failure to return is a continuation, reoccurrence, or onset of a serious health condition of the employee or employee's family member, a continuation, reoccurrence, or onset of a serious illness or injury of a covered servicemember or other circumstances beyond the employee's control.

2. If an employee works an insufficient number of hours in a month or uses an insufficient amount of leave to cover his or her optional insurances while on FMLA and OFLA, the employee must pay premiums for the optional insurances that may be continued.
3. When the leave qualifies only under OFLA, the employee must work enough hours or use sufficient paid leave in a month for insurance coverage to continue in the next month. All insurance coverage terminates when the employee does not work enough hours in the month or uses insufficient paid leave. If the employee wishes the insurance to continue, he or she may self-pay some insurance premiums under COBRA. The employee receives information about self-paying insurance through a third-party administrator.
4. Donated leave received from other employees, applies first to the payment of the employee's insurance premiums for medical, dental and basic employee-only life insurance when the employee is on OFLA only.⁴
5. Refer to the "Public Employees' Benefit Board FMLA-OFLA Matrix" (accessible through this link, <http://www.oregon.gov/DAS/CHRO/pages/fmla.aspx>, also at the bottom of this policy) for the effect on an employee's insurance when returning from FMLA or OFLA leave.

N. Use of Paid Leave: FMLA and OFLA are unpaid leave entitlements. However, this policy requires an employee to use available paid leave while on FMLA and OFLA before using leave without pay with some exceptions listed in the chart below. The department counts all paid and unpaid leave used during FMLA and OFLA leave toward the employee's FMLA and OFLA entitlement. An employee chooses whether to use compensatory time (unless required by a collective bargaining agreement).

Leave situation	Represented Employees <i>(The column below is the employee's requirement to use or reserve leave in the leave situation listed in the left-hand column)</i>	Management Service or Unrepresented Employees <i>(The column below is the employee's requirement to use or reserve leave in the situation listed in the far left-hand column)</i>
Employee is on any FMLA, OFLA or both leaves-types in a block of time, and employee is not on OFLA Military Family leave, workers' compensation or receiving payments from a disability provider.	Employee must use paid leave but may be able to reserve leave according to an applicable collective bargaining agreement. Employee may not reserve accrued paid leave when on intermittent or reduced-schedule leave.	Employee must use paid leave but may reserve 40 hours of sick or vacation leave or a combination of both. Employee may not reserve accrued paid leave when on intermittent or reduced-schedule leave.
Employee receives payments from a disability provider <u>at the same time</u> that he or she is on FMLA only or FMLA and OFLA.	Employee chooses if he or she will use paid leave. Employee resumes use of accrued paid leave when disability payments end.	Employee chooses if he or she will use paid leave. Employee resumes use of accrued paid leave when disability payments end.
Employee is on OFLA Military Family leave.	Employee chooses if he or she will use paid leave. If the employee chooses to use accrued paid leave, the employee chooses the order in which to use the leave.	Employee chooses if he or she will use paid leave. If the employee chooses to use accrued paid leave, the employee chooses the order in which to use the leave.

⁴ See the OSPA Reference Manual, Family and Medical Leave Handbook; State HR Policy 460_12, Donated Leave; and an applicable Collective Bargaining Agreement for more information about an employee's eligibility to receive donated leave and how an agency administers donated leave.

<p>Employee is on time loss through workers' compensation while on FMLA leave.</p>	<p>Employee can only use accrued paid leave to supplement the workers' compensation payment to equal the difference between the workers' compensation payment and his or her normal salary. (A collective bargaining agreement may have further requirements or different provisions.)</p>	<p>Employee chooses whether he or she will supplement the workers' compensation payment with accrued paid leave to equal the difference between the workers' compensation payment and his or her normal salary.</p>
<p>Employee is on OFLA Bereavement Leave</p>	<p>The first few days are paid by the employer, if specified in a relevant collective bargaining agreement and the employee meets the eligibility requirement under the collective bargaining agreement. Employee uses his or her own accrued paid leave for time that is not employer paid. Employee may request donated hardship leave if addressed in a collective bargaining agreement.</p>	<p>The first three days (24 hours, prorated for part time employee), are paid by the employer per occurrence if the employee meets the eligibility requirement under HR Policy 460_03, Special Leaves with Pay. The employee is required to use his or her own accrued paid leave for the remainder of the period. The employee may request donated hardship leave if the employee will be in leave without pay during bereavement leave. The employee may receive up to 40 hours of donated leave per occurrence.</p>

O. Returning from Leave: The department has the option to require an employee who returns from leave for his or her own serious health condition to provide a fitness for duty statement from a health care provider. The statement must certify that the employee is able to return to work, whether the employee has any job-related restrictions, and the duration of any restrictions. (The department must communicate this requirement when it initially responds to the employee's request for leave.)

1. Reinstatement Rights:

- a. The department restores an employee who returns from OFLA only, or OFLA and FMLA used at the same time, to the position of employment held by the employee when the leave began. If the position no longer exists, or if the employee returns from FMLA only, the department returns the employee to an equivalent position with equivalent pay, benefits and other terms and conditions of employment. The following exceptions apply:
 - i. If the department eliminates the employee's position through layoff, the department treats the employee as if the employee was not on FMLA, OFLA or both, in the same manner as similarly situated employees, according to the department's policy or applicable collective bargaining agreement.
 - ii. The department restores an unclassified, temporary or limited duration employee to the extent the employee's placement, appointment or position still exists.
 - iii. If the employee does not return from leave or is unable to perform an essential function of the position the employee held prior to the commencement of FMLA, or OFLA or both, with or without reasonable accommodation, the employee may be subject to termination under applicable law, rule, policy or collective bargaining agreement.
- b. The department has no obligation to continue to employ an employee who has exhausted his or her FMLA and OFLA leave if the employee cannot return to the position he or

she held prior to FMLA and OFLA, or cannot perform an essential function of the position with or without reasonable accommodation.⁵ The following exceptions apply:

- i. An employee who cannot return to work after exhausting his or her FMLA and OFLA leave entitlement who still has sick leave, must notify the department of the need to continue his or her absence using accrued sick leave according to State HR Policy 60.000.01 Sick Leave with Pay, ODFW policy HR_460_01 Sick Leave with Pay, or an applicable collective bargaining agreement.
- ii. The department has the option to grant an employee's request to extend an absence when continuing the leave does not impose undue hardship on the department and it complies with law, policy, applicable collective bargaining agreement, and reasonable accommodation provisions of the American with Disabilities Act Amendments Act (ADAAA). The department may request that the employee provide medical certification that verifies the need for continued leave.

P. Effect on Seniority, Salary Increases and Recognized Service Dates: Use of FMLA and OFLA does not affect an employee's seniority, eligibility for salary increases or the employee's recognized service date. The department treats an employee using FMLA or OFLA leave as if the employee is not on leave during that time-period, up to the point where the employee's FMLA and OFLA entitlement ends. Unpaid leave affects an employee's PERS retirement benefits.

Q. FMLA and OFLA Recordkeeping: The department maintains records of the FMLA and OFLA leave taken by its employees according to the recordkeeping requirements and purging schedules of OAR 166-300-0035(3)(5)(6). The department keeps FMLA and OFLA medical records in a locked file separate from an employee's personnel file. If an employee who is on FMLA or OFLA transfers to another agency, the department does not send the employee's medical file, instead the department provides number of hours worked in the past 12 months and any FMLA or OFLA taken in the past 12 months. At the employee's request, the department may make a copy of the medical file for the employee to provide to the receiving agency.

III. POLICY CLARIFICATION

- A. Refer to the appropriate federal and state laws for situations regarding family and medical leave not covered in the policy.
- B. The department may send all Eligibility and Designation letters to the employee through email at work before and after the time the employee is on FMLA or OFLA leave. The department may send Eligibility and Designation letters through the employee's personal email if the employee wants to provide their personal email address during the time the employee is on FMLA or OFLA leave. Otherwise, Eligibility and Designation letters are delivered in person or sent through the mail. The department may not send an employee's completed medical certification in an unprotected manner through email. However, the department is not prohibited from receiving medical documentation via email if the employee chooses to provide it in this manner.
- C. Under FMLA only, the department grants an eligible employee time off for FMLA Military Caregiver leave and for FMLA Qualifying Exigency leave. Under OFLA only, the department grants an eligible employee time off for Sick Child leave to provide care to a child with a non-serious health condition requiring home care.

⁵ An employee has reinstatement rights under FMLA and OFLA as long as the employee returns immediately (the next business day for an employee on full-day leave) after the employee's leave entitlement ends and can perform all essential functions of the position. An agency may still have an obligation to employ the person but it is no longer under FMLA and OFLA.

- D. An agency may designate FMLA or OFLA leave in the initial written response if the agency has enough information to make the determination if the employee is eligible and his or her need for leave qualifies. The agency's response must include (where applicable) the provisions in Sections II., J.1., K. and L.
- E. See the OSPA Reference Manual, Family and Medical Leave Handbook; State HR Policy 60.025.01; and an applicable Collective Bargaining Agreement for more information about an employee's eligibility to receive donated leave and how an agency administers donated leave.
- F. An employee has reinstatement rights under FMLA and OFLA as long as the employee returns immediately (the next business day for an employee on full-day leave) after the employee's leave entitlement ends and can perform all essential functions of the position. An agency may still have an obligation to employ the person but it is no longer under FMLA and OFLA.
- G. A comparison must be made between the various laws to determine which applicable leave provision is the most generous.
- H. Application of the provisions of the various leave laws may vary based on individual circumstances and those are considered on a case-by-case basis. For example, the care of a parent-in-law with a serious health condition as well as the care of an employee's child suffering an illness or injury which requires home care but is not a serious health condition are both qualifying events under OFLA but not under FMLA.
- I. Mandatory and voluntary use of accrued leave is set by policy or CBA rather than by law.
- J. An employee may elect the type of accrued leave to be used during family or medical leave. However, all accrued leave except compensatory leave must be exhausted prior to going on approved leave without pay except as provided for in accordance with Section II., N of this policy.
- K. An employee's request for intermittent or reduced schedule leave qualifying under FMLA for birth or placement of a child for adoption or foster care may be granted at the Human Resources Administrator's discretion. However, an employee may take intermittent or reduced-schedule leave qualifying under FMLA whenever medically necessary to care for a family member or for the employee's serious health condition. The employee may be required to provide certification from the employee's health care provider as to the expected duration and schedule of such leave.
- L. An employee on intermittent OFLA leave or a reduced work schedule may be transferred to an alternate position with the same or different duties at equivalent pay and benefits during the time necessary to accommodate the leave, at the discretion of the Human Resources Administrator. The transfer must be voluntary on the part of the employee. It must be consistent with the collective bargaining agreement, if applicable.
- M. An employee is entitled to continued employer paid health care contributions when the leave is designated as FMLA. When the leave is qualifying only under OFLA, health care contributions continue if the employee is using accrued paid leave. If an employee qualifying only under OFLA goes on leave without pay, employer contributions terminate and coverage may be continued under COBRA.
- N. See HR Policy 420_01, Merit Pay System, for the effect of qualifying leave on the employee's salary eligibility date (SED), and HR Policy 460_02, Vacation Leave, for its effect on the recognized service date (RSD).

- O. FMLA and OFLA leaves are not optional and federal and state law prohibit retaliating against an employee with respect to hiring or any other term or condition of employment because the employee asked about, requested or used any type of FMLA or OFLA leave.

Attachments:

- A. FMLA/OFLA Employee Information Packet – Serious Health, Parental Leave, etc.
- B. Medical Certification (PD615A)
- C. FMLA Military Healthcare Certification PD615B
- D. FMLA Qualifying Exigency Certification PD615C

Additional Resources – DAS Policy, Attachments and Toolkit:

- G. CHRO State Policy 60.000.15
- H. Policy Attachments and Toolkit