

Family and Medical Leave

1041.1 PURPOSE AND SCOPE

The purpose of this policy is to provide general guidance for managing unpaid leave for eligible employees for qualified medical and family reasons, including (29 USC § 2612; ORS 659A.159):

- The birth, adoption, or foster care placement of a child.
- To care for a family member with a serious health condition.
- When an employee is unable to work because of a serious health condition.
- To care for a spouse, son, daughter, parent, or next of kin who is a service member of the United States Armed Forces and who has a serious injury or illness incurred in the line of duty.
- To care for a child of an employee who is ill, injured, or has a condition that is not a serious health condition but requires home care, or who requires home care due to the closure of a child's school or child care provider because of a public health emergency.
- Death of a family member.

This policy does not address all possible situations and circumstances that may arise when an employee requests leave for family or medical reasons. As these leave situations arise, supervisors should consult with the District Clerk or legal counsel to obtain specific guidance regarding leave rights and obligations.

Nothing in this policy supersedes any provision of any collective bargaining agreement, civil service or other local rule, or any law that provides greater family or medical leave rights.

1041.1.1 DEFINITIONS

Definitions related to this policy include:

Child - A child under 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability (29 USC § 2611; 29 CFR 825.102; 29 CFR 825.122). An employee's child is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, or foster child; stepchild; or a child for whom the employee is standing in loco parentis (in place of a parent).

For purposes of the Oregon Family Leave Act (OFLA), an employee's child also includes the child of an employee's domestic partner. An employee's child may be a minor or adult when leave is taken for a serious health condition, sick child leave, or death of a family member (OAR 839-009-0210).

FMLA - The federal Family and Medical Leave Act (29 USC § 2601 et seq.).

Family member - A spouse, child, or parent as defined by 29 CFR 825.122.

For purposes of OFLA, a family member includes a child, parent, grandparent, grandchild, sibling, stepsibling, spouse, or domestic partner of an eligible employee; a spouse or domestic partner of a covered individual's child, parent, sibling, stepsibling, grandparent, or grandchild; and any

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individual related by blood or affinity whose close association with an eligible employee is the equivalent of a family relationship (ORS 659A.150; OAR 839-009-0210).

OFLA - The Oregon Family Leave Act (ORS 659A.150 et seq.).

Qualified health care professional - A physician, surgeon, doctor of osteopathy, podiatrist, dentist, psychologist, optometrist, nurse practitioner, nurse midwife, clinical social worker, or physician assistant duly licensed and authorized to practice medicine; chiropractors for some purposes; any health care provider from whom the department benefits plan will accept certification of the existence of a serious health condition to substantiate a claim for benefits (29 CFR 825.125).

Spouse - The person with whom an employee has entered into a marriage defined or recognized by the location in which the marriage was entered into (29 USC § 2611(13); 29 CFR 825.102; 29 CFR 825.122).

For purposes of OFLA, Oregon recognizes "spouses" as individuals who have lawfully established a civil union, domestic partnership, or similar relationship under the laws of any state, or a marriage validly performed in a foreign jurisdiction (OAR 839-009-0210).

1041.2 POLICY

It is the policy of the Umatilla Rural Fire Protection District to manage unpaid leave for eligible employees for qualified medical and family reasons in compliance with federal and state law and any applicable collective bargaining agreement.

1041.3 FMLA-ELIGIBLE EMPLOYEES

Employees are eligible for FMLA after working for the Umatilla Rural Fire Protection District for at least one year and completing 1,250 hours over the 12 months prior to the commencement of the leave (29 USC § 2611; 29 CFR 825.110). Employees may not be eligible for leave if there are less than 50 other employees within 75 miles of the employee's work site.

1041.3.1 OFLA-ELIGIBLE EMPLOYEES

Employees are eligible for OFLA after working for the Umatilla Rural Fire Protection District for 180 days preceding the leave and working at least an average of 25 hours per week during the 180-day period (ORS 659A.156). Employees may not be eligible for OFLA leave if there are less than 25 employees (ORS 659A.153). The following exceptions apply under OFLA:

- (a) For parental leave, employees are eligible after being employed for 180 days, without regard for the number of hours worked per week.
- (b) Leave during a public health emergency (ORS 659A.156).
- (c) Re-employment or temporary cessation of scheduled hours within certain timeframes as prescribed in ORS 659A.156.

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1041.4 TYPE AND DURATION OF LEAVE

Generally, eligible employees are entitled under FMLA/OFLA to 12 work weeks of unpaid leave during a 12-month period (29 USC § 2612; 29 CFR 825.100; ORS 659A.162). Up to 26 weeks of unpaid leave during a single 12-month period may be available to care for certain injured military service members. The 12-month period is measured backward from the date leave is taken and continuously with each additional leave day taken.

1041.4.1 SERIOUS HEALTH CONDITIONS

Eligible employees may take up to 12 weeks of leave to care for a spouse, child, or parent with a serious health condition or when the employee is unable to work because of a serious health condition (29 USC § 2612(a)(1); 29 CFR 825.200).

Under state law, eligible employees may take up to 12 weeks of leave to care for a family member with a serious health condition or when the employee is unable to work because of a serious health condition (ORS 659A.159; ORS 659A.162).

If both spouses, including a state-registered domestic partner, are employed by the Umatilla Rural Fire Protection District, the combined number of work weeks to care for a sick parent is limited to 12 work weeks during any 12-month period (29 USC § 2612(f); 29 CFR 825.201; ORS 659A.162).

Generally, a serious health condition is an illness, injury, impairment, or physical or mental condition that involves (29 USC § 2611; 29 CFR 825.113):

- An overnight stay in a hospital, hospice, or residential medical care facility (29 CFR 825.114; ORS 659A.150).
- Continuing treatment by a qualified health care professional due to a serious health condition of more than three full consecutive calendar days (29 CFR 825.115(a)).
- Any period of incapacity due to pregnancy complications or prenatal care (29 CFR 825.115(b); ORS 659A.150).
- A chronic condition which requires treatment (29 CFR 825.115(c)).
- A permanent condition for which treatment may not be effective (such as Alzheimer's or the terminal stages of a disease) (29 CFR 825.115(d)).
- Any period of absence to receive multiple treatments, including any recovery period, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days without medical intervention or treatment (such as cancer chemotherapy or physical therapy for arthritis) (29 CFR 825.115(e)).
- Under OFLA, an illness, disease, or condition that, in the medical judgment of the treating health care provider, poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care (ORS 659A.150).
- Under OFLA, any period of absence for the donation of a body part, organ, or tissue, including preoperative or diagnostic services, surgery, post-operative treatment, and recovery (ORS 659A.150).

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1041.4.2 BIRTH OR PLACEMENT OF A CHILD

Eligible employees may take up to 12 weeks of leave for the birth, adoption, or foster care placement of a child of the employee (29 USC § 2612; 29 CFR 825.200; ORS 659A.159). The leave must be concluded within one year of the birth or placement of the child (29 CFR 825.120; 29 CFR 825.121; ORS 659A.159; OAR 839-009-0240).

If both parents are employed by the Umatilla Rural Fire Protection District, the combined number of work weeks of leave, under FMLA, is limited to 12 work weeks during any 12-month period (29 USC § 2612(f); 29 CFR 825.120; 29 CFR 825.121).

Under OFLA, if both parents are employed by the Umatilla Rural Fire Protection District, the eligible employees may each take up to 12 weeks of leave but not concurrently (ORS 659A.162).

1041.4.3 MILITARY EXIGENCY LEAVE

Eligible employees may take service member leave of up to 12 weeks for qualifying exigencies occurring because a spouse, child, or parent is on covered active duty or has been notified of an impending order to active duty (29 USC § 2612(a)(1)(E); 29 CFR 825.200). This type of leave is available to a family member of a person in the National Guard, Reserves, or members of the regular Armed Forces deployed to a foreign country. Qualifying exigencies include (29 CFR 825.126):

- Addressing issues that arise from a short notice (seven or less days) deployment.
- Attending military events related to the active duty or call to duty.
- Attending family support or assistance programs.
- Making child care or educational arrangements or attending school activities arising from active duty or a call to active duty.
- Making financial and legal arrangements.
- Spending time with a military member who is on short-term rest-and-recuperation leave during a period of deployment.
- Attending post-deployment activities.
- Addressing issues that arise from the death of a military member, such as making funeral arrangements.
- Caring for a military employee's parent who is incapable of self-care, such as providing care on an immediate need basis or arranging for alternative care.

1041.4.4 MILITARY CAREGIVER LEAVE

Eligible employees may take up to 26 weeks of leave in a single 12-month period to care for a spouse, son, daughter, parent, or next of kin who has incurred an injury or illness in the line of duty while on active duty in the Armed Forces, provided that such injury or illness may render the family member medically unfit to perform work (29 USC § 2612; 29 CFR 825.200).

Military caregiver leave is also available to family members of covered veterans who were members of the Armed Forces, including the National Guard or Reserves, at any point in the five

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years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy (29 USC § 2612; 29 CFR 825.127).

During the single 12-month period, employees are entitled to no more than a combined total of 26 weeks of FMLA leave. In any case in which both spouses are employed by the Umatilla Rural Fire Protection District, the combined number of work weeks of leave is limited to 26 work weeks during any 12-month period (29 USC § 2612(f); 29 CFR 825.127).

Service member FMLA leave runs concurrent with other leave entitlements provided under federal, state, and local law. Where FMLA leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first.

1041.4.5 MILITARY FAMILY LEAVE

During a period of military conflict, an eligible employee who is the spouse (including a same-gender domestic partner) of a service member is entitled to 14 days of unpaid leave for each deployment when the service member is called to active duty or is deployed. An employee must work an average of at least 20 hours per week to be considered eligible (ORS 659A.090). The leave is to be used prior to deployment or when the service member is on leave from deployment (ORS 659A.093).

An employee who requests military family leave shall provide a supervisor with notice of the intent to take leave within five business days of receiving official notice of an impending call or order to active duty or a leave from deployment (ORS 659A.093).

Military family leave shall be included in the total amount of leave authorized under OFLA (ORS 659A.093).

1041.4.6 INTERMITTENT LEAVE

An employee may take leave for the employee's own serious health condition, for the serious health condition of the employee's spouse, child, or parent, or to care for a covered service member with a serious injury or illness, intermittently or on a reduced schedule if medically necessary, and if that medical need can best be accommodated by an intermittent schedule as defined in federal law (29 USC § 2612(b); 29 CFR 825.202; 29 CFR 825.124).

Leave due to a military exigency may be taken on an intermittent or reduced-leave schedule (29 CFR 825.202).

Intermittent leave for the birth, adoption, or foster care placement of a child is only available if granted at the discretion of the Fire Chief, unless the employee has a serious health condition in connection with the birth or if the newborn child has a serious health condition (29 CFR 825.120; 29 CFR 825.121).

Under state law, an employee who has previously qualified for and taken a portion of OFLA leave may have to requalify as an eligible employee each time additional OFLA leave is taken within the same leave year (OAR 839-009-0240).

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Intermittent leave for any employee shall be tracked and calculated.

1041.4.7 PREGNANCY DISABILITY LEAVE

Employees who are disabled by pregnancy may be entitled to a disability leave in addition to any FMLA/OFLA leave. The duration of leave is dependent on the circumstances. The Department shall defer to a pregnant member's qualified health care professional in assessing the member's ability to work (ORS 659A.186).

1041.5 EMPLOYEE BENEFITS WHILE ON LEAVE

While on leave, employees will continue to be covered by any group health insurance to the same extent that coverage is provided while the employee is on the job (29 USC § 2614(c); 29 CFR 825.209). However, employees will not continue to be covered under non-health benefit plans.

Employees are responsible for any health plan employee contributions while on leave (29 CFR 825.210; OAR 839-009-0270(6)). Employee contribution rates are subject to any change in rates that occurs while the employee is on leave. If an employee fails to return to work after the leave entitlement has been exhausted or expires, the Department may recover its share of health plan premiums for the entire leave period unless the employee does not return because of the continuation, recurrence or onset of a serious health condition of the employee or a family member that would entitle the employee to leave, or because of circumstances beyond the employee's control (29 CFR 825.213; OAR 839-009-0270(6)). The Department may recover premiums through deduction from any sums (e.g., unpaid wages, vacation pay).

Employees may not earn additional time off while on unpaid leave.

1041.6 SUBSTITUTION OF PAID ACCRUED LEAVES

Subject to applicable collective bargaining agreements and civil service rules, employees are required to exhaust all applicable paid leave before taking unpaid leave. Paid accrued leave includes vacation leave, sick leave, personal leave, and compensatory time earned in lieu of overtime, pursuant to the Fair Labor Standards Act, during FMLA and/or OFLA leave. Employees may not use paid accrued leave to extend FMLA/OFLA leave beyond 12 work weeks per year.

1041.7 USE OF FMLA/OFLA LEAVE

If an employee takes a leave of absence for any reason that is FMLA/OFLA qualifying, the Department may designate that non-FMLA/OFLA leave as running concurrently with the employee's 12-week FMLA/OFLA leave entitlement.

1041.8 PROCEDURES

The following procedures will apply for all employees requesting leave under FMLA/OFLA:

- (a) When a leave is requested for a medical or other FMLA/OFLA-related treatment appointment, the employee must make a reasonable effort to schedule the appointment at a time that minimizes disruption to the department's operations (29 USC § 2612; 29 CFR 825.302; ORS 659A.168).

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- (b) An employee who wishes to take FMLA/OFLA must provide a supervisor with 30 days' advance notice when the leave is foreseeable or as soon as practicable, but not later than 24 hours if the need for leave is not foreseeable (29 USC § 2612; 29 CFR 825.302; 29 CFR 825.303; ORS 659A.165).
- (c) At the time of the request, the employee must complete an FMLA/OFLA request form.

Requests for medical leave shall be accompanied by a qualified health care professional statement, including the date on which the serious health condition began and the estimated date of return to work (29 USC § 2613; 29 CFR 825.302).

Once the leave is requested or designated by the Department, the supervisor should forward the request and any medical certifications to the District Clerk and ensure the employee is provided the necessary forms and FMLA/OFLA information within five days (29 CFR 825.300).

Employees are required to provide medical certification of a qualified health care professional, military documentation, or child care verification, if requested (29 CFR 825.305; 29 CFR 825.308; 29 CFR 825.309; 29 CFR 825.310; ORS 659A.168).

Employees shall be required to periodically report on their status and intent to return to work (29 USC § 2614; 29 CFR 825.311; ORS 659A.171). This may assist in avoiding a delay in reinstatement when the employee is ready to return to work.

Employees returning from a medical leave from the employee's own serious health condition will be required to present medical verification from a qualified health care professional of the employee's ability to return to work and a list of any restrictions that need to be accommodated (29 USC § 2614; 29 CFR 825.100; 29 CFR 825.312; ORS 659A.171).

1041.9 REINSTATEMENT FOLLOWING LEAVE

Generally, employees returning from FMLA/OFLA leave within the qualified period will be restored to their original job or to an equivalent job with equivalent pay and benefits (but not seniority), unless the employee would not otherwise have been employed at the time reinstatement is requested (e.g., in the case of a layoff) (29 USC § 2614; 29 CFR 825.214; 29 CFR 825.216; ORS 659A.171).

If the same position is no longer available, such as in a layoff, the employee will be entitled to a position that is comparable in pay, job content, and promotional opportunities and geographic location, if such a comparable position exists.

If upon return from leave an employee is unable to perform the essential functions of the job because of a physical or mental disability, the supervisor should work with the District Clerk or legal counsel to engage in an interactive process with the employee to identify a potential reasonable accommodation.

After exhausting any paid FMLA/OFLA leave, non-paid leave will continue until the conclusion of the protected time limit. Following the protected leave, the Fire Chief, in consultation with the legal counsel or the District Clerk, will determine whether non-FMLA/OFLA leave should apply.

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1041.10 RESPONSIBILITY

Supervisors should work with the District Clerk or legal counsel regarding questions relating to leave or reinstatement from leave under this policy. The District Clerk should advise the supervisor and inform members of their rights and responsibilities.

1041.11 RECORDS

The Department will maintain leave-related records as required by 29 CFR 825.500 for at least three years and in compliance with the department's established records retention schedule.

Records and documents related to doctor certifications and other medical information created for purposes of complying with FMLA/OFLA and this policy shall be maintained as confidential medical records in separate files from employee personnel files.

1041.12 NOTICE TO EMPLOYEES

The District Clerk should ensure that a notice explaining the FMLA's provisions and procedures is prominently posted in conspicuous places in the Department where it can be readily seen by all employees and applicants for employment. Electronic posting is sufficient as long as the other posting requirements have been met as provided by 29 CFR 825.300 (29 CFR 825.300).